

**REPUBLIC OF KENYA**



**ELEVENTH PARLIAMENT**

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**NATIONAL ASSEMBLY – THIRD SESSION**  
**DIRECTORATE OF COMMITTEE SERVICES**

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**THE NINETEENTH REPORT**  
**OF THE**  
**PUBLIC INVESTMENTS COMMITTEE**  
**ON THE**  
**AUDITED FINANCIAL STATEMENTS OF STATE CORPORATIONS**

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**VOLUME I**

**Clerk's Chambers**  
**Parliament Buildings**  
**NAIROBI.**

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## ACRONYMS AND ABBREVIATIONS

<b>ADC</b>	Agricultural Development Corporation
<b>ADF</b>	African Development Fund
<b>AFC</b>	Agricultural Finance Corporation
<b>AfDB</b>	African Development Bank
<b>AFFA</b>	Agriculture, Fisheries and Food Authority
<b>Ag.</b>	Acting
<b>AIDS</b>	Acquired immunodeficiency syndrome
<b>APRP</b>	Annual Public Roads Programme
<b>BoK</b>	Bomas of Kenya
<b>Cap</b>	Chapter
<b>CBK</b>	Central Bank of Kenya
<b>CBK</b>	Coffee Board of Kenya
<b>CDA</b>	Coast Development Authority
<b>CEO</b>	Chief Executive Officer
<b>CID</b>	Criminal Investigation Department
<b>CIS</b>	Cost Information Systems
<b>COMESA</b>	Common Market for Eastern and Southern Africa
<b>CRF</b>	Coffee Research Foundation
<b>CS</b>	Cabinet Secretary
<b>CT</b>	Computed Tomography
<b>CTC</b>	Corporation Tender Committee
<b>CUE</b>	Commission for University Education
<b>CWSB</b>	Coast Water Services Board
<b>DCA</b>	Directorate of Civil Aviation
<b>DCs</b>	District Commissioners
<b>DDOs</b>	District Development Officers
<b>EAC</b>	East Africa Community
<b>EACC</b>	Ethics and Anti-Corruption Commission
<b>EAPL</b>	East African Power & Lighting
<b>EARHC</b>	East Africa Railway & Harbor Corporation
<b>EFT</b>	Electronic Fund Transfers

<b>EMCA</b>	Environmental Management and Coordination Act
<b>ERC</b>	Energy Regulatory Commission
<b>EU</b>	European Union
<b>FAR</b>	Fixed Assets Register
<b>FDR</b>	Fixed Deposit Reserves
<b>FMA</b>	Financial Management Agency
<b>FY</b>	Financial Year
<b>GDC</b>	Geothermal Development Corporation
<b>GM</b>	General Manager
<b>GoK</b>	Government of Kenya
<b>HCC</b>	High Court Case
<b>HELB</b>	Higher Education Loans Board
<b>HIV</b>	Human Immunodeficiency Virus
<b>IAS</b>	International Accounting Standards
<b>ICAO</b>	International Civil Aviation Organization
<b>ICDC</b>	Industrial Commercial Development Corporation
<b>ICT</b>	Information Communication Technology
<b>IFRS</b>	International Financial Reporting Standards
<b>IPU</b>	Interparliamentary Union
<b>JICA</b>	Japan International Corporation Agency
<b>JKIA</b>	Jomo Kenyatta International Airport
<b>KAA</b>	Kenya Airports Authority
<b>KACC</b>	Kenya Anti-Corruption Commission
<b>KANU</b>	Kenya African National Union
<b>KARI</b>	Kenya Agricultural Research Institute
<b>KCAA</b>	Kenya Civil Aviation Authority
<b>KCB</b>	Kenya Commercial Bank
<b>KDB</b>	Kenya Dairy Board
<b>KEFRI</b>	Kenya Forest Research Institute
<b>KEMFRI</b>	Kenya Marine and Fisheries Research Institute
<b>KEMRI</b>	Kenya Medical Research Institute
<b>KEMSA</b>	Kenya Medical Supplies Authority
<b>KENAO</b>	Kenya National Audit Office

<b>KenGen</b>	Kenya Electricity Generating Company
<b>KeNHA</b>	Kenya National Highway Authority
<b>KEPHIS</b>	Kenya Plant Health Inspectorate Services
<b>KeRRA</b>	Kenya Rural Roads Authority
<b>KESREF</b>	Kenya Sugar Research Foundation
<b>KETRACO</b>	Kenya Electricity Transmission Company
<b>KFS</b>	Kenya Forest Services
<b>KICC</b>	Kenyatta International Convention Centre
<b>KICD</b>	Kenya Institute of Curriculum Development
<b>KICOMI</b>	Kisumu Cotton Millers
<b>KIRDI</b>	Kenya Industrial Research Development Institute
<b>KLDTD</b>	Kenya Long Distance Truck Drivers
<b>KLDTDA</b>	Kenya Long Distance Truck Drivers Association
<b>KMA</b>	Kenya Maritime Authority
<b>KMFRI</b>	Kenya Marine and Fisheries Research Institute
<b>KMTC</b>	Kenya Medical Training College
<b>KNEC</b>	Kenya National Examination Council
<b>KNH</b>	Kenyatta National Hospital
<b>KNLS</b>	Kenya National Library Services
<b>KPA</b>	Kenya Ports Authority
<b>KPCU</b>	Kenya Planters Co-operative Union
<b>KPLC</b>	Kenya Power and Lighting Company
<b>KPRL</b>	Kenya Petroleum Refineries Limited
<b>KRA</b>	Kenya Revenue Authority
<b>KRB</b>	Kenya Roads Board
<b>KRC</b>	Kenya Railways Corporations
<b>KSB</b>	Kenya Sugar Board
<b>KTDC</b>	Kenya Tourist Development Corporation
<b>KWS</b>	Kenya Wildlife Services
<b>LAPFUND</b>	Local Authority Provident Fund
<b>MD</b>	Managing Director
<b>MOA</b>	Ministry of Agriculture
<b>MRM</b>	Mwea Rice Mills

<b>MSS</b>	Merchant Shipping Superintendent
<b>MTRH</b>	Moi Teaching and Referral Hospital
<b>NACADA</b>	National Authority for the Campaign against Alcohol & Drug Abuse
<b>NACC</b>	National AIDS Control Council
<b>NARC</b>	National Rainbow Coalition
<b>NCA</b>	National Construction Authority
<b>NCC</b>	Nairobi City Council
<b>NCPB</b>	National Cereals and Produce Board
<b>NEMA</b>	National Environment Management Authority
<b>NETFUND</b>	National Environment Trust Fund
<b>NHC</b>	National Housing Corporation
<b>NHIF</b>	National Hospital Insurance Fund
<b>NIB</b>	National Irrigation Board
<b>NIS</b>	National Intelligence Service
<b>NOCK</b>	National Oil Corporation of Kenya
<b>NSC</b>	Nzoia Sugar Company
<b>NSSF</b>	National Social Security Fund
<b>NWCPC</b>	National Water Conservation and Pipeline Corporation
<b>OP</b>	Office of the President
<b>PAC</b>	Public Accounts Committee
<b>PACC</b>	Provincial AIDS Control Coordinators
<b>PAYE</b>	Pay as You Earn
<b>PCC</b>	Public Complaints Committee
<b>PFM</b>	Public Finance Management
<b>PIC</b>	Public Investments Committee
<b>PPDA</b>	Public Procurement and Disposal Act
<b>PS</b>	Principal Secretary/Permanent Secretary
<b>PSI</b>	Population Services International
<b>PwC</b>	Price waterHouse Coopers
<b>RBA</b>	Retirement Benefits Authority
<b>RD</b>	Refer to Drawer
<b>RDU</b>	Research Development Unit
<b>SCAC</b>	State Corporations Advisory Committee

<b>SDF</b>	Sugar Development Fund
<b>TARDA</b>	Tana & Athi River Development Authority
<b>TOWA</b>	Total War Against AIDS
<b>TOWA</b>	Total War against AIDS
<b>UGMH</b>	Uasin Gishu Referral Hospital
<b>USD</b>	United States of America Dollar
<b>VAT</b>	Value Added Tax
<b>VERS</b>	Voluntary Early Retirement Scheme
<b>WKRM</b>	West Kenya Rice Mills

## PREFACE

**Mr. Speaker Sir,**

On behalf of the Members of the Public Investments Committee, I beg to move the adoption of the Nineteenth Report of the Committee on the Annual Report and Accounts of State Corporations.

The Public Investments Committee is a select committee established under Standing Order No. 206 as follows:-

- (1) There shall be a select committee to be designated the Public Investments Committee for the examination of the working of the public investments.
- (2) The Public Investments Committee shall consist of a Chairman who shall be a Member who does not belong to a party in Government.
- (3) In the Membership of the Public Investments Committee, the opposition parties shall have a majority of one.
- (4) The Public Investments Committee constituted by the House immediately following the general elections shall last for a period of three calendar years and that constituted thereafter shall serve for the remainder of the parliamentary term.
- (5) The functions of the Public Investments Committee shall be:
  - (a) to examine the reports and accounts of the public investments;
  - (b) to examine the reports, if any, of the Auditor General on the public investments; and
  - (c) To examine, in the context of the autonomy and efficiency of the public investments, whether the affairs of the public investments are being managed in accordance with sound financial or business principles and prudent commercial practices.

Provided that the Public Investments Committee shall not examine or investigate any of the following, namely:-

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

The procedure of a Select Committee and other related matters thereto is covered under Standing Order Nos. 158 - 200 The Committee has power, under the provisions of the National Assembly (Powers and Privileges) Act (Cap. 6), the State Corporations Act (Cap. 446) and the Public Audit Act, to summon witnesses and receive evidence.

The Committee consisted of the following Members: -

- (1) Hon. Adan Wehliye Keynan, CBS, MP - **Chairperson**
- (2) Hon. Anthony Kimani Ichung'wah, MP - **Vice Chairperson**
- (3) Hon. Francis Mwanzia Nyenze, EGH, MP
- (4) Hon. (Dr.) Oburu Oginga, MGH, MP
- (5) Hon. (CPA) Thomas Ludindi Mwadeghu, CBS, MP
- (6) Hon. Adan Mohammed Nooru, MP
- (7) Hon. Franklin Mithika Linturi, MP
- (8) Hon. Athanas Wafula Wamunyinyi, MP
- (9) Hon. Elias Bare Shill, MP
- (10) Hon. Sammy Silas Komen Mwaita, MP
- (11) Hon. John Olago Aluoch, MP
- (12) Hon. (Dr.) Paul Otuoma Nyongesa, EGH, MP
- (13) Hon. (Eng.) John Kiragu, M.P
- (14) Hon. (Major) (Rtd.) John Waluke Koyi, MP
- (15) Hon. Abdullswamad Sheriff Nassir, MP
- (16) Hon. Beatrice Nkatha Nyaga, HSC, MP
- (17) Hon. Bernard Munywoki Kitungi, MP
- (18) Hon. Chrisanthus Wamalwa Wakhungu, CBS,MP
- (19) Hon. Cornelly Serem, MP
- (20) Hon. Ejidius Njogu Barua, MP
- (21) Hon. Irungu Kang'ata, MP
- (22) Hon. Johana Kipyegon Ng'eno, MP
- (23) Hon. John Muchiri Nyaga, MP
- (24) Hon. John Ogutu Omondi, MP
- (25) Hon. Korei Ole Lemein, MP
- (26) Hon. Mary Sally Keraa, MP
- (27) Hon. Onesmus Muthomi Njuki, MP

## **PROCEEDINGS**

The Committee held One Hundred and Thirty Six sittings (136) in which it closely examined the audited accounts of seventy two (72) State Corporations and the Reports thereon by the Auditor General.

The Committee also undertook site inspection tours of the Moi Teaching and Referral Hospital, Kenya Seed Company Limited, Nzoia Sugar Company Limited in Uasin Gichu, Trans Nzoia and Bungoma Counties respectively and Kenya Maritime Authority, Kenya Ferries Services Limited, Coast Development Authority, Kenya Ports Authority and Kenya Marine and Fisheries Research Institute in Mombasa County.

These inspection visits were necessitated by the need to ascertain various issues arising from audit reports. The proceedings of the site visits are recorded in the Minutes of the Committee contained in this Report.

The minutes of the Committee are contained in volume two (II) of this Report and copies of the HANSARD REPORT have been placed in the Parliament Library.

In its inquiry into whether or not the affairs of the public investments were managed in accordance with sound business principles and prudent commercial practices, the Committee heard and received both oral and written evidence from Chief Executives of various State Corporations and other relevant witnesses. The recommendations on the issues raised by the Office of the Auditor General will be found under appropriate paragraphs of the Report.

The records of evidence adduced, documents and notes received by the Committee form the basis of the Committee's observations and recommendations as outlined in the Report and can be obtained in the HANSARD REPORTS of the Committee available in the Parliament Library.

These observations and recommendations, if taken into account and implemented, will enhance accountability, effectiveness, transparency, efficiency, prudent management and profitability in State Corporations and the public investments sector as a whole.

### **COMMITTEE GENERAL OBSERVATIONS AND RECOMMENDATIONS**

In examining the audited accounts of State Corporations, the Committee's primary approach was to elicit background information as to why particular course of actions were or were not taken, keeping in mind the relevant financial management principles and regulations. This is the foundation of the Committee's observations and recommendations.

The Committee was appalled to observe that several State Corporations continued to operate under financial constraints occasioned by mismanagement and/or imprudent commercial arrangements. In addition, some Corporations continually breached Treasury guidelines on investment of surplus funds without authority, approval of budget and other management guidelines on remuneration and salary increments to staff and Board Members.

Further, the Committee has continually taken great exception to the slow pace at which the Government has implemented the recommendations of this House arising from the previous reports. The Committee was concerned by the slow pace at which the Ministry of Lands and the National Land Commission has taken to have illegal allocations of Corporation land revoked to enable the Corporations make proper use of the same. It is also noteworthy that most audit reservations relate to non-adherence to the procurement procedures; payment of Board allowances; budgetary control, illegal

allocation of Corporations land and acquisition of ownership documents for Corporations land, investment without authority and bad and doubtful debts.

## **IMPREST**

The Committee noted with concern that recovery of imprest was either slow or non-existent. In some organizations, recovery was either done after a long while or from the staff dues when they left the organization. National Water Conservation and Pipeline Corporation (NWCPC) had Kshs 71,748 in form of staff imprest with no supporting documents; Coast Development Authority had outstanding imprest of Kshs 368,448 and Kshs 114,390 in form of staff imprest and staff advances that were outstanding for a long time and Kenya Medical Research Institute (KEMRI) had outstanding imprest of Kshs 328,256 in Financial Year (FY) 2011/2012.

**The Committee recommends that the Chief Executive Officers/ Managing Directors of State Corporations should ensure that imprest is recovered within the period stipulated in the financial regulations.**

## **UNQUALIFIED ACCOUNTS**

The Committee observed that some organizations which had audit queries the previous financial year were given reports of unqualified accounts the following year without satisfactory evidence that the audit queries had been resolved. For instance, Kenya Roads Board Unqualified Accounts of FY 2010 to 2012; Nursing Council of Kenya Unqualified Accounts of FY 2010 to 2012; Kenya Industrial Research Development Institute (KIRDI) unqualified accounts of FY 2010/2011; Kenya Electricity Transmission Company (KETRACO) Unqualified Accounts of FY 2011/2012 and Local Authority Pension Fund's (LAPFUND) unqualified accounts of FYs 2008 - 2012. The Committee also noted that some state corporations did well in the financial audit and recorded unqualified audit reports.

**The Committee further recommends that the number of audit queries in State Corporations be factored as one of the benchmarks/ targets in performance contracts by Chief Executive Officers of State Corporations.**

## **OUTSOURCING OF AUDIT SERVICES**

The Constitution under Article 229 mandates the Auditor General to audit and report on accounts of any entity that is funded from public Funds. Section 39 of the Public Audit Act 2003 provides for the Auditor General to outsource audit services to private sector auditor. The Committee observed that audit of strategic State Corporations especially in the energy, financial and infrastructure sectors have been outsourced to private auditors e.g. Geothermal Development Corporation (GDC), Kenya Power and KENGEN.

**The Committee recommends that, though the Auditor General is allowed to outsource auditors as provided under section 39 of the Public Audit Act, 2003, the**

**Auditor-General should not outsource auditing of strategic State Corporations particularly in the energy, financial and infrastructure sectors and instead the audit office should undertake the audit, particularly now that there is adequate capacity in the audit office.**

#### **UNAUDITED ACCOUNTS**

The Committee observed that the accounts of some state corporations were not being audited by the Auditor General as per the provisions of article 229 of the Constitution of Kenya 2010 for example National Bank of Kenya, Kenya Petroleum Refineries Limited, Telkom Kenya Limited and the Central Bank of Kenya.

Central Bank of Kenya Financial Statements for the Financial Years 2001/2002 to 2011/2012 has not been audited by the Auditor General. The accounts were audited by a private auditor who was not appointed by the Auditor General and instead was appointed by the Bank.

#### **Committee Observation**

**The Committee observed that the Auditor-General had not audited the accounts of the Central Bank of Kenya in spite the provisions of Article 229 of the Constitution of Kenya 2010.**

#### **Committee Recommendations**

**The Committee recommends as follows:-**

- (i) That the Auditor-General undertakes an audit of the accounts of Central Bank of Kenya beginning FY 2010/2011 pursuant to Article 229 (5) of the Constitution of Kenya 2010 and provides a report to National Assembly within six months of adoption of this Report.**
- (ii) That the Central Bank of Kenya Act be reviewed to be in tandem with the Constitution of Kenya as regards auditing of books of accounts of the Bank.**

#### **CONFLICT OF INTEREST**

The Committee observes that there were instances of apparent conflict of interest for instance the case of Mr. Katwa Kigen sitting in the Moi Teaching and Referral Hospital Board as a board member while representing the company as a lawyer.

**The Committee recommends that Directors of Boards of State Corporations should declare interest and should not transact/ do business with the Corporations they are serving.**

#### **CONSTITUTION OF BOARDS OF STATE CORPORATIONS**

The Committee observed with concern how some Boards of Corporations whose terms had expired would continue transacting business that was binding to the Board. For other Corporations like KEPHIS, even after alerting their parent Ministry on the need for

a new Board, the parent Ministry advised them how to conduct meetings without the Board. For others the Constitution of the new Boards was delayed. In others the ex-Board members sued the new Board members preventing them from taking up their mandate e.g. Bomas of Kenya.

**The Committee recommends that the appointing authorities of Board of Directors of state corporations should ensure that Boards are appointed on time and that board members whose tenure has expired should not transact any business for the corporations after their terms have expired.**

#### **NON-COMPLIANCE WITH INTERNATIONAL FINANCIAL REPORTING STANDARDS**

The Committee observed that a number of State Corporations had Financial Statements that did not comply with International Financial Reporting Standards and therefore the accuracy of the revenue reserve balances could not be confirmed.

For example, in the FY 2011-2012 Northern Water Service Board's Financial Statements did not comply with International Financial Reporting Standards (IFRS)-International Accounting Standards (IAS) No. 20.

Kenya Civil Aviation Authority (KCAA) Stocks were carried at First in First out basis in contravention of IAS No. 2 which recommends lower cost and net realizable value. In the FY 2004/2005 KMFRI's financial statements did not contain comparative notes in respect to notes to the accounts and further the notes to the accounts had not been identified and cross referenced to the balances in the financial statements contrary to International Financial Reporting Standards (IFRS).

KEPHIS in FY 2002-2004 claimed that their financial statements and disclosures were not compliant with IAS because the standards were new.

**The Committee recommends that the Managing Director's and or Chief Executive Officers of State Corporations should ensure that the Corporations comply with International Financial Reporting Standards.**

#### **FINANCIAL POSITION**

Some of the organizations had audit queries on weak financial positions occasioned by several factors. For instance, National Oil Corporation complained of reduced market share Kenya Civil Aviation Authority in FY 2003/2004 made financial losses due to bad and doubtful debts and depreciation charges leading to negative working capital. National Housing Corporation in FY 2002/2003 recorded losses whereas it was unable to meet its long-term loans and interests obligations. In FY 2010/2011 the Cotton Development Authority recorded a net deficit, which it attributed to the shortfalls of remittances of Government grants.

In FY 2007/2008, the Kenya Railways Corporation realized a loss, which affected the Corporation's financial position due to a high dependency on the support of creditors and principal shareholder. In the FY 2011/2012 Ewaso Ng'iro North Development Authority's financial position was precarious and its operations as a going concern depended on its bankers, creditors and the Government. In FY 2011/2012 KNEC incurred a deficit attributable to increased costs due to increased number of candidates which led to increased cost of management of examinations without corresponding increases in government capitation. In the FYs 2000-2012 Nzoia Sugar Company's current liabilities exceeded the current assets resulting in a negative net working capital. The Company prepared its financial statements on a going concern basis on assumption that Government and creditors will continue supporting it financially.

**The Committee recommends that States Corporations should diversify their revenue base, reduce over reliance on government support and donor aid and work to reduce liabilities while ensuring that debts are collected on time.**

### **PROCUREMENT PROCESS**

The Committee noted with concern that despite the enactment of the Public Procurement and Disposal Act, 2005 and various Government Circulars meant to streamline procurement and tendering procedures and efficient and effective administration of public resources, certain Corporations have continued to flout the provisions of the procurement law and laid down Government regulations on procurement and award of tenders.

The tendering process for procurement of facilities and services by some State Corporations such as National Oil Corporation when it was procuring contractors to construct the Nairobi Loading Facility was based on financial rather than technical considerations. As a result of which the winning bidder could not execute the contract due to lack of technical capacity and the corporation ended up terminating the contract and engaging another contractor leading to time wastage, loss of paid up fees, protracted Court cases and variation of the original contract prices.

Contracts would be awarded and later terminated for non-performance. The contractor then takes the corporation to court, which award damages to the contractor leading to losses in the Corporation e.g. KAA awarded a contractor to do security fencing in FY 2008/2009 which was terminated for non-performance. In FY 2008-2011, NSSF advanced Mugoya Construction Company a total of Kshs. 324,355,699 to facilitate completion of Phase 2 of Nyayo Estate in Embakasi without a collateral security from the Company to cover the advance. The Fund has not been able to recover the advance. In FY 2008-2012 National Water Conservation and Pipeline Corporation awarded a contractor to construct the headquarters at Kshs 485,400,820 who abandoned it after receiving advance payments of Kshs. 48,540,082 and certificates of Kshs. 26,465,926. Another contractor was given the contract.

In FY 2003/2004 the Nursing Council procured goods without following the due process of the Public Procurement and Disposal Act because the Council had poor staffing levels in both accounts and procurement departments.

National Housing Corporation in FY 2001/2002 single sourced the buying of computers from Elite Computers in contravention of the Public Procurement and Disposal Act. In FY 2008/2009 NSSF contravened the Public Procurement and Disposal Act, 2005 (PPDA) by single sourcing for leasing the plot along Kenyatta Avenue to Cheraik Agencies and Caryl Agency to operate car park services.

The Committee also noted that the National Treasury also entered into contractual obligations on behalf of Corporations without their involvement and particularly in the identification of services beneficial to the Corporations and which required their input e.g. Nzoia Sugar Company Limited. The Committee noted with concern that it would be illegal for Treasury to enter into such contractual arrangements without the input of the beneficiary Corporation.

**The Committee recommends that:-**

- 1. Chief Executive Officers/Managing Directors of State Corporations should ensure that all procurement and disposal of goods/assets and services is undertaken under the provisions of the Public Procurement and Disposal Act, 2005 and its relevant regulations.**
- 2. The National Treasury as defined per the Public Finance Management Act should bear the responsibility for the repayment of the loan arising from such contractual obligations/ transactions.**

**BUDGETARY CONTROLS**

Several State Corporations appeared to exceed their budgets especially on recurrent expenditure and administrative items e.g. National Oil Corporation. In the FY 2009/2010 NSSF over spent against various items; general insurance, board expenses and legal expenses without approval of the Board of Trustees, Parent Ministry and Treasury. In the FY 2009/2010, Kenya Ferry Services without the approval of the parent Ministry and the National Treasury incurred over expenditure on board expenses.

**The Committee recommends that:-**

- 1. The Managing Directors/ Chief Executive officers of State Corporations should ensure that their respective Corporations observe budgetary controls and where necessary, with sufficient grounds, seek parent Ministry and National Treasury approval for over expenditure.**
- 2. The Chief Executives should ensure that the Corporation's budget is rationalized and expenditure maintained within budgetary provisions.**

- 3. The Corporations seek alternative means of enhancing income generating activities to supplement budgetary allocations.**

### **NON- PAYMENT OF STATUTORY DEDUCTIONS AND TAXES**

At some point, some State Corporations did not pay their statutory deductions like NSSF, NHIF and PAYE even though they deducted the same from the employees. This led to an accumulation of penalties especially the NHIF. Some also had difficulties paying their taxes to Kenya Revenue Authority. The Corporations either negotiated for extended payment periods or for waiver of the accumulated penalties and interests e.g. National Oil Corporation in FY 2002/2003. In FYs 2009-2012 KTDC was facing challenges paying its taxes and so applied for waiver from penalties and interests, which was granted. In FY 2009-2012 Nzoia Sugar Company had defaulted on tax remittance to Kenya Revenue Authority.

#### **The Committee recommends that:-**

- 1. The Managing Directors/ Chief Executive Officers of State Corporations should ensure that state corporations pay their statutory obligations such as NSSF, PAYE, NHIF as well as debts on time to avoid penalties and interest.**
- 2. All statutory deductions should be settled in a timely manner as provided in the relevant legislation or financial regulations.**
- 3. The Managing Directors/ Chief Executive Officers of State Corporations who fail to remit statutory deductions should be personally held accountable for such delay and surcharged interest and penalties that may accrue from such delay.**

### **DEVELOPING LANDS WHOSE OWNERSHIP IS IN DOUBT**

The Committee observed that some State Corporations were putting up buildings on land whose ownership documents are not in their custody. This is attributed to either, the land having been originally owned by the parent Ministry or the title documents have never been transferred e.g. Kenya Rural Roads Authority and Kenya Civil Aviation Authority inherited lands from Ministry of Transport and Infrastructure but not the title documents. The Committee also noted that there were cases of debt swap agreement e.g. National Housing Corporation was given a parcel of land by Webuye County Council which Kenya Forest Service claimed and was later given back to them; some of the Corporations do not have an asset register showing what their assets are thus making it easier for land grabbers and squatters to invade the land leading to court cases e.g. Kenya Marine and Fisheries Research Institute (KEMFRI).

**The Committee recommends that the Managing Directors and Chief Executive Officers of State Corporations ensure that their respective Corporations do not apply public funds where the Corporation does not have ownership documents of the land to be developed.**

## **ILLEGAL ACQUISITION/OCCUPATION OF CORPORATION LAND**

### **National Water Conservation and Pipeline Corporation**

The Committee noted that the matter of irregular allocation of the Corporation land was in its 18<sup>th</sup> Report where the Committee had recommended the repossession of its land/revocation of all illegal titles held by private individuals for Changamwe Reservoirs, Shanzu Staff Quarters, Nyali Wells and Likoni Area Water Office.

The Committee also noted that the various Water Boards had declined to sign a Memorandum of Understanding with the Corporation as the properties supposed to be handed over are owned by private developers who have acquired title deeds, thereby hampering their possession by the Water Boards.

The Committee noted with concern that despite its specific recommendations Nyali Water Wells, Likoni Area Water office, Changamwe Reservoirs and Shanzu Staff Quarters are still in the hands of private developers, seven years later. The Committee further noted that many other properties in the Coast Province were irregularly allocated to private individuals and the process of regularizing them has been slow.

Other Corporations affected by illegal acquisition of their land include KEPHIS, Kenyatta National Hospital, Kenya Airports Authority, Kenya Civil Aviation Authority, Agricultural Development Corporation, National Housing Corporation among others.

### **Committee Recommendations**

**The Committee recommends that:-**

- 1. The Cabinet Secretary for Lands, Housing and Urban Development and the National Lands Commission should put restrictions on all the parcels of the Corporation's land that are in private hands.**
- 2. The Cabinet Secretary for Environment, Water and Natural Resources should liaise with the Office of the Attorney General, National Land Commission with a view to revoking all titles belonging to the Corporation that were irregularly allocated and in private hands.**
- 3. The Cabinet Secretary for Lands, Housing and Urban Development and the National Lands Commission should put restrictions on all the parcels of the**

**Corporation's land that are in private hands and liaise with the Attorney General in order to have Court proceedings instituted with a view to revoking all the titles for the Corporation which are in private hands.**

- 4. The Cabinet Secretary for Environment, Water and Natural Resources fast tracks the review of The Water Act 2002 in order to speed up the vesting of assets and liabilities to the respective Water Boards/Counties.**

#### **VARIATION OF TENDER AMOUNTS**

The awarding of tenders, changes being made to the tenders specifications, other contractors who were not part of the winning tenderers' being appointed and further, tender prices being varied, without reference to the tender committee are other issues which came up in the Corporations. e.g. in FY 2010/2011, the tender awarded for roads maintenance in the Nyanza Province by the KeRRA which had variations in costs; KeNHA awarded a tender and made payments without approval of the Tender Committee for emergency markings on Mombasa road in the FY 2010/2011 during the promulgation of the New Constitution, in violation of the Public Procurement and Disposal Act, 2005.

The Corporations gave reasons for the variations as being due to comparison between the contract values which they said were understated and the actual payments realized e.g. KeRRA.

Kenya Airports Authority had a huge variation of up to 74% of the contract price on the Terminal 4 construction in clear contravention of Section 85(2) of the Public Procurement and Disposal Act, 2005.

**The Committee recommends that Chief Executive Officers/Managing Directors of State Corporations should ensure that proper planning of projects is undertaken with credible feasibility studies done to reduce variations during contract implementation. The Chief Executive Officers who exceed the maximum contract variation of 15 % should be surcharged for the variation in price incurred by their respective Corporations over and above the allowed threshold.**

#### **LACK OF OWNERSHIP DOCUMENTS**

It appears that Corporations do not have title documents for land which is in their possession. For some, the title documents are in other Corporations' name or in unlawful owners' names e.g. KEPHIS land in Kitale, during the FY 2001-2010; others only have allotment letters, operating leases e.g. Kenya Airports Authority operating leases; NAS having a title document to land within Jomo Kenyatta International Airport (JKIA) and at Wilson Airport.

Other Corporations did not have title documents for their land because the transfer had not been done from the defunct Corporations from whom they inherited their mandates

e.g. KEPHIS land in Muguga and Nakuru from KARI; In the FY 2009-2012, the Cotton Development Authority excluded the value of Riverside Estate Property where its head office is located from Property, Plant & Equipment. The property is said to belong to the defunct Cotton Board of Kenya and had been charged against a loan from Co-operative Bank that the Board failed to service and which is the subject of a court case. Cotton Development Authority also has a list of properties owned by Cotton Board in Nairobi, Central, Eastern, Coast, Rift Valley, Western and Nyanza Regions but lacks ownership documents for the said land and properties. The Committee was informed that records of the defunct Cotton Board of Kenya were tampered with thus no accurate records were available and again Cotton Development Authority was never vested with properties of Cotton Board of Kenya by law.

In FY 2010/2011 Kenya Ports Authority (KPA) had four parcels of land located in Mombasa whose ownership documents were not available for audit review. A further fifteen separate parcels of land situated in Mombasa are registered in the name of the defunct East African Railways and Harbors Corporation. In FY 2007/2008 KPA had several parcels of land with undetermined value. Further, parts of the Corporation's land had been allocated to private entities by either the Commissioner of Lands or the Local Council's without the permission of the Authority.

In FY 2007-2012, Ewaso Ng'iro North Development Authority despite obtaining allotment for four (4) parcels of land measuring 4.4 hectares in Isiolo, the parcels had not been registered in the name of the Authority. Further, the Authority did not have allotment letters from the Ministry of Lands for two other parcels of land in Isiolo and Garissa measuring 10 hectares each thus making them insecure.

**The Committee recommends that Chief Executive Officers/Managing Directors of State Corporations should liaise with the Ministry of Lands, Housing and Urban Development and the National Land Commission to ensure that ownership documents of all assets/land belonging to their respective Corporations are acquired within six months of the adoption of this Report.**

#### **FAILURE TO MAINTAIN FIXED ASSETS REGISTER (FAR)**

The Committee observed that some corporations failed to maintain crucial documentation such as the fixed assets register. The failure to maintain fixed asset registers for their assets and liabilities makes it difficult to follow up on the acquisition of ownership documents or even to trace the whereabouts of their properties for instance in the FY 2004/2005 Nzoia Sugar Company did not have a Fixed Asset Register. Cash books, loans and shares registers were not maintained and instead the Company maintained computer generated data in the form of lists, schedules and statements; employers using the lands as guarantees for loans e.g. KIE Karen land; lost or misplaced files in the land registries.

Some of the Corporations had manual registers that were not up to date. The Committee noted that this could have been done intentionally so as to give room for irregular allocation and disposal of public properties that apparently did not have ownership documents.

**The Committee recommends that Chief Executive Officers/Managing Directors of State Corporations should ensure that State Corporations develop and maintain updated and automated Fixed Assets Registers.**

### **STALLED PROJECTS**

The Committee heard that some Corporations undertook projects which stalled for various reasons e.g. NHC housing scheme in Kibera Phase III was stopped and the Board asked to write off the sunk cost; Ukunda Airstrip and Embakasi estate fencing projects by KAA; the land ownership was in dispute e.g. the staff canteen project by KPA; a project was overtaken by another similar one e.g. the road project by KPA overtaken by the southern bypass. HELB in the FYs 1996 - 1998 undertook a project without doing a feasibility study, spent Kshs 38,549,827 on it and the project has stalled with no possibility of revival. In FY 2011/2012, KTDC paid Kshs 3,500,000 to acquire land to put up a marina project. In the absence of a functioning board, the contracts and board approvals have not been signed and the project has since stalled. In the FY 2005-2009 Nzoia Sugar Company set to expand its factory and obtained a Government guaranteed loan of Kshs. 8,017,639,620. However, the project stalled at the foundation level incurring an expenditure of Kshs. 2,975,000,296, which included work done and machine parts left on site.

**The Committee recommends that:-**

- 1. Chief Executive Officers/Managing Directors of State Corporations should ensure that funds are available before commencing any procurement process as provided for under the section 26 (6) of the Public Procurement and Disposal Act, 2005.**
- 2. State Corporations should not begin new projects before completion of old projects.**

### **REVENUE COLLECTION**

For Corporations which had revenue collections either in form of levies, cess or leases amounts for use of their assets done on their behalf by their parent ministries, defunct authorities, there were issues with reconciliation of the debt collection before the function was given to KRA e.g. KCAA in FY 2003/2004. In FYs 2005-2012 KTDC advanced Kshs 8,467, 395 to Buffalo Springs Ltd, a subsidiary of KTDC. The premise which Buffalo Springs was using was rented out by the Isiolo Town Council to another tenant who crippled Buffalo Springs operations and thus they were unable to service the loan. Kenya Ports Authority reported in FY 2012/2013 debts amounts owed by the

Ministry of Transport, Kenya Ferry Services, M/s Kobil Petroleum Ltd, M/s Kenol/Kobil and M/s Belize Freight and Cargo.

**The Committee recommends that Chief Executive Officers/Managing Directors of State Corporations should ensure that adequate measures are put in place to safeguard revenue collections to avoid debts. All revenue collected should be banked intact.**

#### **LONG TERM LOANS**

Some State Corporations had long term loans which they initiated or inherited from their parent ministries or from defunct bodies that they took over their functions from e.g. Kenya Civil Aviation Authority in FY 2003/2004 on behalf of Director, Civil Aviation inherited two loans totaling Kshs.1, 238,089,969 for which loan agreements were not availed for audit verification. A loan agreement between Kenya Airports Authority and a foreign bank known as KBC which was entered in January 1999 to finance the development of JKIA for which the Authority paid withholding tax of Kshs. 11,515,966.97 on interest paid.

**The Committee recommends that Chief Executive Officers/Managing Directors of State Corporations should ensure that all loans are paid in time and that before entering into any loan agreement they should satisfy that the Corporation is in a good financial position to service the loan without straining its financial position.**

#### **BOARD EXPENSES**

The Committee heard that State corporations over-spent on Board expenses sometimes without National Treasury or parent Ministry approval. For instance, KCAA overspent on Board expenses in FY 2003/2004 in form of allowances to public officers seconded to various committees in the Authority during its formation. Kenya Plant Health Inspectorate Service (KEPHIS) in FY 2011/2012, paid non-directors Board sitting allowances. This was stopped in the FY 2013/2014 via a circular from the Office of the President. In FY 2003/2004 & 2005/2006, Kenya Tourist Development Corporation exceeded board expenses without the National Treasury approval.

**The Committee recommends that Chief Executive Officers/Managing Directors of State Corporations should ensure that board expenses are within the approved budgetary expenditure.**

**The Committee further recommends that that allowances should only be paid to substantive Board Members.**

#### **LEGAL FIRMS PROCUREMENT AND PAYMENT OF THEIR LEGAL FEES**

The committee noted with concern that some Corporation would procure the services of Legal firms and pay them questionable high legal fees which are not commensurate with the services offered and therefore did not reflect value for money. In FY 2011/2012, it was not clear nor did management of KPA explain how the external legal

services were procured as no valid contract agreements were available for audit review. The Sugar Board on the other hand, hired the services of legal firms and paid exorbitant fees without commensurate services or proof of service having been rendered.

**The Committee recommends that Chief Executive Officers/Managing Directors of State Corporations should ensure that legal firms are procured in line with the Public Procurement and Disposal Act, 2005.**

#### **RECONCILIATION OF BOOKS OF ACCOUNTS**

The Committee heard that Corporations had difficulties in reconciliations of accounts for instance cash and bank balances; debtors and creditors balances; revenue accounts and suspense accounts. E.g. in FY 2002/2003 KEPHIS had difficulties reconciling cash and bank balances. The Corporations cited lack of capacity of the staff seconded to them from the parent Ministries e.g. LAPFUND; the financial and audit period falls on the period when they have not fully reconciled the accounts at the close of the year. NSSF in the FY 2009/2010 did not have account reconciliations of tenant scheme account and expenditure account. In FY 2000-2002 the Nursing Council lacked personnel to undertake proper reconciliation of cash and bank balances.

The Committee further noted that books of accounts were not regularly reconciled and noted the Suspense Account held by the NSSF amounting to Kshs. 6.3 billion in 2008/2009 Financial Year which comprises contributions from members and which accounted for 22% of total contributions received. The Committee observed that the account had been un-reconciled over the years.

**The Committee recommends that Chief Executive Officers/Managing Directors of State Corporations should ensure that reconciliations of accounts of their respective State Corporations are done in a timely manner.**

**The Committee recommends that the Chief Executive expeditiously takes measures to clear the suspense account and have the balances credited to Members accounts by June 2015.**

#### **IRREGULAR PAYMENTS**

Some State Corporations made irregular payments for example Kenya Tourist Development Corporation (KTDC) in the FY 2003/2004 & 2005/2006 paid sitting allowances to public officers receiving salaries, paid the director's rent instead of owner's occupier allowance, legal fees were paid higher than advised by the Company secretary and salary awards to staff were made without parent Ministry approval as required by law. In the FY 2010-2012 of NSSF, a total of Kshs. 16,917,240 was paid to a Mr. Odero towards his exit under unclear circumstances. It has not been possible to confirm the basis and regularity of the payments since there was no approval from the

Government for the payment of benefits to staff retired under the voluntary early retirement scheme. In the FY 2003/2004 the Nursing council paid allowances to staff and Council Members without authority from parent Ministry for inspection visits made to health training facilities.

**The Committee recommends that Chief Executive Officers/Managing Directors of State Corporations should ensure that all payments to staff, directors are within the approved payment structures as per financial guidelines and as provided for in the budget.**

### **INVESTMENT IN NON-PERFORMING ORGANIZATIONS**

The Committee observed that several Corporations have investments in non performing companies and continued reporting the investments at cost as their value could not be ascertained as the shares were not traded at the stock exchange.

The Committee further noted that the continued investment by the National Social Security Fund without National Treasury approval in shares and stocks. The Committee was gravely concerned by the loss of Kshs.1, 388,097,593 worth of shares purchased through Discount Securities Limited. Furthermore, the Fund continued trading in shares without the approval of National Treasury.

#### **Committee Recommendations:-**

- 1. The Chief Executives should ensure that investments by State Corporations are done in a prudent manner and that the Boards' Investments Committee's capacity to supervise investments be strengthened.**
- 2. The stock/shares investments portfolio is reconciled on a monthly basis and reports be tabled before the Board on a regular basis.**

### **ACKNOWLEDGEMENT**

The Committee wishes to record its appreciation to the Chief Executive Officers and Managing Directors of State Corporations and various witnesses who appeared and adduced evidence before it.

Further, the Committee is indebted to the Speaker of the Kenya National Assembly, the Honorable members, the Clerk and staff of the National Assembly, Kenya National Audit Office, the Inspectorate of State Corporations and the Department of Government Investments & Public Enterprises for the services they rendered to the Committee. It is their commitment and dedication to duty that made the work of the Committee and production of this Report possible.



Sign: .....

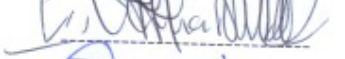
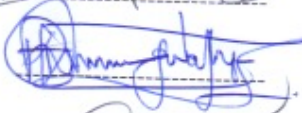

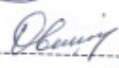






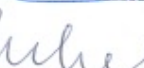

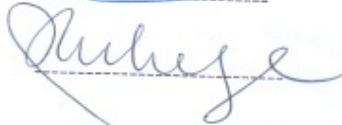
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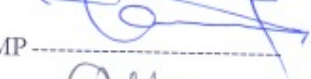
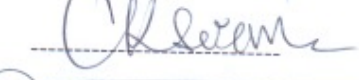
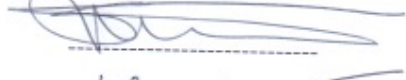







CHAIRPERSON, PUBLIC INVESTMENTS COMMITTEE

Date: 30/3/2015 .....

**ADOPTION OF THE NINETEENTH REPORT OF THE PUBLIC INVESTMENTS COMMITTEE ON THE ACCOUNTS OF STATE CORPORATIONS**

We, the Members of the Public Investments Committee have, pursuant to Standing Order 199, adopted this Report and hereby affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity: -

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

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

**CONSIDERATION OF THE ACCOUNTS OF THE AUDITOR GENERAL ON THE  
FINANCIAL STATEMENTS OF STATE CORPORATIONS**

**1.0 THE NATIONAL OIL CORPORATION: FY 1999/2000 TO 2011/2012**

**REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF  
NATIONAL OIL CORPORATION FOR THE YEAR ENDED 1999/2000 – 2011/2012**

**Ms. Sumayya Athmani, Chief Executive Officer, National Oil Corporation of Kenya, accompanied by Mr. Kamau Mugenda, Finance Manager and Mr. Martin Mungai gave evidence on the accounts of National Oil Corporation of Kenya for the years 1999/2000 to 2007/2008.**

**1.1 FINANCIAL POSITION - FY 1999/2000 ACCOUNTS**

The Committee was informed that during the year ended 30 June 2000, the Corporation realized a loss of Kshs. 88,586,257 after taxation (1999- Kshs. 118, 013, 596), thereby reducing the accumulated profit to Kshs. 43,654,279 as at 30 June 2000. The Corporation, however, attributes the loss to, among other factors, lack of market access to the key markets in Nairobi and its environs and increased administrative costs without corresponding increase in sales.

The Chief Executive Officer informed the Committee that the Corporation had a weak financial position in 1999 due to a small market share, of less than 1%; lack of access to lower cost products; lack of market access in Nairobi and its environs due to lack of a loading terminal in Nairobi and Mombasa; Lack of an adequate number of stations (6 stations at the time) and due to lack of investment funds by the shareholders.

The Committee heard that measures were thereafter put in place to reduce administrative expenses and to minimize the losses.

**Committee Observation**

**The Committee observed that even though measures were put in place to mitigate against the weak financial position, the then Chief Executive Officer had failed to put in place sound financial policies and measures to ensure competitiveness of the company so as to realize profits in 1999.**

**Committee Recommendation**

**The Committee recommends that the Chief Executive Officer/Board should develop policies and strategies to ensure that the company's administrative expenses are reduced, losses minimized, reliance on shareholder funding is reduced and profitability is achieved.**

**1.2 CONSTITUTION OF THE BOARD: FY 1999/2000 ACCOUNTS**

The Committee was informed that during the FY 1999/2000, the Corporation operated with only four Board Members contrary to Section 6(1) of the State Corporations Act

(Cap 446). Although the term of the previous Board of Directors expired on 28 August 1988, no new Board had been constituted by 30 June 2000 leaving the management activities of the Corporation to be transacted by the Chairman, the Managing Director and two Government representatives. The Corporation was, therefore, in breach of the law.

### **Management Response**

The Chief Executive informed the Committee that the Board had received communication from the parent Ministry on how the Board would be conducting their meetings after the tenure of the board had expired.

### **Committee Observation**

**The Committee observed that in the FY 1999/2000 the Board conducted meetings illegally since their tenure had lapsed. The appointing authority or the Parent Ministry ought to have appointed a new Board after expiry of the tenure of the Sitting Board. The Parent Ministry breached provisions of the law by allowing meetings to be conducted without a duly-appointed Board.**

### **Committee Recommendations**

**The Committee recommends that:-**

- (i) The then Minister for Energy, Hon. Chris Okemo, be held responsible for failure to appoint a Board on expiry of the tenure of the previous Board and for any monies paid to the board members without following due process in appointing a new Board.**
- (ii) The appointing Authority ensures that boards are constituted promptly and legally upon the lapse of the previous board.**
- (iii) The Chief Executive Officers or Managing Directors of State Corporations should not pay Board Members whose tenure has expired.**

### **1.3 DEBTORS - FY 1999/2000 ACCOUNTS**

The Committee was informed that the debtor's balance of Kshs. 125,939,802 differs from the debtors schedule provided for audit review of Kshs. 290,019,496 thereby resulting in a difference of Kshs. 164,079,694. Although the Corporation attributed the difference to a provision for bad and doubtful debts of Kshs. 143,804,545, the explanation did not appear plausible because some of the debtors listed as bad and doubtful have since paid their debts. In addition a figure of Kshs. 45,831,576 included in the provision and described as other provision has not been analyzed to indicate from whom the amount owed. Further, the Balance Sheet Debtors figure of Kshs.125,939,802 as at 30 June 2000 includes outstanding imprest of Kshs.2,468,956 which however differs from the imprest supporting schedule figure of Kshs.1,440,945, thereby occasioning unexplained difference of Kshs.1,028,011. The outstanding imprest amount

of Kshs.2, 468,956 also excludes imprest issued to five (5) officers amounting to Kshs77, 786. In addition the Corporation issued an imprest of Kshs.379, 877 on 19 May 2000 to a Parent Ministry employee, which has also remained outstanding for long and whose purpose the Corporation has not explained. Included in the long outstanding imprest is also Kshs.149, 598.60 issued to three (3) officers of the Corporation who have since left the service of the Corporation. No evidence has been seen of any efforts made by management to recover the long outstanding imprest. In the circumstances therefore, the accuracy and completeness of the Debtors balance of Kshs.125, 939,802 could not be confirmed.

### **Management Response**

The Chief Executive Officer informed the Committee that a reconciliation exercise of debtor's accounts incorporating the exchange gain/loss component had been carried out. The Committee heard that debts were provided for to avoid recurrence.

### **Committee Observation**

**The Committee observed that the Corporation failed to reconcile its debtors' accounts and therefore the accuracy of the figures could not be determined.**

### **Committee Recommendation**

**The Committee recommends that the Corporation should ensure that its debtors' accounts are fully reconciled.**

### **1.4 LAKEVIEW SERVICE STATION LOSS: FY 1999/2000 ACCOUNTS**

The Committee was informed that a Company was licensed to operate a service station at Kisumu but due to breach of terms that were not adequately explained; the Corporation revoked the license and later on issued another operator with a license to operate the station in his business name. The Company then went to Court and obtained an order that placed him back in possession of the service station. Similarly the operator whose license was also revoked due to breach of terms of the license went to Court and successfully applied for an injunction restraining the Corporation from take-over.

### **Management Response**

The Chief Executive Officer informed the Committee that the dealer M/s Yess Holdings Ltd was licensed to operate on 4<sup>th</sup> February, 1999 but the license was later revoked on 22<sup>nd</sup> March, 1999 due to a breach of license terms and the Corporation took up running of the station up to November, 1999. The Committee heard that Mr. Hayer S. Singh was appointed as a dealer in November 1999 until February 2000 when the license was revoked for breach of license terms.

The Committee was further informed that the issue was amicably settled out of court with the consent of the Board.

### **Committee Observation**

**The Committee observed that the Corporation failed to put in place measures to militate against dealers breaching the terms of the contract thus leading to losses by the Corporation.**

### **Committee Recommendations**

**The Committee recommends that:-**

- (i) The then Chief Executive Officer Mr. F.K. Moiwo and the members of the Board be held responsible for any losses by the Corporation as a result of breach of contract by the dealers for their failure to undertake due diligence on the dealer during the procurement process.**
- (ii) The two dealers M/s Yess Holdings and Mr. Hayer S. Singh should pay for any loss incurred by the Corporation arising from breach of contract.**
- (iii) The two dealers, M/s Yess Holdings Ltd and Mr. Hayer S. Singh are barred from doing business with National Oil Corporation .**

### **1.5 NAIROBI TRUCK LOADING FACILITY: FY 2000/2001 ACCOUNTS**

The Committee was informed that the Nairobi Truck Loading Facility contract was awarded on 11 January, 2001 to a contractor for civil and structural works at a contract sum of Kshs.51, 247,546 which was later varied to Kshs.53, 078,646.40 to be completed in a period of 40 weeks. The lowest tenderer who has quoted Kshs.46, 917,000 was considered by the Tender Committee technically inferior, although according to minutes of the Board of Directors it was indicated that the main consideration in awarding the tender was financial rather than technical consideration due to scarcity of financial resources. On 23 August 2001, the Tender Committee cancelled the contract apparently due to technical inability to perform as specified under the contract after the contractor had been paid Kshs.10, 505,901, and instead appointed another contractor to complete the works at a contract sum of Kshs.55, 421,714.90 without following proper tendering procedures bringing the total cost of the loading facility to Kshs.65, 927,615.90. In the circumstances therefore, it has not been possible to confirm that the Corporation received value for money in the construction of the loading facility.

### **Management Committee**

The Committee heard that in the Financial Year 2000/2001 the tender process for the procurement of the Nairobi truck loading facility was based on financial rather than technical considerations due to scarcity of financial resources. The cancellation of contract by the Tender Committee on 23<sup>rd</sup> August, 2001 was due to technical inability

by the contractor to perform as per contract and another contractor was appointed to complete the work.

#### **Committee Observation**

**The Committee observed that the Corporation failed to adhere to the provisions of the Exchequer and Audit Act (Cap. 412) and financial regulations (legal notice of 2001) thus leading to cancellation of the tender due to non-performance occasioned by lack of technical capacity on the part of the contractor.**

#### **Committee Recommendation**

**The Committee recommends that the then Chief Executive Officer Mr. F.K. Moiwo be held responsible for contravention of the Exchequer and Audit Act (Cap. 412) and Financial Regulations (Legal Notice of 2001) and for the loss to the Corporation as a result of their failure to be prudent and adhere to provisions of the law during the tender evaluation.**

#### **1.6 BUDGETARY CONTROL: FY 2001/2002 ACCOUNTS**

The Committee was informed that during the year under review the Corporation overspent a total of Kshs.89, 693,220 on three (3) items of expenditure without the required approvals in accordance with the provisions of Section 12 of the State Corporations Act (Cap 446). In the circumstances therefore the propriety of the expenditure of Kshs.89, 693,220 could not be confirmed.

#### **Management Response**

The Committee heard that the Management had overspent in three (3) head expenses, namely; establishment, administrative and financial. The management had however put in place budgetary controls and that these measures had been adhered to in subsequent financial years.

#### **Committee Observation**

**The Committee observed that the management failed to adhere to budgetary controls and instead expended money that had not been budgeted for contrary to the financial regulations.**

#### **Committee Recommendation**

**The then Chief Executive Officer Mr. F.K. Moiwo, be held responsible for failure to observe prudence in management of public resources, the Exchequer and Audit Act and relevant financial regulations.**

### **1.7 IRREGULAR PAYMENTS AND PAYMENTS TO GOVERNMENT OFFICERS: FY 2002/2003 ACCOUNTS**

The Committee was informed that, there were unexplained payments made to three government officers and one non-government officer:

<b><u>Name</u></b>	<b><u>Ministry/Organization</u></b>	<b><u>Amount (Kshs)</u></b>	<b><u>Purpose/explanation</u></b>
D.R.O Riaroh	Ministry of Energy	131,000.00	Club Membership
D.R.O Riaroh	Ministry of Energy	1,004,399.05	Trips abroad
Jane Akumu	Ministry of Energy	769,142.50	Not indicated
Otieno Agina	East African Spectre	<u>132,713.00</u>	Not indicated
	<b>TOTAL</b>	<b><u>2,037,254.55</u></b>	

In addition, the former Managing Director incurred expenditure of Kshs.1, 375,833.35 in accommodation bills at an exclusive Nairobi Hotel between 4 December 2002 and 14 February 2003 after being appointed despite the fact that the Corporation had an official residence for its Managing Director. In the absence of proper explanation for the above expenditure its propriety is in doubt and should be subject to recovery.

#### **Management Response**

The Committee heard that the Ministry had requested to be represented by an officer in the Petroleum Conference and was accompanied by a representative from the Corporation. The Committee further heard that the club membership for the officer (Mr. D. R. O Riaroh) had been approved by the Board.

#### **Committee Observation**

**The Committee observed that the Corporation should not have incurred expenditure on behalf of the Ministry of Energy to sponsor an officer from the Ministry. Indeed the Ministry should have paid for the participation of its representative from its own budget.**

#### **Committee Recommendation**

**The Committee recommends that the State Corporations Advisory Committee should recover the money spent by the Corporation for the club membership of Mr. D. R. O. Riaroh from the then Board which irregularly approved the expenditure and from the then Chief Executive Officer Mr. F.K. Moiwo of National Oil Corporation.**

### **1.8 PENALTIES: FY 2002/2003 ACCCOUNTS**

The Committee was informed that the Corporation imported 35,993,101 liters of gasoline in November 1994 but failed to pay the required suspended duty to the government and as a result attracted penalties which had accumulated to Kshs.230, 342,552 as at September 2002. The government then waived 80% of the penalty which amounted to Kshs.184, 274,042 through letter reference DF N415 dated 19 September

2002. However, the balance of Kshs.46, 068,511 is still outstanding and continues to attract penalties and interest at the rate of 2% per month which amounted to Kshs.8, 292,331.80 as at 30 June 2003. These unnecessary penalties were not justifiable and would have been avoided had management paid the duties when they fell due.

The Committee heard that the principal tax amount had been paid and the Corporation had applied for remission of penalties. 80% of the penalties had been waived and 20% had not been granted by June 2003 and a provision for the same was made.

**Committee Observation**

**The Committee observed that the Corporation had failed to pay taxes leading to penalties and interest.**

**Committee Recommendation**

**The Committee recommends that the Corporation ensures prompt payment of taxes and other due obligations.**

**1.9 CONSTRUCTION OF PETROL STATION: FY 2002/2003 ACCOUNTS**

The Committee was informed that the balance sheet property, plant and equipment net figure of Kshs.691,923,922 includes an over-expenditure of Kshs.212,937,925.45 on the construction of six (6) Petrol Service Stations as indicated below:-

<b>Name of Petrol Station</b>	<b>Approved Expenditure (Kshs.)</b>	<b>Actual Expenditure (Kshs.)</b>	<b>Over Expenditure (Kshs.)</b>
Langas-Eldoret	26,944,172.00	69,091,321.48	42,147,149.48
Lakeview-Kisumu	14,910,833.00	43,817,537.00	28,906,704.00
Ravine Road-Nakuru	18,701,785.00	45,440,786.50	26,739,001.50
Kaplong-Sotik	29,279,096.00	61,791,789.00	32,512,693.90
Embakasi-Nairobi	38,241,043.00	75,699,446.20	37,458,403.20
Bondeni-Eldoret	36,372,943.50	81,546,916.85	45,173,923.35
		<b>TOTAL</b>	<b><u>212,937,925.45</u></b>

Approval of the Board of Directors, Parent Ministry and the Treasury was not sought for the over-expenditure contrary to Section 12 of the State Corporation Act, Cap 446. Under the circumstances, given that the additional cost expenditure spent on the above procurement was not authorized, the Auditor General was unable to confirm whether the carrying values of the above Petrol Station Costs as stated in the financial statements represent their fair values as at the balance sheet date.

**Management Response**

The Committee was informed that actual expenditure of constructing the stations was approved by the Board or the Management separately; however stringent budgetary control measures have since been put in place by the current management.

### **Committee Observation**

**The Committee observed that National Oil Corporation should ensure that the due process of approval should be followed and each approving arm of the Corporation should execute its role on any project undertaken before it commences**

### **Committee Recommendation**

**The Committee recommends that stringent budgetary measures are put in place to prevent over-expenditure**

#### **1.10 UNPAID PREMIUM ON IMPORTED NIGERIAN OIL: FY 2002/2003 ACCOUNTS**

The Committee was informed that in 1991, the Corporation entered into a contract with the Nigerian National Petroleum Corporation to purchase 30,000 barrels per day of Nigeria Crude Oil. M/S Vitol SA Geneva was contracted to handle the lifting of 30,000 barrels at a premium of US\$.0.30 per barrel. There were no records kept by NOCK to show the actual quantities lifted, albeit M/S Vitol SA Geneva did actually lift the crude oil but did not remit the premiums as agreed. In the circumstances, the Corporation lost a substantial but unknown amount of revenue in this transaction and therefore I am unable to confirm whether and if so when, NOCK will be able to recover the amount lost.

### **Management Response**

The Committee heard that the efforts by the Corporation to ascertain the crude oil liftings from Nigeria Oil Corporation have not been successful. The Corporation lawyers visited the site but no sufficient details were found and that the bilateral contract had lapsed and efforts by the Government of Kenya to renew it were not successful.

### **Committee Observation**

**The Committee observed that it was recklessness on the part of the management of National Oil Corporation and the Ministry of Energy not to have documented crude oil liftings.**

### **Committee Recommendations**

**The Committee recommends that the Ministry of Energy and Petroleum should work closely with its Nigerian counterpart in liaison with the Ministry of Foreign Affairs and International Trade to resolve the issue in addition to possibly renewing the bilateral contract.**

**The Committee further recommends that the then Chief Executive Officer, National Oil Corporation, Mr. Daniel Kipkemei Ng'eno, and the then Permanent Secretary Ministry of Energy be held personally responsible for the loss incurred by the National Oil Corporation as a result of their failure to keep records of the unpaid premiums for oil liftings from Nigeria.**

### **1.11 ADVANCE PAYMENT – KAYOLE PETROL STATION: FY 2002/2003 ACCOUNTS**

The Committee was informed that as at 30 June 2003, the Corporation had advanced a total of Kshs.10, 065,000 (50% deposit of Kshs.20, 230,000 contract amount) to a Mr. Kuria, a contractor, to enable him complete Kayole Petrol Service Station. NOCK was to lease the facility from him for a period of fifteen (15) years and one (1) month at a price of Kshs.20, 230,000 with monthly rents of Kshs.330, 000. The balance of a similar amount was to be paid on completion and hand-over of the facility to the corporation. The Corporation did not obtain any collateral from the contractor as security for the advances given. However, the Corporation did not pay the balance and, therefore, the facility has to-date not been handed over. It has not been possible to confirm whether and if so, when the Corporation will be able to recover the amounts advanced to the contractor. Any provision that would have been necessary in relation to this uncertainty had not been incorporated in these financial statements.

#### **Management Response**

Committee was informed that the management could not find any information on the issue.

#### **Committee Observation**

**The Committee observed that the advance payment made to Kayole Petrol Station was done so in breach of the Public Procurement and Disposal Act and government regulations that require payment after services rendered or correct goods delivered.**

#### **Committee Recommendation**

**The Committee recommends that the State Corporations Advisory Committee should recover the advance payment made to Kayole Petrol Station from the then Chief Executive Officer of National Oil Corporation.**

## **2.0 KENYA RURAL ROADS AUTHORITY: FY 1999/2000 TO 2011/2012**

### **REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF KENYA RURAL ROADS AUTHORITY FOR THE YEAR ENDED 30 JUNE 2010 TO 2012.**

**The Director General, Kenya Rural Roads Authority, Eng. Mwangi Maingi, Mr. Peter Rutto, General Manager, Finance, Eng. John Ogango, General Manager (D&C) and Mr. Dan Manyas, Finance Manager appeared before the Committee and gave evidence on the accounts of the Board for the FY 2009/2010 to 2011/2012.**

#### **2.1 PROPERTY, PLANT AND EQUIPMENT - FY 2010/2011 to 2011/2012 ACCOUNTS**

The Committee heard that the financial statement of 2010/2011 to 2011/2012 reflected a work in progress balance of Kshs. 35,270,000 for the construction of regional office blocks in Kiambu, Nyeri, Isiolo, Mandera, Homa, Bay, Migori, Bomet and Bungoma whose land ownership could not be ascertained.

The Director General informed the Committee that the Ministry of Roads had communicated to the Authority to list all the assets in its possession for the purposes of vesting.

#### **Committee Observation**

**The Committee observed that the Authority had constructed an office block in Migori Town, whose work in progress was Kshs. 4,872,000, on a land that it did not have title documents. The investments on land that the Authority did not own means that the public funds entrusted on the Authority were not secure.**

#### **Committee Recommendations**

**The Committee recommends that:-**

- (i) Kenya Rural Roads Authority takes necessary steps including liaising with the National Lands Commission to secure the title deed for the land so as to protect the public investment on the said land;**
- (ii) The Kenya Rural Roads Authority should routinely transfer its staff in the regional offices, as per public service regulations, to avoid collusion between contractors and the regional officers that has created a cartel like behavior in the road sector**

#### **2.2 IRREGULAR VARIATION OF AWARDED TENDERS - NYANZA ROADS 2000 MAINTENANCE PROGRAM (SIDA): FY 2011/2012 ACCOUNTS**

The Committee heard that the Authority in FY 2010/2011 had awarded an amount of Kshs. 103,407,705 for road maintenance contracts in five (5) regions of Nyanza Province. However, after the award of tenders, changes were made and other contractors who were not the winning tenderers were appointed and further, tender

prices were varied, without reference to the tender committee, to the tune of Kshs. 111,288,552 resulting to an overpayment of Kshs. 7,880,847.

### **Management Response**

The Director General informed the Committee that changes were made after tender No. SIDA-KeRRA/KISII/09/10003 for Kenya-Marimba was cancelled and the works re-scoped and re-advertised. Further, the Committee was informed that a variation of Kshs. 7,880,847 was as a result of comparing incorrect contract values and the actual payments.

### **Committee Observation**

**The Committee observed that the Evaluation Committee had recommended award to tenderers who had not qualified for the tender however the Corporation Tender Committee (CTC) canceled the award for those that had failed to meet the criteria and awarded to the next least priced bidders.**

### **Committee Recommendation**

**The Committee recommends that the Authority should ensure that clear technical and financial evaluation criteria are set and communicated to all regions to guide tender evaluations and that the Director General ensures that the technical and financial evaluation is properly undertaken as per the set criteria in accordance with the provisions of the Public Procurement and Disposal Act, 2005.**

## **3.0 KENYA ROADS BOARD: FY 2000/2001 TO 2011/2012**

### **REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF KENYA ROADS BOARD FOR THE YEAR ENDED 30<sup>TH</sup> JUNE 2001 TO 2011/2012**

**The Executive Director, Kenya Roads Board, Dr. Francis Nyangaga accompanied by Eng. Joel Wanyoike, Chairman, KRB, Mr. B.H. Abdi, Director, Accounts, Mr. Rashid Mohamed, General Manager Finance, Eng. Stephen Ndinika, General Manager, Technical Compliance and Eng. Jacob Ruwa, General Manager, Planning and Program appeared before the Committee and gave evidence on the accounts of the Board for the financial years 2001/2002 to 2011/2012.**

#### **3.1 CONSOLIDATED FINANCIAL STATEMENT AND AUDITED ACCOUNTS**

The Committee heard that the financial statements are not consolidated in relation to the funds disbursed for Kenya Roads Board operations. Funds disbursed to its implementing agencies had not being consolidated with those of the Kenya Road Board nor had the agencies submitted their financial audited statements contrary to Section 25(2) of the Kenya Board Act 1999. The challenge faced by the Board was that the Act required the Board to prepare accounts within three months of the financial year while

it's implementing agencies are supposed to submit their audited accounts within six months.

### **Management Response**

The Executive Director, KRB informed the Committee that the issue was addressed with the enactment of the Kenya Roads Act, 2007. The Act created three new autonomous bodies, the Kenya National Highways Authority, Kenya Rural Roads Authority and Kenya Urban Roads Authority who are the principal beneficiaries of the funds and they prepare their financial statements that are audited by the Auditor General.

### **Committee Observation**

**The Committee observed that, as recommended by Public Investments Committee in the 14<sup>th</sup> Report, the Kenya Roads Board Act, 1999 was reviewed in 2007 to facilitate and require reconciliation of the disbursed accounts.**

### **3.2 UN-UTILIZED FUNDS BY DISTRICT ROADS COMMITTEES UNDER KENYA ROADS BOARD: FY 2006/2007 ACCOUNTS**

The Committee heard that seven District Roads Committees did not return the un-utilized Road Maintenance Levy Funds for FY 2006/2007 to be revoted in the next financial year totaling Kshs. 168,488,928 as instructed by Kenya Roads Board and no satisfactory explanation was given for not returning the funds.

### **Management Response**

The Executive Director, KRB informed the Committee that a review of the districts that had funds at the end of the financial year showed that the funds were committed to approved projects. Cheques had been written to contractors but remained un-presented. The funds had therefore been committed by 30<sup>th</sup> June, 2007 and could not be revoted.

### **Committee Observation**

**The Committee observed that the District Roads Committees had committed the funds by the close of the financial year and wrote cheques to avoid returning the funds to Treasury and Kenya Roads Board for revoting.**

### **Committee Recommendation**

**The Committee recommends that all un-utilized funds or cheques that have not been presented by the closure of the financial year be returned and cheques cancelled.**

### **3.3 AGENCY SUPPORT- ICT: FY 2006/2007 ACCOUNTS**

The Committee heard that Kshs. 22,500,000 is reflected under Income and Expenditure figure as agency support ICT relating to purchase of computers for the Board's Agencies. The Board did not produce evidence of when the computers were received into their stores, if they distributed them to their agencies and if the agencies received them into their stores for audit verification.

### **Management Response**

The Executive Director, KRB approved expenditure for purchase of computer equipment for road agencies and training. The equipment was centrally purchased by the Board, distributed to the centres of Nairobi, Mombasa, Eldoret and Embu where the training was taking place. The Agency representatives who attended training at the respective centers received their equipment and have acknowledged receipt of the same.

### **Committee Observation**

**The Committee observed that primary documents were not availed to the Office of the Auditor General for audit review as required by law.**

### **Committee Recommendation**

**The Committee recommends that the Board ensures that primary documents are submitted to the National Audit Office for audit review as required by law.**

### **3.4 ADVERTISING AND PUBLICITY: FY 2005/2006 ACCOUNTS**

The Committee heard that the Advertising and Publicity expenditure of Kshs. 40,425,000 which included unexplained provision of Kshs. 12,522,000 whose supporting analyses were not made available to confirm the propriety of the figure.

### **Management Response**

The Executive Director, Kenya Roads Board informed the Committee that the board uses the accrual basis of accounting. The accrual for advertising the APRP was computed based on the amounts paid to the four daily newspapers in advertising the APRP for FY 2005/06. However, the APRP was not published due to unavoidable circumstances. The amount was subsequently reversed in the accounting records for FY 2008/09.

### **Committee Observation**

**The Committee observed that the Board made provision for advertising and publicity in its accounts without supporting documents.**

### **Committee Recommendation**

**The Committee recommends that the Board ensures that primary documents are submitted to the Office of the Auditor General for audit review as required by law.**

### **3.5 CASH FRAUD:**

The Committee heard that under note 5 of the financial statements, an amount of Kshs. 28,885,756 is reflected under receivables from National Bank of Kenya (NBK). However the amount relates to a cheque purportedly issued to Nairobi City Council but fraudulently paid/en-cashed at Gusii County Council. The matter is being investigated by the bank fraud unit of the CBK and also pending in court.

### **Management Response**

The Executive Director, KRB informed the Committee that the Board lost Kshs. 28,885,756 through fraudulent activity on its NBK account. The matter was taken to court HCC civil case 579 and determined in the Board's favor. National Bank reimbursed the full amount and also the accrued interest on the amount totaling Kshs. 10,352,631.

### **Committee Observation**

**The Committee observed that the Authority did not have stringent measures in place that led to the cash fraud to happen in its National Bank of Kenya Account.**

### **Committee Recommendations**

**The Committee recommends that:-**

- 1. The Board institutes more stringent measures to ensure that fraud does not recur.**
- 2. The Director General ensures that bank reconciliations are undertaken on time.**

### **3.6 OTHER RECEIVABLES: FY 2008/2009 ACCOUNTS**

The Committee heard that other receivables balances are figures of Kshs 395,926 and Kshs 680,440 due from staff and Board members respectively that have since left the service. Although the management indicates that the Kshs. 395,926 would be recovered in full from the staff terminal due which are yet to be paid and Kshs 680,440 from the unpaid sitting allowances of directors, the Board had not indicated when this would be done.

### **Management Response**

The Executive Director, KRB informed the Committee that the Kshs 395,926 was fully recovered from the ex-staff and the Kshs 680,440 recovered from the sitting allowances of the former directors in the FY 2009/2010.

### **Committee Observation**

**The Committee observed that there is nonexistent or weak policy in terms of recovery of debts from staff and board members.**

### **Committee recommendation**

**The Committee recommends that the Board ensures timely recovery of debts and puts in place a policy to caution against delay and default in payment.**

### **3.7 ANNUAL PUBLIC ROADS PROGRAMME: FY 2009/2010 ACCOUNTS**

The Committee was informed that as per the KRB Act 1999 sec 19(5), the Board is required to submit an Annual Public Roads Programme (APRP) to the Minister for Finance and Minister for Roads for approval. The approved programme forms the basis of allocation of funds to Road Agencies by the Board. Funds were allocated and

disbursed to the various Road Agencies, but without the requisite approval as required by the Act. The disbursements were therefore in breach of the law.

### **Management Response**

The Executive Director, KRB informed the Committee that the Board disbursed funds in the FY 2009/2010 based on the Annual Works Programme of each road agency as approved by the KRB Board of Directors, which is in compliance with KRB Act 1999. There were delays in getting the APRP approved by the Ministries due to transitional arrangements in the road sub-sector.

### **Committee Observation**

**The Committee observed that approvals from the National Treasury and Ministry of Transport and Infrastructure were not granted before disbursement of funds to the various roads agencies as required by the Kenya Roads Board Act 1999, amended in 2007.**

### **Committee Recommendation**

**The Committee recommends that the Board ensures that the National Treasury and Ministry of Transport and Infrastructure approval is granted before disbursement of fund to various roads agencies as required by the Kenya Roads Board Act, 1999 as amended in 2007.**

## **3.8 UNQUALIFIED ACCOUNTS: FY 2010/2012 AND 2011/2012 ACCOUNTS**

The Committee heard that the Kenya Roads Board had unqualified accounts in the financial years 2010/2012 and 2011/2012.

### **Committee Observation**

**The Committee observed that Kenya Roads Board had unqualified accounts in the FYs 2010 to 2012.**

### **Committee Recommendations**

**The Committee commended Kenya Roads Board for having unqualified accounts for the FY 2010 to 2012**

**The Committee recommends that the reduction/elimination of qualified accounts be a target in the performance appraisal. Unqualified accounts were made a basis for performance appraisal and that Corporations with unqualified accounts be ranked separately and on the basis of the appraisal.**

#### **4.0 KENYA NATIONAL HIGHWAYS AUTHORITY: FY 2008/2009 TO 2011/2012**

##### **REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF KENYA NATIONAL HIGHWAYS AUTHORITY FOR THE YEARS ENDED 30 JUNE 2009 TO 2012**

The Director General, Kenya National Highway Authority, Eng. M.O. Kidenda, accompanied by Eng. S. Okech Omer, General Manager Planning, Mr. James Bowen, General Manager, Finance, Eng. L.K. Tonui, General Manager Special Projects, Eng. P.C. Kilimo, Alternate Director, Eng. K.I. Mudulia, General Manager, Maintenance, Ms. Esther Kabala, Head of Enterprise Risk Management,, Mr. Chanje Kera, Finance Manager, Ms. Norah Odingo, Head of Legal services, Eng. S.W. Mwawasi, Head of Quality Assurance and Eng. C.N. Makau, Manager, Strategies appeared before the Committee and gave evidence on the accounts of the Board for the 2009/2010 to 2011/2012.

#### **4.1 RELATED PARTY DISCLOSURES: FY 2009/2010 ACCOUNTS**

In the Financial Year 2009/2010 the Authority's trade and other receivables balance of Kshs. 758,504,369 as at 30<sup>th</sup> June, 2010 excluded an amount of Kshs. 423,526,040 reflected in note 8 to the financial statement of Kenya Roads Board as payable to the Authority contrary to the International Accounting Standard No. 24, with regard to related party disclosure.

#### **Management Response**

The Director General informed the Committee that KeNHA's relationship with KRB does not meet the threshold of related parties as per IAS 24 as the two entities are independent of each other and their Board of Directors operate independently. The relationship between KRB and the Authority is best accounted for under IAS 20: Accounting for Government grants and disclosures of government assistance. The non-disclosure of Kshs. 423,526,040 receivable from KRB was based on the fact that the Authority was not aware of the funds as at the close of the financial year. The amount was however received in FY 2010/2011 and appropriately treated as income for that year.

#### **Committee Observation**

The Committee observed that the Authority excluded Kshs. 423,526,040 reflected in note 8 to the financial statement of Kenya Roads Board as payable to the Authority contrary to the International Accounting Standard No. 24, with regard to related party disclosure.

#### **Committee Recommendation**

The Committee recommends that the Authority should ensure adherence to International Accounting Standards No.24.

## **4.2 EMERGENCY MARKINGS ON MOMBASA ROAD: FY 2010/2011ACCOUNTS**

### **4.2.1 Emergency markings on Mombasa Road**

In 2010/2011 KeNHA awarded a Construction firm a contract for the emergency marking on Mombasa Road at a contract price of Kshs. 29,575,128. However three payments totaling to Kshs. 35,690,871 were made to the firm resulting to an overpayment of Kshs. 6,115,746 (21%) over and above the initial contract price without the Authority of the Tender Committee.

#### **Management Response**

The Director General informed the Committee that the tender for marking Mombasa Road and Uhuru Highway at a total cost of Kshs. 29,575,128 was awarded to M/s Shengli Engineering Construction on 18<sup>th</sup> August, 2010 through direct procurement. The award was made due to the urgency of work in preparation for the promulgation of the Constitution. The Regional Manager reviewed the works through an explicit inventory and critical breakdown submitting a variation of Kshs. 6,171,833.60 to address the shortage of quantities which were underestimated. However the authority of the Tender Committee authorizing 21% variation was not produced for audit verification.

#### **Committee Observation**

**The Committee observed that in spite of the short notice, there should have been proper planning of the works to avoid the overpayment by a variation of 21% which is contrary to Section 85(2) of the Public Procurement and Disposal Act, 2005 and Regulation 31 of the Public Procurement and Disposal Regulations, 2006.**

#### **Committee Recommendations**

**The Committee recommends that the Ethics & Anti-Corruption Commission investigates the conduct of the Director General, Kenya National Highways Authority, Eng. M.O. Kidenda and recommends prosecution by the Director of Public Prosecutions for:**

- (a) Contravening Section 85(2) of the Public Procurement and Disposal Act, 2005 and Regulation 31 of the Public Procurement and Disposal Regulations and for the variation of 21% over and above the contract sum;**
- (b) Abuse of office contrary to Section 101 of the Penal Code( for the variation or for authorizing the overpayment) and Public Officer Ethics Act, 2003;**
- (c) Contravening Section 226(5) of the Constitution (for the variation or for authorizing the overpayment).**

#### **4.2.2 Project Accounts for the Financial Year ending 30<sup>th</sup> June, 2011 - Commitment Fees**

The Government paid commitment fees of Kshs. 43,487,020 against the undisbursed loan for Nairobi – Thika Highway; Kshs. 25,744,900 for Arusha-Namanga-Athi River Road Development Project and Kshs. 55,651,395 for the Northern Corridor Transport Improvement Project. The commitment fee in effect increased credit.

##### **Management Response**

The Director General informed the Committee that commitment fees are fees charged by a development partner to the government for an unused credit line or undisbursed loan. It is generally a fixed percentage between 0.10% to 1.0% per annum of the undisbursed loan amount which is charged by the lenders as compensation for keeping a line of credit open or to guarantee loan proceeds at a specific date in future within the life of the financing agreement. In all the three projects, there were challenges relating to procurement procedures, implementation period and budgetary constraints causing delays in the projects leading to the commitment fee accruing on the gross credit.

##### **Committee Observation**

**The Committee observed that there is need for proper planning of projects prior to commencement to minimize nugatory expenditures.**

##### **Committee Recommendation**

**The Committee recommends that the National Treasury should ensure that all major projects funded through loans and grants are well planned and executed within the agreed timelines to prevent the Government from incurring huge losses and expenditure in the name of commitment fees.**

#### **4.3 PROPERTY, PLANT AND EQUIPMENT: FY 2011/2012 ACCOUNTS**

In the FY 2011/2012 all investments on road constructions and rehabilitation have been captured as work in progress awaiting formalization of capitalization policy of road assets. Included as work in progress, is an amount of Kshs. 87.8 billion as at 30 June 2012 for roads that have been completed and handed over to the Authority by the contractor and consequently vested by the Ministry of Roads to the Authority. However, the vested assets have not been valued and incorporated in the financial statements.

##### **Management Response**

The Director General informed the Committee that some of the roads have been handed over to the Authority and majority of the investments in these roads were undertaken by the parent Ministry prior to the establishment of the Authority. Further, the treatment of road assets is outside the scope of IAS 16 and therefore Development Expenditure Investments in the road network will be treated as work in progress until a comprehensive national policy or an appropriate International Standard is issued.

The Committee further heard that the financial statement discloses a work in progress balance of Kshs. 26,874,804 as at 30 June, 2012 including Kshs. 16,015,322 incurred on the construction of a regional office in Lower Eastern Province. However, the value of the land on which the construction is being undertaken has not been included in the financial statement.

The Director General also informed the Committee that the Authority's Lower Eastern Regional Office is constructed on government land together with KURA, KeRRA, Ministry of Housing and Public Works and regional Mechanical and Transport Fund offices. However, the land where the office block stands has not been subdivided to facilitate valuation.

### **Committee Observation**

**The Committee observed that the Authority's vested assets had not been valued and therefore their true financial value cannot be established and further that the Authority is awaiting a policy on capitalization of road assets.**

**The Committee further observed that the Authority did not have a title document to the land on which its regional office in Lower Eastern Province was built on.**

### **Committee Recommendations**

**The Committee recommends that:-**

- (i) The Ministry of Transport and Infrastructure fast-tracks the finalization of the capitalization policy on road assets.**
- (ii) The Kenya National Highways Authority undertakes a valuation of all its Assets including the road assets.**
- (iii) The Authority secures the Title Deed for the land on which the regional office in former Lower Eastern Province is located.**

## **5.0 KENYA AIRPORTS AUTHORITY: FY 2009/2010 TO 2011/2012**

### **REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF KENYA AIRPORTS AUTHORITY FOR THE YEAR ENDED 30 JUNE 2009 TO 2012**

The Acting Managing Director, Kenya Airports Authority, Ms. Lucy Mbugua accompanied by Mr. John Thumbi, G.M Finance, Mr. Victor Arika, Acting chief surveyor and Philemon Chamwada, G.M Engineering appeared before the Committee and gave evidence on the accounts of the Authority for the Financial Year 2008/2009 to 2011/2012.

#### **5.1 LONG-TERM LOANS: FYs 2008/2009, 2009/2010, 2010/2011 AND 2011/2012 ACCOUNTS**

The Committee heard that the Authority paid withholding tax of Kshs. 11,515,966.97 on interest paid in accordance with the terms of the existing loan agreement between KAA and a foreign bank known as KBC that was entered in January 1999 to finance the development of JKIA. The loan was to be free of any taxes, duties or charges but the KAA has been paying withholding tax on the loan payable to the lender.

#### **Management Response**

The Committee was informed by the Acting Managing Director that KAA should have sought withholding tax exemption from Treasury as provided under Section 13 of the income tax in respect of interest payable before entering into the loan agreement with the lender. Efforts to negotiate with the lender to take over the payment of the withholding tax have been unsuccessful.

#### **Committee Observation**

**The Committee observed that the Authority failed to obtain tax exemption before signing the loan agreement, thus making the Authority incur huge taxes.**

#### **Committee Recommendation**

**The Committee recommends that the then Managing Director be held accountable for their failure to seek tax exemption leading to the Authority incurring the expenditure.**

#### **5.2 OPERATING LEASE: FYs 2008/2009, 2009/2010, 2010/2011 AND 2011/2012 ACCOUNTS**

The Committee heard that the Non-Current Assets balance of Kshs. 20,355,915,000 included an amount of Kshs. 6,078,461,000 described as operating lease. It was not possible to confirm the ownership status of the various properties.

### **Committee Observation**

**The Committee observed that the management of Kenya Airports Authority portrayed a lack of interest in protecting public interest and property.**

### **Committee Recommendation**

**The Committee recommends that the Managing Director should ensure that all properties of the Authority have ownership documents.**

#### **5.3 SECURITY FENCING PROJECT: FINANCIAL YEARS 2008/2009, 2009/2010 AND 2011/2012 ACCOUNTS**

The Committee heard that the contract for Ukunda Airstrip fencing which took too long at tender committee was terminated and the contractor had placed a claim of Kshs. 8.9 million as compensation which the management had deferred apparently awaiting some clarification from the Project Engineer.

The Committee further heard that the Embakasi fencing works had never started and the contract has never been terminated and no reasons were given for the anomaly.

### **Management Response**

The Committee was informed that an internal committee found that the Contractor for Ukunda Airstrip was entitled to an amount of Kshs. 8,973,229.93 as per the provisions of the contract. The Tender Committee approved the payment of this amount which was subsequently paid to the Contractor on 9<sup>th</sup> July 2013.

The Committee was further informed that the contractor for the construction of the Embakasi fence was frustrated. The Tender Committee had approved termination of the contract and negotiations were on-going on any entitlement as per the contract.

### **Committee Observation**

**The Committee observed that the termination of contracts and arbitration/litigation has become a new form of corruption in State Corporations.**

### **Committee Recommendations**

**The Committee recommends that:-**

- 1. The Authority should ensure that all its contractors undergo due diligence to determine their technical and financial capacity to undertake the project to avoid issues of non-performance.**
- 2. The Authority should ensure that the contract is terminated within the provisions of the signed contract to avoid the contractor moving to court.**

#### **5.4 EMBAKASI HOUSING SCHEME: FY 2008/2009 AND 2011/2012 ACCOUNTS**

The Committee heard that the Authority owns 515 housing units at Embakasi village out of which 320 are occupied by former staff of the authority, Government employees and other unidentified occupants. The Authority took the occupants to court for non-payment of rent and illegal occupancy. In spite the Court ruling in favor of the authority in 2005 no action has been taken to enforce the court decision and to evict the tenants and occupants.

##### **Management Response**

The Committee was informed that the illegal tenants were evicted in December 2011 and the houses are now occupied by the Kenya Airports Authority employees. There are however some one-bed roomed houses that are unoccupied due to the bad state that they are in and require repairs.

##### **Committee Observation**

**The Committee observed that the Authority had failed to protect public property by knowingly allowing illegal occupancy of the Authority's houses and for failure to rehabilitate the houses that have deteriorated to the extent that the houses are declared uninhabitable.**

##### **Committee Recommendations**

**The Committee recommends that:-**

- (i) The then Managing Director Mr. Stephen Gichuki be held accountable for any losses that the Authority may have incurred on the Embakasi housing scheme.**
- (ii) The Inspectorate of State Corporations and the Kenya Airports Authority recover rent from all the Government agencies whose officers were residing in KAA houses with or without the authority of KAA.**
- (iii) KAA institutes legal proceedings on all the illegal tenants at the Embakasi property.**
- (iv) EACC to investigate circumstances under which illegal tenants occupied KAA houses and all those found culpable be prosecuted and any proceeds or benefits that accrued be recovered from them.**

#### **5.5 TRADE AND RECEIVABLES: FY 2008/2009 ACCOUNTS**

The Committee heard that in trade and receivables there is an amount of Kshs. 83,643,248 due from Kenya Revenue Authority which has been outstanding for six years. No provision for debts has been given in the financial statements.

### **Management Response**

The Committee was informed by the acting Managing Director that the above amount was finally received from Treasury and paid to the KAA account on July 07, 2011. The Treasury was not aware of the same but once they were informed, they facilitated the refund.

### **Committee Observation**

**The Committee observed that the National Treasury had for six years delayed in releasing the amount due to Kenya Airports Authority from Kenya Revenue Authority.**

### **Committee Recommendation**

**The Committee recommends that Kenya Revenue Authority expedites the release of any monies due to Kenya Airports Authority.**

#### **5.6 STALLED PROJECTS: FY 2011/2012 ACCOUNTS**

The Committee heard that in FY 2011/2012 the contract for fencing of Ukunda Air Strip was terminated and the contractor claimed Kshs. 8.9 million as compensation. The Committee further heard that Embakasi Estate fencing works have never started and the contract has never been terminated and no reasons given.

### **Management Response**

The management informed the Committee that the contractor could not undertake the Embakasi project due to hostile crowds from those who were illegally occupying the site. The Authority is intending to review scope of the area for fencing and re-tender the works after the evictions. The Authority is considering terminating the contract since the contractor has failed to maintain a performance security as contractually required.

The Committee was further informed that the Authority terminated the contract for the Ukunda airstrip fencing when it was realized that the land issues were taking long to resolve and paid Kshs 8,973,229.93 in June 28, 2013 and the matter is now closed.

### **Committee Observation**

**The Committee observed that Kenya Airports Authority awarded a fencing contract without surveying the land and paid monies without the contractor undertaking any works.**

### **Committee Recommendations**

**The Committee recommends that:-**

- (i) The then Managing Director, Kenya Airports Authority, Mr. Stephen Gichuki be held personally responsible for paying monies to a contractor**

**without any works having been done for Embakasi Housing fencing project**

- (ii) The Authority should carry out due diligence in planning for implementation of projects.**
- (iii) Management ensures projects are undertaken only after surveying and land ownership documents have been obtained.**

#### **5.7 DISPUTED LAND: FY 2010/2011 ACCOUNTS**

The Committee was informed that parcels of land Nos. LR 13512 and LR 14231 at JKIA and other unidentified parcels of land at Wilson Airport are within the Authority's titles. The Authority has written to the Commissioner of Lands requesting revocation of listed titles (owned by private developers) that fall within the land titles of various airports. Cases of Houses with illegal occupiers are still pending in court.

#### **Management Response**

The Ag. Managing Director informed the Committee that the disputed lands are within Jomo Kenyatta International Airport land and have been accordingly included in the operating lease. This was clarified by the Commissioner of Lands in a letter dated 30<sup>th</sup> December 2005.

The Ag. Managing Director further informed the Committee that the land dispute is still pending in High Court through Court numbers HCCC No. 489 of 2004 (Kenya Airports Authority vs. Uungani Self Help) and HCCC No. 206 of 2004 (Kenya Airports Authority vs. Mlolongo Brothers). The structures built on the subject parcels of land have since been demolished and the area fenced for security purposes.

#### **Committee Observation**

**The Committee observed that the management of Kenya Airports Authority had taken long to secure titles for its land that had been irregularly allocated and further that cases on illegal occupiers had taken long to conclude while the Authority was retaining and paying lawyers for the cases.**

#### **Committee Recommendations**

**The Committee recommends that:-**

- (i) The management of Kenya Airports Authority liaises with the National Land Commission to fast-track the revocation of irregularly allocated land and issue titles to KAA.**
- (ii) Kenya Airports Authority should within six months of adoption of this Report ensure that ownership documents for all its properties are secured.**
- (iii) The Ethics and Anti-Corruption Commission (EACC) investigates the circumstances under which the land belonging to Kenya Airports Authority**

was irregularly allocated to individuals. The EACC should further investigate all the Ministry of Land officials and officials at Kenya Airports Authority under whose tenure KAA land was irregularly allocated with a view to recommending prosecution for those found culpable.

#### **5.8 TRANSGLOBAL CENTRE LTD: FY 2011/2012 ACCOUNTS**

The Committee heard that Transglobal Centre was given a lease of 20 years automatically renewable for a further period of twenty years and a further renewal of 20 years. The land was charged on a loan of Kshs. 500 million.

#### **Management Response**

The Ag. Managing Director informed the Committee that the Tender Committee approved 20 years for the lease which was duly signed by the Authority's authorized representatives and subsequently endorsed on the Authority's land title at the Land Office.

#### **Committee observation**

**The Committee observed that:-**

- (i) The lease was poorly drafted and the agreement skewed in favor of Trans Global Centre Limited.**
- (ii) Trans Global Centre Limited charged the land on a loan of Kshs. 500 million and was issued with I. R. number. The effect of an IR number is that the Company can easily be issued with a title deed for the land.**
- (iii) The lease was meant to circumvent the law since the Authority lacked the capacity to issue long-term leases and that the tender committee did not approve the subsequent 40 years extension.**

#### **Committee Recommendations**

**The Committee recommends that:-**

- (i) The Ethics and Anti - Corruption Commission investigates circumstances under which KAA entered into a lease of 60 years with Trans Global Limited which charged the land lease for a loan of Kshs. 500 million.**
- (ii) The EACC investigates the circumstances under which Trans Global Limited was issued with I. R. No. 127800 for the land leased from KAA.**
- (iii) EACC investigates the procurement, tendering and award of lease and signing of the contract leading to the lease awarded to Trans global Limited and those found culpable be recommended for prosecution by the Director of Public Prosecution.**

## **5.9 MALINDI AIRPORT: FY 2011/2012 ACCOUNTS**

The Committee was informed that a portion of Malinda Airport land under LR No. 7669 was allocated to the Baptist Convention of Kenya vide Grant Number CR 30280 of 1997. Further, the Committee was informed that L.R. 8540 forms part of the original airport land and constitutes Portion No. 10688 belonging to the Authority. However, the Government allocated the subject parcel of land to Kenya Oil Co. Ltd on 16<sup>th</sup> June 1988.

### **Management Response**

The Committee heard that parcels LR 7669 and LR 8540 are either on the flight path or within airport land. Parcel LR 7669 belongs to the Baptist Convention of Kenya however it is within the flight path. The Authority has initiated the process of acquisition and intends to finalize payment. Parcel LR 8540 is within Malindi airport land and the Commissioner of Lands has allocated the same. The Authority has written to the National Land Commission to revoke several parcels of land in various airports in the country, including LR 8540.

### **Committee Observation**

**The Committee observed that:-**

- 1. Parcel LR 7669 is on the flight path while parcel LR 8540 which is within airport land has been allocated to private developers.**
- 2. There is deliberate lack of interest on the part of the management of KAA to protect public property entrusted to them by virtue of their offices.**

### **Committee Recommendations**

**The Committee recommends that:-**

- (i) EACC investigates the circumstances under which parcel LR 8540 which is within KAA land was allocated by the Commissioner of Lands with a view to recovering the land for use by the airport and prosecuting the then Commissioner of Lands and the private developers.**
- (ii) The National Land Commission invokes Article 40(6) of the Constitution to revoke the title unlawfully issued and revert the land to KAA.**
- (iii) KAA liaises with the National Land Commission to fast track the process of acquiring parcel LR 7669 that is within the flight path under compulsory acquisition policy.**

## **5.10 TERMINAL 4 AT JOMO KENYATTA INTERNATIONAL AIRPORT**

The General Manager Finance Kenya Airports Authority presented that one of the projects being undertaken was Terminal 4, parking garage and associated services. This consists of construction of floor area 25,800 sqm, with thematic displays all over the terminal, parking garage (multi-storey car park for parking for 1,500 vehicles and grade

parking to provide 400 slots. This is currently being used as an Arrival Terminal and office after the fire of 7<sup>th</sup> August 2013 that destroyed the Arrivals Terminal.

Terminal 4 arrivals consists of construction of Arrivals Hall complete with Baggage Claim carrousel and necessary GoK agencies offices, Passenger Holding Lounges, Automated Baggage Handling System, 7 Passenger Board Bridges (air bridges), Business and VIP lounges including a Spa, Remote Bus Termini on Ground Floor, segregation of in and outbound passengers with Departure Gates on Level 1 and Arrivals on Level 2; centralized security screening after Immigration(no secondary screening at gates).

### **Management Response**

The Ag Managing Director further informed the Committee that an addendum from World Bank was sought to enable KAA build a power substation on their land even though in the initial contract there was a fixed cost of Kshs. 900 Million for electrical installation but supply of electricity to come from Kenya Power. They however tendered for the substation separately after reviewing the original contract to 1.1 billion

### **Committee Observations**

**The Committee noted with concern that the variation in the contract price on the Terminal 4 construction had escalated by 74% of the original figure tendered for in contravention of Section 85(2) of the Public Procurement and Disposal Act, 2005 and Regulation 31 of the Public Procurement and Disposal Act, 2006 and the Public Finance Management Act.**

**The Committee further observed that the Authority resorted to constructing a power station contrary to earlier plans that allowed KPLC, the power supply company under whose mandate power distribution is vested, to construct the sub-station.**

**The Committee also observed that there was poor planning, delay in implementation of the project on the part of the Authority necessitating addendums mid-way through the contract thus resulting in cost escalation over and above the original budgeted project cost.**

### **Committee Recommendations**

**The Committee recommends that:-**

- (i) The Authority ensures that there is proper planning and timely implementation of projects to avoid price and costs escalations.**
- (ii) The Authority ensures that the project is implemented to the highest standards and specifications and completed to avoid further cost escalations.**

### **5.11 CONSTRUCTION OF REMOTE STANDS AT JKIA**

The General Manager Finance KAA presented that work on the remote stands commenced in March 2012 and that works substantially completed in April 2014. The remote stands comprise of 16 aircraft stands complete with Fuel hydrant to the stands.

**The Committee visited the stands and observed that the works were complete with fuel hydrant to the stands.**

### **5.12 REHABILITATION OF EXISTING RUNWAY AT JKIA**

The General Manager Finance KAA presented that the rehabilitation of the existing runway included the extension of go and upgrade of Instrument Landing Systems (ILS) from ICAO Cat 1 to 2, to enable landing in bad weather. The works expected to commence in November 2014 for 14 months.

#### **Committee Observation**

**The Committee visited the site and observed that the rehabilitation will improve the status of Jomo Kenyatta International Airport and Kenya as a regional aviation hub.**

#### **Committee Recommendation**

**The Committee recommends that the management ensures that the works once they commence are done up to highest standards and specifications with no variations on cost.**

### **5.13 INTERIM TERMINAL TO RAISE CAPACITY AT JKIA**

The General Manager Finance KAA presented that this is Domestic/International, Arrival and Departure Terminal for 2.5 million passengers per annum facilities with an area of 10,000square meters. The contract was signed on 22<sup>nd</sup> January 2014 with M/s Roder of Germany and works are in progress. The contract sum is USD 23 million financed by African Development Bank. It is expected to serve for 5 years, thereafter converted to other use.

#### **Committee Observation**

**The Committee inspected the site and observed that the contractor was on sight.**

#### **Committee Recommendation**

**The Committee recommends that the management ensures that the works are done up to highest standards and specifications with no variations on cost.**

### **5.14 TEMPORARY ARRIVAL AND LOUNGES AT UNIT 3 (JKIA)**

The General Manager Finance presented that this comprises construction of temporary Arrivals Hall next to Unit 3 and Lounges on top of Unit 3. The contract was signed on

12<sup>th</sup> June 2014 with M/s Roder of Germany. Works were expected to commence in July 2014 to complete in November 2014.

#### **Committee Observation**

**The Committee visited the site and observed that temporary arrivals will alleviate problem of space following the fire incident.**

#### **Committee Recommendation**

**The Committee recommends that the management ensures that the works are done up to highest standards and specifications with no variations on cost.**

#### **5.15 CONSTRUCTION OF 2<sup>ND</sup> RUNWAY TO HANDLE CODE F AIRCRAFTS (JKIA)**

The General Manager Finance KAA presented that the conceptual design commenced in August 2012 and was completed in February 2013. RFP for detailed design was issued to shortlisted firms on 11 July 2014. Commencement of works is expected in October 2015. The preliminary design recommended that runway will be 5,500 meters, to enable operation of direct flights to New York which is 6,403NM at 32 ton payload with 89 % passenger load capacity Code F (60m wide with 15 m shoulders), to handle new generation wide body aircraft, A380 and B747-800. Also there will be an ICAO Category II Instrument landing system to both runways to enable landing in bad weather. The funding is expected from GoK.

#### **Committee Observation**

**The Committee observed that the construction of a new runway of 5,500 meters will upgrade the status of Jomo Kenyatta International Airport and Kenya as a regional aviation hub to handle Code F aircrafts.**

#### **Committee Recommendation**

**The Committee recommends that the management ensures that procurement is undertaken professionally and above board and award of tender made to a company with the technical and financial capacity to handle the work. The works must be done up to highest standards and specifications with no variations on cost.**

#### **5.16 SECURITY MEASURES AT JKIA**

The General Manager Finance, KAA presented that security is a dynamic situation but that KAA had hired a consultant through a competitive tendering process to make KAA more technologically friendly and mitigate against security breaches. This in part would comprise a sixteen (16) channels screening yard complete with screening equipment and CCTV. The security measures included armed responses, rapid responses and security scans at point of entry.

The fire that devastated JKIA was deemed to have been caused by an electrical fault.

### **Committee Observation**

The Committee observed that the security at the JKIA was poor which lead to many security lapses which were mainly physical as opposed to technology oriented.

### **Committee Recommendation**

The Committee recommends that the management for KAA invests in securing the airport and in particular security technology.

## **6.0 KENYA CIVIL AVIATION AUTHORITY: FY 2003/2004 TO 2011/2012**

### **REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF KENYA CIVIL AVIATION AUTHORITY FOR THE FINANCIAL YEARS ENDED 30 JUNE 2004 TO 2012**

The Director General, Kenya Civil Aviation Authority, Col. (Rtd) Hillary K. Kioko, Mr. Joseph Kiptoo, Director Corporate Services, Ms. Judith Ngethe, Corporation Secretary, Ms. Irene Ileri, Ministry of Transport and Infrastructure, appeared before the Committee and gave evidence on the accounts of the Authority for the FY 2003/2004 to 2010/2011.

#### **6.1 FINANCIAL POSITION: FY 2003/2004 ACCOUNTS**

The Committee heard that the Authority made a loss of Kshs. 682,503,823 mainly attributable to depreciation charge and provision for doubtful debts of Kshs. 661,316,976 and Kshs. 146,982,862 and the balance sheet reflected negative working capital of Kshs. 661,316,154.

#### **Management Response**

The Director General informed the Committee that KCAA was facing a challenging year and it relied entirely on Government grant of Kshs. 800 million. During the year, the aviation revenue were collected and submitted to Treasury. In the following Financial Year 2004/2005, the Authority was allowed to collect and retain 100% of the aviation revenue to fund both recurrent and capital budgets.

#### **Committee Observation**

The Committee observed that the issue had been rectified in the subsequent years.

#### **6.2 FIXED ASSETS: FY 2003/2004 ACCOUNTS**

The Committee heard that fixed assets included assets costing Kshs. 7,162,460,284 inherited from the Ministry of Transport and Communications for which no professional valuation had been carried out. Also included is a KCAA aircraft valued at

Kshs. 137,500,000 which was not depreciated and had been grounded for the past four years for lack of spare parts. Also included are assets with no ownership documents which included; 13 housing units in Bamburi Estate Mombasa, land owned by former Directorate of Civil Aviation Department, 1 house LR. No. 6230/1/M/N at Nyali Estate, Mombasa, 1 hectare of land at Wilson Airport and 4 hectares of land for East Africa School of Aviation.

### **Management Response**

The Director General informed the Committee that professional valuation was done in 2011 thus resolving the issue. The aircraft was removed from the books in FY 2006/2007 and is currently in use as monument at East Africa School of Aviation. The issue of ownership titles remains unresolved. Currently an asset register is being maintained

### **Committee Observation**

**The Committee observed that many parcels of land belonging to KCAA had been irregularly allocated to private individuals without the approval of the Authority.**

### **Committee Recommendations**

**The Committee recommends that:-**

- (i) Ethics and Anti-Corruption Commission investigates circumstances under which land initially belonging to KCAA was allocated to private individuals.**
- (ii) The National Land Commission, in line with Article 40(6) of the Constitution and Section 5 of the National Land Commission Act, 2012 revokes all titles issued to individuals for land belonging to the Kenya Civil Aviation Authority.**
- (iii) The Ethics and Anti-Corruption Commission investigates circumstances under which Mr. M. Lijodi Makaka a former lands officer acquired land LR No. 9042/698 belonging to KCAA with the aim of recovering the land and prosecuting the irregular allottees.**
- (iv) The EACC investigates all Ministry of Lands officers involved in the irregular allocation of KCAA land to private companies and individuals including the then Commissioner of Lands and the people allocated the land.**

### **6.3 ILLEGALLY ALLOCATED LAND: FYs 2000/2001 to 2011/2012 ACCOUNTS**

The Committee heard that land previously belonging to Kenya Civil Aviation Authority was irregularly allocated to individuals and private companies without the approval of the Kenya Civil Aviation Authority. The irregular allocations were reported in the accounts of the Corporation for the period 2000/2001 to 2011/2012 Financial Years.

## **Management Response**

(i) L.R. No. 39/1/R was allotted and subdivided into 10 plots before amalgamation to create plot L.R. No. 9042/800 which comprises of 87 acres in Embakasi. The plot is currently partly occupied by the Authority and registered as:-

- **L.R. No. 9042/664** comprising of 23.12 hectares under the KCAA. The title was registered on 21<sup>st</sup> July, 2006.
- **L.R. No. 9042/698** comprising of 6.074 hectares under AINU Shamsi Limited purchased from first registered owner Mr. M. Lijodi Makaka on 18<sup>th</sup> August, 2005. The title was first registered to Mr. M. Lijodi Makaka on 18<sup>th</sup> August, 2005.
- **L.R. No. 9042/638** – plot apparently not registered.
- **L.R. No. 9042/639** – plot apparently not registered.
- **L.R. No. 9042/640** – plot apparently not registered.
- **L.R. No. 9042/800** – plot apparently not registered.

Mr. M. Lijodi Makaka has sued the Authority to vacate the land. KCAA has counter claimed and requested the Court to revoke the irregular titles and issue title for the entire property under KCAA's name. The case is still in Court. The Authority has so far spent Kshs. 2, 361,130 as legal fees on the property.

## **Committee Observation**

**The Committee observed that several parcels of land L.R. No. 9042/638; L.R. No. 9042/639; L.R. No. 9042/640 and L.R. No. 9042/800 were not registered in KCAA's name.**

**The Committee observed that L.R. No. 9042/698 was registered in Mr. Lijodi Makaka's name instead of KCAA.**

## **Committee Recommendation**

**The Committee recommends that the National Land Commission revokes titles issued to Mr. M. Lijodi Makaka and the title re-issued to KCAA and registers all the other parcels of land under KCAA**

(ii) **L.R. No. 11933** – the plot was originally 64.8 hectares located in Mlolongo. It is the current location of KCAA central transmitting station. KCAA is in occupation of 60.48 hectares following excision of 4.27 hectares for road expansion. KCAA was issued with 59.78 hectares by allotment letter but no title. Total area allotted to other parties is 5 hectares whose ownership and size unknown. A complaint was filed with KACC in 2009. KACC asked the then Ministry of Lands and Housing to restore the entire 64.8 hectares to KCAA but no action has been taken.

### **Committee Observation**

The Committee observed that L.R No. 11933 is occupied by KCAA but the Authority does not have ownership documents.

### **Committee Recommendations**

The Committee recommends that:-

- (a) The National Land Commission revokes titles issued to private individuals and or companies and expeditiously issues a consolidated title to KCAA for the entire 64.8 hectares of land.
  - (b) The Ethics and Anti-Corruption Commission investigates circumstances under which land belonging to KCAA was irregularly allocated to private individuals and recommend prosecution for individuals by the Director of Public Prosecutions.
- (iii) **L.R. No. 209/14372** – The plot comprises of 0.7733 hectares on Langata Road opposite Wilson airport, formerly location of the KCAA central stores. KCAA is not in occupation of the property and a Hotel has been constructed thereon. The current registered owner of the property is Weston Hotel that purchased it in 2007 from Priority Limited/Monene Investment Limited to whom grant was issued in 2002. The matter was reported to KACC in 2010 and Ministry of Lands in 2008 and 2010. KACC advised that no action could be taken due to lack of supporting documents to support KCAA’s claim.

### **Committee Observation**

The Committee observed that the Authority did not present documents to support claim of the land. Further Kenya Anti-Corruption Commission (the predecessor of Ethics and Anti-Corruption Commission) had written indicating that there was insufficient evidence to facilitate its filing a suit for recovery of the property due to lack of ownership documents.

### **Committee Recommendation**

The Committee recommends that the National Land Commission investigates circumstances under which the land moved from public to private ownership with a view to restitution in line with Article 40(6) of the Constitution and Section 5 of the National Land Commission Act, 2012.

## **6.4 PROPERTY PLANT AND EQUIPMENT: FYs 2011/2012 AND 2012/2013 ACCOUNTS**

The Committee heard that the ownership documents for various assets belonging to the Authority including 31 housing units in Nyali, Mombasa, 13 housing units in Bamburi, Mombasa, 87 acres of land at the East African School of Aviation, Nairobi, 132 acres of land at the Central Transmitting Station along Mombasa Road, Nairobi 2 acres at Central

Stores along Langata Road and Miritini Staff Houses in Mombasa were not made available for audit verification. Although according to the information made available are the documents under process at the Ministry of Lands, no reason has however been provided for the inordinate delay in having the documents issued. In addition, records available indicated that five parcels of land belonging to the Authority namely Mito Andei Ngai Ndethya Settlement Scheme/161 (13 acres), Bamburi Staff Housing (acreage not known), Central Stores in Nairobi (0.7733 acres) and East African School of Aviation (37 acres) were registered in the names of third parties. The circumstances under which the land was allocated and registered in the names of private individuals have not been explained.

**Management Response**

The Managing Director informed the Committee that the Authority has initiated the process of recovery of the buildings and parcels of land as outlined below:-

LAND	ACREAGE	DETAILS
Nyali Houses (Mombasa)		<p>The 2 parcels, Land References Nos. MN/1/2395 and MN/1/6230(part) situated at Nyali Estate Mombasa, were allocated to the Directorate of Civil Aviation (DCA) under the East African Community (EAC), after the collapse of the East African Community in 1977.</p> <p>KCAA Management in the year 2005 commissioned the development of survey plans and deed plans for the 2 parcels of land namely MN/1/2395 and MN/1/6230(part) on which 31 housing units are located. On completion of the survey plans, the contracted surveyors, Hime and Zimmerlin, forwarded the survey plans together with Deed Plan No. 99242 to the Director of Surveys for approval and transmission to the Commissioner of Lands for the issuance of the titles for both parcels of land.</p> <p>Despite follow up with the Commissioner of Lands, the title documents to these parcels have neither been processed in favour of, nor released to the Authority, as the files in respect of these parcels disappeared from circulation at the Mombasa Land Titles Registry.</p> <p>KCAA has written to the Ethics and Anti-Corruption Commission for intervention to revoke illegal allocation of part of this property to the Church and a former Commissioner for Lands</p> <p>KCAA Management has also sought the intervention of the National Land Commission to facilitate procurement of the titles-</p>

LAND	ACREAGE	DETAILS
Bamburi Houses	9.35 acres	<p>KCAA owns 15 houses, 11 of which are occupied by the KCAA senior offices while 4 units are in possession of third parties who grabbed the same. The houses are on L.R Nos. MN/1/2396, MN/1/2397, MN/1/2398, MN/1/2400, MN 1/2402, MN/1/2403, MN/1/2404, MN/1/2405, MN/1/2406, MN/1/2407, MN/1/2409, MN/1/2410, MN/1/2411 and MN/1/2414. The titles are all in the names of the third parties.</p> <p>KCAA wrote to KCAA on 11t August 2008 for investigation and revocation of the illegal allocations.</p> <p>KCAA filed several suits in Mombasa High Court (HCC No 167-181 of 2009) against illegal allottees.</p> <p>Minister for Lands revoked the illegal titles by Gazette notice dated 19<sup>th</sup> November 2010</p> <p>KCAA Management has been following up on the issuance of titles at the Ministryof Lands through telephone conversations and visits, but only 2 out of the 15 titles are being processed (at allotment letter stage.</p> <p>KCAA has also been sued and order of injunction issued against it in MSA HCC No. 22 of 2012(Omar Tashir vs KCAA) in challenge to the revocation notice.</p> <p>KCAA Management has also sought the intervention of the National Land Commission to facilitate procurement of the titles</p>
East African School of Aviation(L.R No. 39/1/R)	87 Acres	<p>KCAA wrote to Kenya Anti- Corruption Commission on 15<sup>th</sup> May 2009 seeking for investigation and intervention to cancel irregular and rectification of title No. 9042/698 to reflect that KCAA owns 87 acres.</p> <p>KCAA wrote to Commissioner of Lands of 16<sup>th</sup> November 2009 seeking for the Commissioner's intervention to cancelled irregular titles.</p> <p>KCAA further wrote to Commissioner of Lands on 8<sup>th</sup> August 2011 and 22<sup>nd</sup> August 2011 seeking for the Commissioner's intervention to cancel the irregular titles.</p> <p>Matter in Court in MacDonald Makaka and another – V- KCAA HCC No. 375 of 2013 (KCAA through counter-claim is seeking for court order to cancel the illegal titles). The individual is claiming 15 acres of</p>

LAND	ACREAGE	DETAILS
		<p>the land</p> <p>KCAA has been following up through telephone communications and visits, to the Commissioner of Lands office for the revocation of the illegal titles.</p> <p>As reported above the property is one of those to which KCAA Management has also sought the intervention of the National Land Commission to facilitate procurement of the titles</p> <p>KCAA is currently undertaking fencing of the property to secure the entire 87 acres.</p>
<p>Mlolongo( L.R No. 11933)</p> <p>(Central Transmitting Station)</p>	<p>149 acres</p>	<p>Land initially comprising of 160 acres bought by the then East African Community from Syokimau Farm in 1968.</p> <p>Following an investigation requested by Management, KACC wrote to the then Minister for Lands on 7<sup>th</sup> May 2009 and KCAA also wrote to Permanent Secretary Ministry of Lands, Housing and Urban Development 10<sup>th</sup> December 2009(Annex 12 a-b) recommending cancellation of illegal titles and restoration of original acreage to KCAA.</p> <p>KCAA wrote to Kenya Anti-Corruption Commission on 11<sup>th</sup> February 2010, seeking for fresh intervention to cancel irregular titles. Annex 13(a-c). This followed KCAA Management visit to the Commissioner of Lands on 23<sup>rd</sup> November 2010 regarding the issue of titles for all KCAA properties.</p> <p>The File in respect of the property cannot be traced at Lands Office.</p> <p><i>To enhance security provided by the Government Installation Security Unit, fencing of the property has been done</i></p> <p>KCAA has also been following up through telephone conversations and visits to the Commissioner of Lands office, regarding revocation of the illegal titles.</p> <p>As reported above the property is one of those too which KCAA Management has also sought the intervention of the National Land Commission to facilitate procurement of the titles</p>
<p>Central Stores (L.R. 209/14372)</p>	<p>0.7733 hectares</p>	<p>This property was until the year 2001 used as the central stores for the former DCA.</p> <p>In 1998, the property was allocated to Priority</p>

LAND	ACREAGE	DETAILS
Langata		<p>Limited and Monene Investment Limited and a grant subsequently issued to the 2 companies (Grant No. I.R 89671)</p> <p>In 2007, the property was sold and transferred to Weston Hotels Limited.</p> <p>This property was also discussed at KCAA Management meeting with Commissioner of Lands on 23<sup>rd</sup> November 2010.</p> <p>As reported above the property is one of those to which KCAA Management has also sought the intervention of the National Land Commission to facilitate procurement of the titles</p> <p>KCAA does have ownership documents for this property. Neither is KCAA in occupation of the property.</p> <p>KCAA wrote on 21<sup>st</sup> September 2010 indicating that there was insufficient evidence to facilitate its mounting a suit for recovery of the property due to lack of ownership documents.</p>
Miritini, Mombasa (KCCA component 80 units)	7 acres	<p>In 2001, a letter of Allotment was issued to D.C.A, the predecessor of KCAA.</p> <p>In 2004, while KCAA was awaiting a Vesting Order, vesting the land and assets of DCA to it, so as to obtain a title for the property, a new allotment letter was issued to KRA.</p> <p>Subsequently, a title was issued to KRA for the entire parcel of land.</p> <p>Representatives of KRA, KCAA and Meteorological Department held meetings held meetings on 24<sup>th</sup> January 2012 and agreed on joint ownership and management of the property. See minutes of deliberations</p> <p>KCAA is awaiting KRA Board approval to release title for cancellation and issuance of new title in the names of the institutions.</p>
Ngai Ndeithya	13 acres	<p>The KCAA is the holder of 13 acres of land, as per the current records available at the Mtitio Andei Land Adjudication Office.</p> <p>Preliminary survey of the property was done in 2010.</p>

LAND	ACREAGE	DETAILS
		<p>Alliance Land Surveys, contracted by the Authority on the adjudication, has indicated that the process of adjudication still on-going and being a Government process, will take a significant period of time to conclude.</p> <p>As reported above the property is one of those to which KCAA Management has sought the intervention of the National Land Commission to facilitate procurement of the titles</p>

### **Committee Observations**

**The Committee observed that:-**

- (i) The Minister for Lands and Settlement took action to revoke titles vide Gazette Notice dated 19<sup>th</sup> November, 2010.**
- (ii) KCAA Inherited all the assets and liabilities of the Directorate of Civil Aviation.**
- (iii) There appears to be an institutional lapse in keeping of records for ownership documents within the relevant Government ministries.**

### **Committee Recommendations**

**The Committee recommends that:-**

- (i) The Authority improves its internal control processes to safeguard the assets under its jurisdiction.**
- (ii) The Authority liaises with the National Land Commission to fast track the issuance of titles for all its land.**
- (iii) The National Land Commission investigates all land belonging to KCAA but irregularly allocated to private developers and other organizations in line with Article 40(6) of the Constitution and Section 5 of the National Land Commission Act, 2012.**
- (iv) The EACC investigates the irregular transfer of land belonging to KCAA to private developers with the aim of recovery and prosecution of those found culpable in the irregular transfers.**

### **6.5 DEBTORS: FY 2003/2004 ACCOUNTS**

The Committee heard that the balance sheet figure of Kshs. 40,189,744 is net of bad debts provision of Kshs. 146,982,862 owed to former Directorate of Civil Aviation in respect of income prior to revenue collection function being transferred to Kenya

Revenue Authority (KRA). No explanation was given as to why the recovery of debts function was not given to KRA. KRA revenue returns were not submitted hence it was not possible to ascertain new additional debtors.

#### **Management Response**

The Director General informed the Committee that Revenue collection between KCAA and KRA has been streamlined.

#### **Committee Observation**

**The Committee observed that the defunct Directorate of Civil Aviation was owed Kshs 146,982,862 in respect of income on account of revenue collection.**

#### **Committee Recommendation**

**The Committee recommends that KCAA recovers the debt owed to its predecessor.**

#### **6.6 CASH IN HAND: FYs 2003/2004 ACCOUNTS**

The Committee was informed that cash in hand of Kshs. 300,396 was not supported by the Board of Survey Report.

#### **Management Response**

The Director General informed the Committee that the Authority conducts Board of Survey as required and this is no longer an issue.

#### **Committee Observation**

**The Committee observed that the Authority did not carry out board of surveys as required by the financial management regulations but had since rectified the anomaly.**

#### **Committee Recommendation**

**The Committee recommends that the Authority should ensure that the board of survey is conducted as required by the financial regulations.**

#### **6.7 STOCKS: FY 2003/2004 ACCOUNTS**

The Committee heard that the balance sheet figure of Kshs. 15,509,103 was not supported by evidence of physical stock take. Stocks were carried at First in First out basis in contravention of IAS No. 2 which recommends lower cost and net realizable value.

#### **Management Response**

The Director General informed the Committee that the Authority carries out stock taking and stocks are valued at lower costs and net realizable value.

### **Committee Observation**

**The Committee observed that the Authority did not carry out physical stock take in contravention of IAS No. 2 which recommends lower cost and net realizable value. The issue was however addressed in subsequent years.**

### **Committee Recommendation**

**The Committee recommends that the Authority conducts periodic physical stock take in line with IAS No. 2.**

### **6.8 CREDITORS: FY 2003/2004 ACCOUNTS**

The Committee was informed that balance sheet figure of Kshs. 487,195,481 was composed of dedicated lease line (Telkom) of Kshs. 117,595,481 and replacement of telecommunication equipment of Kshs. 369,600,000. The Telkom dedicated lease lines creditors' amount was understated by Kshs. 9,410,202 and the creditors' ledger was not maintained.

### **Management Response**

The Director General informed the Committee that the bills were subsequently paid and the creditors' ledger is maintained and updated.

### **Committee Observation**

**The Committee observed that the Authority did not maintain a creditors' ledger and had understated creditors.**

### **Committee Recommendation**

**The Committee recommends that the management should ensure that an updated creditors' ledger is maintained by the Authority.**

### **6.9 LONG TERM LOANS: FY 2003/2004 ACCOUNTS**

The Committee was informed that the Authority took over two long term loans totaling Kshs. 1,238,089,969 obtained from France by the Government on behalf of Directorate of Civil Aviation for which loan agreements were not availed for audit verification. The balance sheet figure of Kshs. 1,123,185,215 differs with note 9 figure of Kshs. 1,238,089,969 by Kshs. 114,904,754 representing accrued interest not reconciled.

### **Management Response**

The Director General informed the Committee that the agreements were availed for verification and that the variance accrued interest was adjusted in FY 2004/2005.

### **Committee Observation**

**The Committee observed that the Authority took over, two long terms loans from its predecessor however the accrued interest was not reconciled.**

### **Committee Recommendation**

**The Committee recommends that the Authority ensures that it reconciles interest in the loans and be brought into its books.**

### **6.10 BOARD EXPENSES: FY 2003/2004 ACCOUNTS**

The Committee was informed that expenses exceeded the budget by Kshs. 1,312,469. This over expenditure was caused by a payment of Kshs. 3,644,000 made to public servants seconded to various committees of the board which include Kshs. 2,425,000 paid over and above the rate approved by the Office of the President vide letter dated 29/08/2003.

### **Management Response**

The Director General informed the Committee that the public officers were paid allowances for participating in various Committees of the then Authority's Board during the formative period of the Authority. Upon receiving the Auditor's observations, the Authority sought advice from the Inspectorate of State Corporations and Directorate of Personnel Management on the interpretation of the Office of the President Circular No OP/CA/2/12A (9) on payment of allowances.

### **Committee Observation**

**The Committee observed that the Authority paid allowances to public officers attending its committee meetings in contravention of Office of the President Circular No. OP/CA/2/12A (9) on payment of allowances.**

### **Committee Recommendation**

**The Committee recommends that the Authority ensures adherence to the relevant Government financial circulars whenever public officers are invited to participate in its activities.**

## **7.0 KENYA PLANT HEALTH INSPECTORATE SERVICE: FY 2001/2002 TO 2011/2012**

### **REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF KENYA PLANT HEALTH INSPECTORATE SERVICE FOR THE YEAR ENDED 30 JUNE 2002 TO 2012**

**Dr. James Onsando, Managing Director, KEPHIS accompanied by Ms. Margaret Njuguna, Head of Finance and Mr. Kiptarus Bartonjo, Head of Corporate and Legal Affairs appeared before the Committee to adduce evidence on the accounts of the Kenya Plant Health Inspectorate for the Financial Years 2001/2002 to 2009/2010.**

#### **7.1 PROPERTY, PLANT AND EQUIPMENT: FY 2011/2012 ACCOUNTS**

##### **Kitale LR 2197.2/2R**

The Committee heard that private developers had encroached on 330 acres of land (Kitale LR 2197/2/2R) set aside for seed quality assurance activities in Kitale. The encroachment preceded the inception of KEPHIS in 1997. In the 1980's the land set aside for the seed and plant varieties assurance activities was 400 acres but 70 acres were hived off for a primary school and coffee research foundation thus leaving 330 acres.

##### **Management Response**

The Committee heard that 105 acres of the land and houses was recovered by KEPHIS and further encroachment stopped in the period 2002 to 2010. The Corporation has since fenced off the recovered land however the Corporation does not have a title for the land.

##### **Nakuru Municipality LR 9290/4 - I.R 93234**

The CEO, KEPHIS informed the Committee that the parcel of land which hosts KEPHIS Nakuru regional office was inherited from KARI in 1997. The land was surveyed and development planning commenced but the process stalled when part of the development plans could not be found at the Nakuru land office. The Corporation is following up with the lands office with a view to concluding the matter.

##### **Muguga L. R. No. 23880**

The parcel of land hosts KEPHIS Plant Quarantine Station and there is no dispute over its ownership. The Corporation is pursuing its transfer of title from KARI.

##### **Kabete L.R. 22380/25**

The parcel was allocated to KEPHIS by Ministry of Agriculture. Title acquired.

### **Committee Observation**

The Committee observed that KEPHIS has several pieces of land for which it does not have title ownership documents and which require fencing to avoid encroachment.

### **Committee Recommendations**

The Committee recommends that:-

- (i) KEPHIS fences off the aforementioned pieces of land and acquires titles for the remaining parcels of land within six months of the adoption of this Report.
- (ii) The National Land Commission fast tracks the issuance of titles for the KEPHIS land.
- (iii) KEPHIS in liaison with the Ministry of Interior and National Coordination evicts all those persons that have encroached on its 330 acres and fences off the land to protect it from future encroachment.

## **7.2 PRESENTATION OF FINANCIAL STATEMENTS AND DISCLOSURES: FY 2002/2003 AND 2003/2004 ACCOUNTS**

The Committee heard that contrary to the requirements of IAS No.1, the financial Statements have not disclosed significant accounting policies such as stock valuation, debtors' valuation, revenue recognition and investment and staff retirement benefits. Further, the amounts reflected in the financial statements differ from the amounts disclosed in the notes to the financial statements.

### **Management Response**

The Chief Executive Officer informed the Committee that the inadequacy in presentation of financial statements and disclosures was due to the fact that the requirement for the adoption of International Accounting Standards was new.

The Committee further heard that the Corporation had put in place measures to ensure compliance and is now fully compliant with the standards.

### **Committee Observation**

The Committee observed that without proper presentation of financial statements and disclosures it was not possible to confirm the figures given.

### **Committee Recommendation**

The Committee recommends that the Inspectorate adopts the International Accounting Standards in its presentation of financial statements and disclosures.

### **7.3 CASH AND BANK BALANCES: FY 2002/2003 ACCOUNTS**

The Committee heard that the Bank reconciliation statements for three out of the five bank accounts maintained by the inspectorates were not availed for audit. In addition, a Board of Survey or Cash Survey Certificate has not been availed to support the cash in hand figure of Kshs 171,391 as disclosed in note in 6 to the accounts. Differences were noted between the figures reported in financial statements, bank confirmation certificates and bank reconciliation statements.

#### **Management Response**

The Chief Executive Officer informed the Committee that the variance of Kshs. 2,766,106 between the balance sheet figure for current account of Kshs. 29,460,410 and the bank reconciliation figure of Kshs. 11,231,821 was as a result of bank guaranteed and a cheque both of which were cancelled post balance sheet date. Reconciliation was undertaken on the three accounts and the bank confirmation for the regional offices totaling Kshs 3,714,531, bank statement for Savings account that was dormant at the time and bank reconciliations for all accounts provided.

#### **Committee Observation**

**The Committee observed that the Inspectorate failed to undertake reconciliation of accounts.**

#### **Committee Recommendation**

**The Committee recommends that the Chief Executive Officer ensures that bank reconciliations are undertaken on time as per the IAS.**

### **7.4 DEPRECIATION: FY 2002/2003 ACCOUNTS**

The Committee heard that the figures appearing in the fixed assets register schedule had errors and as such the accuracies of the figures could not be ascertained.

#### **Management Response**

The Chief Executive Officer informed the Committee that the depreciation figure was incorrectly computed however the errors in the fixed assets schedule were rectified in the FY 2003/2004 accounts and have not been repeated in subsequent accounts.

The Committee further heard that the Corporation had acquired ACCPAC computerized fixed asset management system thus eliminating possibility of computational errors.

#### **Committee Observation**

**The Committee observed that the Corporation did not have an up to date and correct Assets Register.**

#### **Committee Recommendation**

**The Committee recommends that the Chief Executive Officer ensures that the Corporation maintains an updated and complete fixed assets register.**

## **7.5 ACCURACIES OF FINANCIAL STATEMENTS: FY 2003/2004 ACCOUNTS**

The Committee was informed that most of the comparative balances for FY 2002/2003 in the FY 2003/2004 financial statements differ from the audited balances in FY 2002/2003.

### **Management Response**

The Chief Executive Officer informed the Committee that the comparative figures were erroneously captured but were rectified.

### **Committee Observation**

**The Committee observed that the accuracy of the opening balances for FY 2003/2004 could not be ascertained due to the differences in the comparative balances for the previous Financial Year.**

### **Committee Recommendation**

**The Committee recommends that the Inspectorate ensures that its opening balances are accurate.**

## **7.6 DEBTORS: FY 2004/2005 ACCOUNTS**

The Committee heard that the debtors' figures could not be confirmed by the auditors due to unexplained difference arising from an incomplete schedule that was presented during the time of audit.

### **Committee Observation**

**The Committee observed that there was a variance in the debtors' figures.**

### **Committee Recommendation**

**The Committee recommends that the Inspectorate ensures that the debtors' figures are properly reconciled.**

## **7.7 CREDITORS: FY 2004/2005 ACCOUNTS**

The Committee heard that the validity and completeness of creditors' figure of Kshs. 8,674,846 as reflected in the financial statements could not be confirmed.

### **Management Response**

The Chief Executive informed the Committee that the schedules presented had errors that caused the difference and that the amounts reflected in the financial statements reflected the current position.

### **Committee Observation**

**The Committee observed that there was a variance in the creditors' figures in the financial statements and therefore its validity could not be confirmed.**

### **Committee Recommendation**

**The Committee recommends that the Inspectorate reconciles its creditors' figures to reflect the current position.**

### **7.7 BUDGETARY CONTROLS: FY 2004/2005 ACCOUNTS**

The Committee heard that the Inspectorate overspent its budget by amounts totaling Kshs. 63,094,393 contrary to Section 12 of the State Corporations' Act.

### **Management Response**

The Chief Executive informed the Committee that the increased expenditure was due to 44.3 % increase in salaries that was approved by the Ministry of Agriculture and Treasury approved the revised budget.

### **Committee Observation**

**The Committee observed that the Inspectorate overspent on its budget contrary to the State Corporations' Act, Cap 446 and in contravention of Article 226 (5) of the Constitution.**

### **Committee Recommendations**

**The Committee recommends that the EACC investigates and recommends prosecution of the then Managing Director, Dr. Chagema Kedera, by the Director of Public Prosecutions for:**

- (i) Authorizing the over expenditure contrary to Section 12 of the State Corporations' Act, Cap 446.**
- (ii) Abuse of office contrary to the Public Officer Ethics Act, 2003.**

### **7.8 DEBTORS AND PREPAYMENTS: FYs 2005/2006 AND PARAGRAPH 2 OF 2006/2007 ACCOUNTS**

The Committee heard that the Inspectorate has a debt of Kshs. 14,403,496 owed by the Kenya Agricultural Research Institute (KARI), which has been outstanding since 2000 with no indication of recoverability.

### **Management Response**

The Chief Executive informed the Committee that the debt was settled vide Cheque No. 007027 (Kshs. 16,113,423) on 22<sup>nd</sup> April 2008.

### **Committee Observation**

**The Committee observed that a debt of Kshs 14,404,496 owed by KARI had been outstanding since 2000.**

### **Committee Recommendation**

**The Committee recommends that the Board of the Inspectorate (KEPHIS) should put in place a policy for quick recovery of debts.**

### **7.9 ILLEGAL WATER CONNECTION: FYs 2004/2005, 2005/2006, 2006/2007, 2007/2008 AND 2008/2009 ACCOUNTS**

The Committee heard that the Inspectorate purchased its current premises with a borehole that supplies it with water. A neighbor, who is an employee of the bank that sold the property, to the premises had made an illegal underground connection enabling him to draw water from the borehole for his own private use. The neighbor used his position to illegally draw water from the Inspectorate's premises.

### **Management Response**

The Chief Executive Officer informed the Committee that Mr. Adan Mohamed sought the Court's order stopping the Corporation from interfering with the supply of water to his premises and later sought the courts reprieve from paying his water bills that stand at Kshs. 643,586. The matter was settled out of court and finalized on 3<sup>rd</sup> April 2012 upon payment of the agreed amount of Kshs. 205,010 by Mr. Adan Mohammed through his advocate, J.K. Muchae & Company Advocates.

### **Committee Observation**

**The Committee observed that though the matter was settled out of court the Corporation had lost money through the illegal water connection.**

**The Committee further observed that Mr. Adan Mohamed used his senior management position at Barclays Bank to illegally draw water from the Corporations borehole. The matter was settled out of court.**

### **Committee Recommendation**

**The Committee recommends that the Corporation takes necessary measures to ensure that the matter is does not recur.**

### **7.10 BOARD EXPENSES: FY 2011/2012 ACCOUNTS**

The Committee heard that the Inspectorate paid a total of Kshs 140,000 as sitting allowance to non-directors in attendance during board/committee meetings in breach of the State Corporations Act Cap 446 of the Laws of Kenya Section 6(1) and financial regulations.

### **Management Response**

The KEPHIS management informed the Committee that payment to the representative of the Inspector General of State Corporations was allowed following amendments of the State Corporations Act, 2002. However this has since been stopped following a circular from the Head of Public Service dated 8<sup>th</sup> November 2013 vide OP/CAB 9/1A to all Chief Officers of State Corporations.

### **Committee Observation**

**The Committee observed that the Inspectorate paid sitting allowances totaling Kshs. 140,000 to non-directors in attendance during Board/Committee meetings in breach of Article 226 (5) of the Constitution and Section 6(1) of the State Corporations Act Cap 446 of the Laws of Kenya and financial regulations.**

### **Committee Recommendations**

**The Committee recommends that:-**

- 1) The then Managing Director be surcharged for the loss of Kshs. 140, 000 paid to the non-directors.**
- 2) The EACC investigates and recommends prosecution of the then Managing Director for the following offenses:-**
  - (i) Illegal payments paid to non-directors contrary to Section 6(1) of the State Corporations Act, Cap 446 and financial regulations.**
  - (ii) Abuse of office contrary to Public Officer Ethics Act, 2003.**

## **8.0 NATIONAL HOUSING CORPORATION: FY 2001/2002 TO 2011/2012**

### **REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF NATIONAL HOUSING CORPORATION FOR THE YEAR ENDED 30 JUNE 2002 TO 2012**

**The Chief Executive Officer, National Housing Corporation, Mr. Wachira Njuguna accompanied by Ms. Lydia Ng'ang'a, Corporation Secretary, Mr. Gideon Muange, General Manager, Estates, Ms. Rosebella Langat, General Manager, Business Development, Mr. Willis Ouma, General Manager, Technical Operations, Mr. Thiongo Anthony, Chief Human Resource Officer, Mr. George Kinyanjui, General Manager, Finance and Mr. Albert Nyaga, Chief Accountant appeared before the Committee and gave evidence on the accounts of the Corporation for the 2001/2002 to 2005/2006.**

#### **8.1 FINANCIAL POSITION: FY 2001/2002 ACCOUNTS**

The Committee heard that during the year ended June 2002 the Corporation recorded a loss of Kshs. 22,059,505 compared to a profit of Kshs. 1,431,377 the previous year. The Corporation was unable to meet its long term maturing loans and interest obligations amounting to Kshs. 3,309,019,803 and was unable to recover loan arrears of Kshs. 2,246,690,011 due from local authorities and rural housing loans.

#### **Management Response**

The CEO informed the Committee that the loss-making trend was as a result of capital structure which was not business friendly since most of the funds appropriated to the Corporation were in form of loans and not equity. The Corporation is pursuing local authorities and rural housing loanees. The balance owed by local authorities is currently Kshs. 1 billion as at March 2012.

#### **Committee Observation**

**The Committee observed that the Corporation was unable to recover loans owed by local authorities and was unable to meet its long term maturing loans and interest obligations.**

#### **Committee Recommendations**

**The Committee recommends that the Corporation recovers all loans owed to it and reviews its policy on loans to equity.**

#### **8.2 IRREGULAR PURCHASE OF COMPUTERS: FY 2001/2002 ACCOUNTS**

The Committee heard that the Corporation single sourced the supply of computer software component at a cost of Kshs. 5,441,824.24.

### **Management Response**

The CEO informed the Committee that only elite computers submitted bids acceptable for computerization hence proper procurement procedure was followed.

### **Committee Observation**

**The Committee observed that the Corporation single sourced the supply of computer software without the justifications provided for under Section 74 of the Public Procurement and Disposal Act, 2005 and Regulation 62 of the Public Procurement and Disposal Regulations, 2006.**

### **Committee Recommendations**

**The Committee recommends that the EACC investigates the conduct of the then Managing Director and circumstances surrounding the irregular procurement procedure in the supply of computer software and recommend prosecution by Director of Public Prosecutions for:**

- (i) Single sourcing the supply of computer software contrary to the exceptions allowed under Section 74 of the Public Procurement and Disposal Act, 2005, Regulation 62 of the Public Procurement and Disposal Regulations, 2006 and Treasury Regulations and for failure to ensure that there was value for money in the procurement process.**
- (ii) Abuse of office contrary to the Public Officer Ethics Act, 2003.**

### **8.3 ELDORET PHASE (III) MORTGAGE HOUSING: FY 2001/2002 ACCOUNTS**

The Committee heard that the Corporation started a housing project in 1997 but it stalled when the Corporation had already spent Kshs. 55,358,858.05 in payments to a contractor and consultant.

### **Management Response**

The Committee was informed that 15 out of the proposed 24 housing units were completed in 2006 at a cost of Kshs. 127,811,405.25 and leased out as rental units. The remaining 9 units were abandoned at various stages.

### **Committee Observation**

**The Committee observed that the Corporation invested in a housing estate project which stalled after payments had been made to a contractor and consultant thus it did not achieve value for money.**

### **Committee Recommendation**

**The Committee recommends that:-**

- (i) The Corporation recovers the money paid to the contractors whose projects stalled.**

(ii) **The contractor should be barred from doing business in Kenya.**

#### **8.4 LAND AND BUILDINGS: FY 2007/2008, 2009/2010, 2010/2011 AND 2011/2012 ACCOUNTS**

The Committee heard that the Property, Plant and Equipment balance included an undeveloped parcel of land in Webuye town measuring 22 ha and valued at Kshs 4,787,260 which had not been registered in the Corporation's name nor the title documents produced for audit verification

##### **Management Response**

The Ag. Managing Director informed the Committee that the parcel had been allocated to the Corporation by Webuye Municipal Council in a debt swap arrangement. Kenya Forest Service claimed ownership of the land to which NHC surrendered it. NHC then reinstated the Webuye Council debt in their books.

##### **Committee Observation**

**The Committee observed that NHC reinstated the Webuye Municipal Council debt after the debt swap arrangement failed.**

##### **Committee Recommendation**

**The Committee recommends that the Corporation pursues recovery of the debt from the successor of Webuye Municipal Council, Bungoma County Government.**

#### **8.5 HOUSING SCHEME IN PROGRESS: FY 2007/2008 TO 2011/2012 ACCOUNTS**

The Committee was informed that Housing Schemes in progress balance included tenant purchases schemes, mortgage schemes and other projects all totaling Kshs. 207,717,495 which have remained dormant for over 5 years. Though the Corporation had indicated that they were reviewing the possible viability of the schemes in order to make appropriate recommendations to the Board, little progress had been made. So it was not possible to confirm the viability of these schemes or how and when these dormant schemes will be revived.

##### **Management Response**

The Ag Managing Director presented that, the dormant schemes comprised of three main projects, namely Nairobi South B at Kshs 11,434,204.70; Canalization of Ngong River at Kshs 28,378,026.40; Kibera Phase III at Kshs 113,163,060.23 for consultancy and a further Kshs 16,450,178.65 incurred in putting-up houses for sale in Nanyuki. The houses were not immediately sold, but eventually got sold and the above cost will be matched against the sales revenue realized.

The Ag Managing Director further informed the Committee that the land in South B was invaded by squatters after Kshs. 11, 434,204.70 had been utilized on it and that the

squatters were not being evicted on humanitarian grounds even though they have court orders to evict.

As for the Kibera Phase III, the project was stopped yet the preliminary consultancy costs had been incurred. The Board has been advised that this is a sunk cost and that it should be written off. Although NHC was the supervising and paying agent, canalization of Ngong River stalled after the Ministry of Lands and Housing could not provide funds to pay the contractor and further NHC was not paid for the money it paid on behalf of the Ministry.

### **Committee Observation**

**The Committee observed that due diligence was not done during purchase of the parcel of land at South B and Kibera Phase III. The Committee further noted with concern that NHC spent Kshs. 113,163,060.23 for consultancy services incurred at the preliminary period for Kibera Phase III tenant purchase project.**

### **Committee Recommendations**

**The Committee recommends that:-**

- 1. The Corporation evicts the squatters on the parcel of land in South B and takes over the land as per the Court Order and report status to the Public Investments Committee within three months of the adoption of this report.**
- 2. The Ministry of Lands and Housing pays the Corporation money paid to the contractor on behalf of the Ministry for the Canalization of Ngong River within six months of the adoption of this Report.**

### **8.6 INVESTMENTS IN RDU COMPANY LTD: FY 2007/2008 TO 2011 ACCOUNTS**

The Committee heard that NHC investments in Research Development Unit Company Ltd (RDU) (a wholly owned subsidiary) amounted to Kshs. 40,000,000. However there was no share certificate in support of the investments produced for audit review and thus it's not possible to ascertain ownership status.

### **Management Response**

The Ag Managing Director NHC informed the Committee that the RDU Company was formed with the assistance of the British Government to do research on roofing materials but the products produced were not relevant to the Kenyan market. The Corporation had anticipated that the RDU Company would issue them with share certificate by 2010 but due to errors in the Articles and Memorandum of Association this was not possible. The Attorney General's office and the Registrar of Companies both advised that the share certificates be transferred from the original directors to the current ones. This will make it possible for the Board to wind up the Company if they so decide as advised by the Inspectorate of State Corporations. A consultant has been

appointed to sort out the error and the matter of the share certificate. The investment in the RDU Company currently stands at Kshs 99 million up from Kshs 40 million.

### **Committee Observation**

**The Committee observed that:-**

- 1. The original directors were holding the share certificates as trustees and once they left the share certificates should have been transferred/handed over to the current directors.**
- 2. The Corporation hired a consultant on a matter that could be handled by the Corporation's in-house lawyer.**

### **Committee Recommendations**

**The Committee recommends that:-**

- 1. The then Managing Director be held responsible for issuance of share certificates with errors and surcharged.**
- 2. The management pursues the issuance of a share certificate by its subsidiary Research Development Unit Company Ltd (RDU) to new directors and report to Parliament within six months after adoption of the Report.**
- 3. The Corporation winds up Research Development Unit Company Ltd (RDU) to avoid incurring further losses.**
- 4. The EACC investigates the circumstances under which the company was registered with a view to prosecuting those found culpable.**

### **8.7 DEBTS AND PREPAYMENTS: FY 2007/2008 ACCOUNTS**

The Committee heard that out of the Kshs. 8,177,062 owed in respect of staff debtors / outstanding imprest, Kshs. 6,446,622 has been outstanding from a former employee for over 8 years. The matter is reported as pending in court and so it's not possible to confirm the monies recoverability.

### **Management Response**

The Ag Managing Director NHC presented to the Committee that the former M.D, Mr. Lawi Kiplagat owed the Corporation Kshs. 6,446,622 of un-surrendered imprest of which Kshs 5 million was recovered through sale of his assets. Mr. Kiplagat filed for bankruptcy. Although the bankruptcy was lifted, NHC have not been able to trace more assets to sell to recover the money leaving Kshs 1,446,622 outstanding.

### **Committee Observation**

The Committee observed that the then Managing Director Mr. Lawi Kiplagat took imprest and even after sale of his assets to recover the money, he still has an outstanding amount of Kshs 1,446,622.

### **Committee Recommendations**

The Committee recommends that:

1. The Corporation recovers the outstanding imprest owed of Kshs 1,446,622 by its former Managing Director, Mr. Lawi Kiplagat;
2. The then Finance Manager and the Board be held responsible and accountable for failure to recover the imprest and in contravention of financial regulations;
3. The then Finance Manager and the Board be surcharged and money lost be recovered from them.

### **8.9 CASH AND CASH EQUIVALENTS: FY 2009/2010 TO 2010/2011 ACCOUNTS**

The Committee heard that there were differences between the cash book balances and the financial statements and the supporting evidence was not produced for audit verification.

The Ag Managing Director NHC presented to the Committee that the variances were mainly caused by mis-codings and reconciliations that were still ongoing at the time of the audit. The cashbook balances have since been reconciled in the FY 2011/2012. The variance in the Cooperative Bank Account 300 was because money had been directly banked and credited into the account but not receipted including Kshs 42 million from Eldoret Municipal Council in respect of a loan repayment. The Kshs 900,000 was erroneously credited into the account and the bank later reversed the entry.

### **Committee Observation**

**There were no cash book reconciliations of cash book balances**

### **Committee Recommendation**

**The Committee recommends that the management ensures that the Corporations undertake reconciliation of cash book balances and the financial statements.**

### **8.10 TRADE AND OTHER PAYABLES: FY 2009/2010 ACCOUNTS**

The Committee heard that contrary to IAS 1 paragraph 32, the Corporation offset Kshs 73,032,602 being debt in respect of security maintenance and insurance expenses incurred by the Corporation on behalf of tenants, against other balances. Further the Corporation could not explain the two journal entries it passed of debits amounting to Kshs. 3,515,000 and Kshs. 3,584,626 respectively.

### **Management Response**

The Ag. Managing Director NHC informed the Committee that the Kshs. 73,032,602 represented amounts paid to suppliers of goods and services to NHC tenant purchase schemes, which amounts are reimbursable from service charge levied on the tenant purchasers. The Corporation had taken the advice of the Auditor General and isolated the service charge amount in the accounts. Kshs 3,515,000 represented insurance debt following an accident in the official car of Kshs 3,040,000 and Kshs 475,000 recognised as debt payable to the Corporation arising from disposal of an old car. Kshs. 3,584,998 represents debit balances in the creditor codes in the general ledger. Reconciliation was completed and the balances properly posted.

### **Committee Observation**

**The Committee observed that debt in respect of security maintenance and insurance expenses was incurred by the Corporation on behalf of tenants.**

### **Committee Recommendation**

**The Committee recommends that the Corporation ensures that balances are properly posted and reconciliations undertaken on the same.**

## **9.0 HIGHER EDUCATION LOANS BOARD: FY 2003/2004 TO 2011/2012**

### **REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF HIGHER EDUCATION LOANS BOARD FOR THE YEAR ENDED 30 JUNE 2004 TO 2012**

**The Chief Executive Officer/Board Secretary, Higher Education Loans Board, Charles Ringera, accompanied by Mr. Shem Gichuru, Head of Finance and Mr. Joseph Ndiku, Finance Manager appeared before the Committee and gave evidence on the accounts of the Board for the FY 2003/2004 to 2011/2012.**

#### **9.1 LOANS TO STUDENTS: FY 2003/2004 TO 2011/2012 ACCOUNTS**

The CEO informed the Committee that the Board has continued to pursue the outstanding loans and has realize continuous growth in loan recoveries from past university students. Such measures include increasing loans repayments channels, collaboration with Kenya Revenue Authority, partnering with other institutions that have large data bases of employed Kenyans, embracing technology in managing disbursement and recovery, public awareness and sensitization, enforcement of HELB Act, among others.

### **Management Response**

The CEO provided a summary of Loan Recoveries for financial years' 2003/2004 to 2011/2013 as follows:

<b>Financial Year</b>	<b>Outstanding Loan Amount (Kshs.)</b>	<b>Loan Recoveries (Kshs.)</b>	<b>% increase in Collections over previous financial year</b>	<b>% of Annual collections to outstanding loan</b>
2003/2004	8,631,238,746	672,621,432	15.17	7.79
2004/2005	11,400,334,576	720,540,220	7.12	6.32
2005/2006	14,021,588,415	881,206,173	22.30	6.28
2006/2007	15,211,956,368	1,030,556,488	16.95	6.77
2007/2008	16,488,287,962	1,343,816,565	30.40	8.15
2008/2009	17,901,461,981	1,592,818,088	18.53	8.90
2009/2010	18,954,127,890	1,923,444,284	20.76	10.15
2010/2011	19,925,164,816	2,294,265,395	19.28	11.51
2011/2012	21,968,052,468	2,512,594,660	9.52	11.44
2012/2013	23,051,200,000	3,355,089,882	33.53	14.55

In the recent past the Board undertook an interest waiver campaign through which it realized Kshs.1.2 billion.

#### **Committee Observation**

**The Committee observed that the recovery efforts by the Board are not sufficient.**

#### **Committee Recommendation**

**The Committee recommends that the Board puts in place measures to ensure full recovery of loans from former students in order to increase the amount available for the ever increasing number of Kenyan's seeking higher education.**

**The Committee recommends that the loans should be disbursed in a timely manner.**

## **10.0 KENYA TOURIST DEVELOPMENT CORPORATION: FY 1996/1997 TO 2011/2012**

### **REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF KENYA TOURIST DEVELOPMENT CORPORATION FOR THE YEAR ENDED 30 JUNE 1997 TO 2012**

The Managing Director, Kenya Tourists Development Corporation, Ms. Marianne Ndegwa, accompanied by Mr. Abraham Muthoga, Head of Credit, Mr. Allan Njoroge, Head of Audit, Mr. John Mukuna, Ag. Head of Finance, Ms. Carolyne Misoi, Head of HR and Administration and Mr. Carrey Francis, Head of Legal appeared before the Committee and gave evidence on the accounts of the Board for the 1996/1997 to 2011/2012.

#### **10.1 REVOLVING FUND LOANS: FYs 1996/1997 AND 1997/1998 ACCOUNTS**

The Committee heard that during the years in question, the Corporation's recovery of Revolving Fund Loans was poor. Out of the total loan and accrued interest totaling Kshs. 136,172,972 outstanding, only Kshs. 6,172,074 had been recovered. The unrecovered loan as at 30<sup>th</sup> June, 1997 was Kshs. 89,296,064.

#### **Management Response**

The Managing Director informed the Committee that some of the loans dated back to 1970's. The loans had gone up due to interest forcing the Corporation to write off the interests and getting twice the premiums as opposed to completely writing them off. However, the Committee was informed that the Board had cleared majority of the loans with only 6 remaining by the year 2010.

#### **Committee Observation**

**The Committee observed that the Corporation while lending failed to undertake due diligence and follow prudential guidelines.**

#### **Committee Recommendation**

**The Committee recommends that:-**

- (i) The Corporation recovers the loans and ensures that prudential guidelines are followed.**
- (ii) The then Managing Director under whose tenure the loans were dispersed without prudential guidelines be surcharged for not doing due diligence.**

## **10.2 INVESTMENTS AND COMMERCIAL LOANS: FY 1996/1997 AND 1997/1998 ACCOUNTS**

The Committee heard that the Corporation had invested through Equity, Commercial and Revolving Fund Loans in organizations that had not been performing, non-profitable or were nonexistent. The loans were not recovered and amounts outstanding may not be recoverable.

### **Management Response**

The Managing Director informed the Committee that the loan amounts that had been advanced to the Corporation subsidiaries and their interests had been suspended. The Board had already approved the debt to be converted into equity in their respective units.

### **Committee Observation**

**The Committee observed that the Corporation is owed huge debts by its subsidiaries**

### **Committee Recommendation**

**The Committee recommends that the Corporation converts the debt owed by its subsidiaries into equity.**

## **10.3 STALLED PROJECTS: FY 1996/1997 & 1997/1998 ACCOUNTS**

The Committee was informed that Kshs. 38,549,827 was invested in a project that was later abandoned and that no feasibility study had been done before the project was started. Further, there were additional expenditures of Kshs. 109,250 on feasibility when the project was on-going.

### **Management Response**

The Managing Director agreed with the position of the Auditor General. He informed the Committee that since the project stalled, there was no possibility of actualizing it and that the Corporation intended to remove the asset from the books of accounts.

### **Committee Observation**

**The Committee observed that the Corporation invested in a project without undertaking a feasibility study; the project later stalled.**

### **Committee Recommendations**

**The Committee recommends that:-**

- (i) The Corporation ensures that it undertakes feasibility studies before commencing any project.**

**(ii) The Board be held accountable for the poor investments decision including recovery of the lost funds.**

**(iii) The EACC investigates the circumstances under which the project was procured, payments made and reasons as to why the project stalled and if the Board is found culpable be prosecuted and be surcharged.**

#### **10.4 FIXED DEPOSITS/PRIVATIZATION PROCEEDS: FYs 1996/1997 TO 2005/2006**

The Committee was informed that proceeds from privatization through sale of shares in 9 companies were invested in banks at a lower rate than the Treasury Bills rate of 24%-26%. The proceeds were held in bank accounts not jointly operated with Treasury and withdrawals were not used for intended purposes contrary to the Treasury Circular No. 351/03 of 26<sup>th</sup> April, 1993. Further, the Committee heard that part of the proceeds amounting Kshs. 15,455,200 were paid to a foreign company in United Kingdom on behalf of the Parent Ministry.

#### **Management Response**

The Managing Director informed the Committee that the privatization proceeds totaling Kshs. 386,347,440 were held by the Corporation as Fixed deposits in a Commercial Bank managed by the Corporation alone contrary to the Treasury Circular. A sum of Kshs. 134,089,192 was paid out without approval of the Board and the Treasury as required by Section 15(1) and 12 of the State Corporations Act, Cap 446. However, the Corporation is currently operating its accounts jointly with the Treasury abiding by the guidelines. Actions were taken against officers who were involved in the acts of omission and commission.

#### **Committee Observation**

**The Committee observed that the Inspectorate of State Corporations needed to thoroughly inspect State Corporations. Further the Committee observed that the Corporation invested proceeds of privatization in bank accounts at rates lower than Treasury Bills and paid out monies without Board and Treasury approval contrary to Section 12 of the State Corporations Act, Cap. 446.**

#### **Committee Recommendations**

**The Committee recommends that:-**

**(i) The Corporation should not pay for expenses incurred by their parent Ministries.**

**(ii) The Corporation should ensure that all investments are done in line with Treasury guidelines.**

**(iii) The then Managing Director be held accountable for poor investments decisions and investing without Treasury approval contrary to Section 12 of the State Corporations Act, Cap. 446.**

**10.5 DEBTORS AND PRE-PAYMENT: FYs 1996/1997, 1997/1998, 1998/1999, 1999/2000, 2000/2001, 2004/2005, 2005/2006, 2006/2007, 2011/2012 ACCOUNTS**

The Committee was informed that the Corporation had long outstanding debtors who were dormant for 3-8 years and whose recoverability was doubtful. The debtors included ex staff, trade debtors, CEO's car loan, salary advances and rent, doubtful debts owing from various hotels and lodges, ex-tenants and deposits made to a firm for hosting Africa Investments Forum in Nairobi.

**Management Response**

The Managing Director informed the Committee that the Corporation had outstanding debtors as indicated by the Auditor General. The Corporation was however pursuing the debtors through all possible means including hiring private investigators. The Corporation had recovered from the benefits of the CEO imprest taken and was holding his car's logbook. Further, the Corporation had made provisions for the doubtful debts in its books of accounts.

As for the Investment Forum, the Corporation was in partnership agreement not providing services.

**Committee Observation**

**The Committee observed that the Corporation had long outstanding debtors who include ex staff, trade debtors, CEO's car loan, salary advances and rent, doubtful debts owing from various hotels and lodges, ex-tenants and deposits made to a firm for hosting Africa Investments Forum in Nairobi and whose recoverability was doubtful.**

**Committee Recommendations**

**The Committee recommends that the Managing Director ensures that all debts owed to the Corporation is recovered within six months of tabling of this Report.**

**10.6 IRREGULAR PAYMENTS: FYs 1996/1997, 1997/1998, 1999/2000, 2000/2001, 2003/2004, 2005/2006 ACCOUNTS**

The Committee was informed that irregular payments were made as follows;

- Rent was paid for the Chief Executive Officer for his own house instead of making payment for owner occupier house allowance.
- Sitting allowances and bonuses were paid to public servants receiving a salary.

- Payment of legal fees that were higher than was advised by the Company Secretary.
- Sitting allowances and Christmas bonuses paid to an expired board.
- Salary award without approval of the parent Ministry.
- Consultancy fee paid to human resource company without competitive selection, approval of the Board and the parent ministry.
- Directors' expenses exceeded budget without approval by Treasury.

### **Management Response**

The Managing Director concurred with the Auditor General's position. She informed the Committee that allowances were paid to representative of the Permanent Secretary (PS) including bonuses.

Further, on the issue of the expired Board, the PS recalled the Board and hence the meetings were irregular.

Concerning the salary award, the Corporation was given an approval by the Head of Public Service. On the issue of HR Consultancy, the Corporation hired it on contractual basis without adhering to Treasury Circular and Procurement and Disposal Act.

Regarding the Directors emoluments, the budget was exceeded by having more board meetings than were scheduled as at that time the Managing Director had been terminated from employment.

### **Committee Observation**

**The Committee observed that KTDC management made irregular payments.**

### **Committee Recommendations**

**The Committee recommends that:-**

- (i) The Corporation urgently recovers from the then Managing Director Directors expenses that exceeded the budget and that was incurred without Treasury approval contrary to Section 12 of the State Corporations Act, Cap. 446.**
- (ii) The Corporation urgently recovers monies paid as rent for the Chief Executive Officer for his own house instead of making payment for owner occupier house allowance.**
- (iii) The then Managing Director/CEO be held responsible for abuse of office contrary to Section 11 of the Public Officer Ethics Act, 2003 and Section 101 of the Penal Code by awarding himself hefty house allowance instead of owner occupier house allowance.**

**(iv) The then Managing Director be held responsible and accountable for procuring consultancy services without Board and Ministerial approval and in contravention of Treasury Circular and Public Procurement and Disposal Act, 2005.**

**(v) The Corporation recovers monies paid as allowances and Christmas bonuses to representatives of the Permanent Secretary.**

#### **10.7 BANK OVERDRAFT: FY 2000/2001 ACCOUNTS**

The Committee heard that the Corporation had an overdraft of Kshs. 15,562,032 in the bank against the approved ceiling of Kshs. 10,000,000. The Corporation did not have an approval from the Parent Ministry for the increased overdraft ceiling.

#### **Management Response**

The Managing Director informed the Committee that the Board authorized the Corporation to operate the overdraft facility with Kenya Commercial Bank up to a maximum of Kshs. 15 million. However, there was no approval from the Parent Ministry. The situation was corrected and the current limit is Kshs. 10 million per Kenya Tourist Development Corporation Act.

#### **Committee Observation**

**The Committee observed that the Corporation exceeded the legal overdraft limit in contravention of the Kenya Tourist Development Corporation Act.**

#### **Committee Recommendations**

**The Committee recommends that the EACC investigates and recommends prosecution by the Director of Public Prosecutions of the then Managing Director and Board of Directors for:-**

- i) operating an overdraft facility without ministerial approval and in contravention of the Kenya Tourist Development Corporation Act.**
- ii) Abuse of office contrary to Section 101 of the Penal Code and Section 10 of the Public Officer Ethics Act, 2003.**

#### **10.8 PROCUREMENT OF MARINA PROJECT LAND: FY 2011/2012 ACCOUNTS**

The Committee was informed that in the Financial Year 2012 the Corporation purchased land valued at Kshs. 35,000,000 and paid Kshs. 3,500,000 without details of compliance with the Public Procurement and Disposal Act.

#### **Management Response**

The Managing Director informed the Committee that this land was for a specific purpose of putting up a Marina due to its uniqueness and was identified with the help of

Kenya Ports Authority. The Management prepared a paper to the Board to initiate the acquisition of the land and approval was granted. However, the project has stalled and no contracts have been signed to formally acquire the land due to the absence of a functional KTDC Board.

#### **Committee Observation**

**The Committee observed that the Corporation single sourced the purchase for land and paid for it in contravention of Article 10 and 226(5) of the Constitution; Section 74 of the Public Procurement and Disposal Act, 2005; and Regulation 62 of the Public Procurement and Disposal Regulations, 2006.**

#### **Committee Recommendations**

**The Committee recommends that:-**

**(i) The EACC investigates the conduct of the then Managing Director and the Board (names) and the circumstances under which the purchase of land was single sourced and recommend prosecution by the Director of Public Prosecutions for:**

**(a) Breach of Section 74 of the Public Procurement and Disposal Act, 2005 and Regulation 62 of the Public Procurement and Disposal Regulations, 2006.**

**(b) Abuse of office contrary to Section 101 of the Penal Code and Section 10 of Public Officer Ethics Act, 2003**

**(ii) The then Managing Director and the Board be surcharged or money recovered from them to make good the loss incurred.**

**(iii) The then Managing Director and the Board should not hold any public office if found culpable.**

#### **10.9 ADVANCE OF KSHS 50 MILLION TO AN INVESTMENT COMPANY: FY 2011/2012**

The Committee was informed that the Corporation advanced Kshs. 50 million to an investment company in which Kenyan shareholding was only 37% contrary to the requirement of at least 51% Kenyan shareholding.

#### **Management Response**

The Managing Director informed the Committee that the funds were lent to Lagoon Development Limited in Kilifi Creek. The Board formulated the Credit Policy and using their powers, could review it according to the KTDC mandate and management recommendations. The said loan is up to date in terms of repayments.

### **Committee Observation**

The Committee observed that the Corporation advanced Kshs. 50 million to Lagoon Development Limited in Kilifi Creek, an investment company in which Kenyan shareholding was only 37% contrary to the requirement of at least 51% Kenyan shareholding.

### **Committee Recommendations**

The Committee recommends that the EACC investigates the circumstances surrounding the irregular and unlawful advance of Kshs. 50 Million and recommend prosecution by the Director of Public Prosecution of the then Managing Director and the Board for:

- i) Acting beyond the mandate provided for under the Kenya Tourist Development Corporation Act.
- ii) Abuse of office contrary to Section 101 of the Penal Code and Section 10 of the Public Officer Ethics Act, 2003.

### **10.10 PROPERTY, PLANT AND EQUIPMENT: FYS 2005/2006 AND 2006/2007 ACCOUNTS**

The Committee was informed that the Corporation had reflected land in Mombasa and Kitale as investment and not under property, plant and equipment and the correctness of figures could not be verified.

### **Management Response**

The Managing Director informed the Committee that these lands were reclassified.

### **Committee Observations**

The Committee observed that the land in Mombasa and Kitale reflected as investments and not under Plant, Property and Equipment.

### **Committee Recommendation**

The Committee recommends that the Corporation ensures proper classification of items in its books of accounts.

### **10.11 NON-CURRENT ASSETS LOANS: FYS 2005/2006, 2007/2008, 2008/2009, 2009/2010, 2010/2011 AND 2011/2012 ACCOUNTS**

The Committee was informed that the Corporation issued loans to Buffalo Springs, an entity whose going concern could not be verified.

### **Management Response**

The Managing Director informed the Committee that the Corporation loaned Kshs 8,467, 395 to Buffalo Springs Ltd, a subsidiary of KTDC. The premise in which the Company operated was leased out to another tenant by Isiolo Town Council crippling operations of the Company. The Company has not been servicing its loan as per the agreement. The matter was referred to the office of the Auditor General for a forensic audit; however the request was turned down.

### **The Committee Observation**

**The Committee observed that the premise from which Buffalo's spring operated from was leased to someone else thus crippling the operations of Buffalo Springs.**

### **Committee Recommendation**

**The Committee recommends that the EACC investigates the circumstances under which the Isiolo Town Council leased out premises that buffalo springs as subsidiary of KTDC was operating on with a view to prosecuting those found to have engaged in impropriety.**

### **10.12 TAXATION: FYs 1998/1999, 1999/2000, 2000/2001, 2008/2009, 2009/2010, 2010/2011, 2011/2012 ACCOUNTS**

The Committee was informed that the Corporation had been granted 50% waiver of penalties and interests but had not paid the remaining 50%.

### **Management Response**

The Managing Director informed the Committee that the Corporation had applied for total waiver for penalties and interests and had been granted. Further the Corporation has instituted measures to update its taxes and to ensure that no more penalties are accrued.

### **Committee Observation**

**The Committee observes that the corporation had failed to meet its tax obligations thus leading to penalties and interests.**

### **Committee Recommendations**

**The Committee recommends that the Corporation ensures that all taxes and levies are paid on time and in accordance with relevant laws and regulations to avoid penalties and interest.**

## **11.0 NATIONAL SOCIAL SECURITY FUND (NSSF): FY 2008/2009 TO 2011/2012**

### **REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF NATIONAL SOCIAL SECURITY FUND (NSSF) FOR THE YEAR ENDED 30 JUNE 2009 TO 2012**

**The Acting Managing Trustee, National Social Security Fund, Ms. Hope Mwashumbe accompanied by Mr. Moses Cheseto, Manager Property Management, Richard Langat, Finance Manager, M. Nzatu, Manager Policy development and Gideon Kyengo appeared before the Committee and gave evidence on the accounts of the Fund for the FY 2008/2009 to 2011/2012.**

#### **11.1 PROPERTIES IN GAZETTED AREAS: FY 2008/2009 TO 2011/2012 ACCOUNTS**

The Committee heard that the Fund acquired investment properties in gazetted areas in new Muthaiga L.R.No. 209/12274 measuring 18.41 hectares (Sigiria Block) which is part of Karura Forest, Ngong Road L.R. Nos. 20840 and 20841 in Ngong Forest next to Lenana School and Ojijo road L.R. No. 209/6439 next to Parklands Sports Club. The properties being in gazetted areas cannot be owned, possessed, utilized or accessed and any development on any such land would be illegal. The properties were worth Kshs. 450 million, 100 million and 350 million for New Muthaiga, Ngong and Ojijo respectively as at June 30, 2009.

#### **Management Response**

The acting Managing Trustee informed the Committee that the Fund has filed three cases in relation to the land situated in Karura Forest and Ngong Forest. The Commissioner of Lands issued titles despite the land in question being forestland. The cases are pending in court. The Fund can recover the cost of acquiring the properties if the Ministry of Lands allocates the Fund alternative land of equivalent value.

Once the cases are finalized the Fund shall carry out valuation and update its financial statement.

The property on Ojijo Road was sold in November 2011 at Kshs. 305 million, while it was valued at 450 million resulting in a loss.

Regarding L.R. 20840 and 20841 on Ngong Road next to Lenana School, the Committee heard that the case between NSSF and Kerio Farms Limited and 5 others under Milimani HCCC No. 162 of 2005 has been in court for a long time. The defendants have requested for an out of court settlement. The Fund is awaiting firming up of the same before issuance of instructions to the Fund lawyers to record consent in court. The defendants have proposed a settlement of Kshs. 40 million while the Fund is seeking Kshs. 45 million.

### **Committee Observation**

The Committee observed as follows:-

- (i) The property on Ojijo Road was sold in November 2011 at a price of Kshs 305 million, which was lower than what it had been valued at Kshs 450 million resulting in a loss of Kshs 145 Million.**
- (ii) The NSSF Versus Kerio farms case under Milimani HCCC No. 162 of 2005 had taken inordinately long to conclude.**

### **Committee Recommendation**

The Committee recommends that:-

- (i) The EACC investigates the circumstances of sale of the Ojijo Road property with a view to prosecuting those found culpable.**
- (ii) The EACC further investigates the circumstances under which NSSF was sold forest land with a view to recovering monies paid by the Fund to Kerio Farms Limited and prosecution of those involved in the irregular transaction, that was aimed at defrauding the public, including the owners of Kerio farms, Ministry of Lands officials and management of NSSF.**
- (iii) The Fund fast tracks the finalization of the pending cases on the issue.**
- (iv) The Fund settles the matter expeditiously and that the title of the forest land should revert to the National Land Commission.**

### **11.2 ACCUMULATED MEMBERS FUND: FY 2008/2009 ACCOUNTS**

The Committee heard that the Funds total funds of Kshs. 82,147,886 include contributions from members held in a suspense account as they had not been allocated to member's accounts. Such contributions totaled Kshs. 5,894,627,690 as at June 30, 2009.

### **Members Response**

The Acting Managing Trustee informed the Committee that the suspense account is mainly caused by employers when they remit their member contributions but fail to provide the accurate membership numbers in form of returns or remit contributions for persons not yet registered with the Fund or remit contributions without returns. The lack of an integrated ICT System has made it difficult to identify unregistered employees.

The suspense account has been growing for some time but the Fund installed an Integrated System (SSPAS) which eases reconciliation processes and identifies the unregistered employees. The Fund is conducting a suspense clearance exercise with the aim of reducing the suspense account figure and as a result the figures in the suspense account from Kshs. 6,106,474, 455 in June 2012 to Kshs. 2,381,299,539 as at June 2013.

### **Committee Observation**

The Committee observed that Kshs. 82,147,886 which includes contributions from members held in a suspense account had not been allocated to member's accounts.

### **Committee Recommendations**

The Committee recommends that:

- (i) The Fund should identify the contributors and clear the balance in the suspense account before 30<sup>th</sup> June 2015.
- (ii) The Fund publishes in the print media the amounts which are in suspense account with the names of contributors/firms.
- (iii) The Fund should put in place a mechanism to ensure that no contributions are accepted without contributing members' details.

### **11.3 TAX RECEIVABLES: FY 2008/2009 TO 2011/2012 ACCOUNTS**

The Committee heard that the Fund had over paid tax to KRA amounting to Kshs. 911,278,000 prior to January 2007 when the Fund was exempted from taxation and withholding tax.

### **Management Response**

The Committee was informed that the Fund hired a tax consultant to help in recovering the tax overpaid. Consultations between the Fund and KRA are ongoing with the validation process underway.

### **Committee Observations**

The Committee observed that in spite being a public body, NSSF hired a tax consultant to help in recovering the tax overpaid to KRA. Being a State Corporation, the Fund should not have engaged a private consultant to recover the refund and should instead have pursued the matter through the official channels in Government.

The Committee also raised concern on the hiring of a consultant to seek tax refund from KRA.

### **Committee Recommendation**

The Committee recommends that the Fund should clear the issue of tax refund with KRA within two months of the adoption of this Report and report back to the Committee.

#### **11.4 ADVANCE TO MUGOYA CONSTRUCTION COMPANY AND ENGINEERING LIMITED: FY 2008/2009 TO 2011/2012 ACCOUNTS**

The Committee heard that the Fund advanced Muggy Construction Company a total of Kshs. 324,355,699 to facilitate completion of phase 2 of Nyayo Estate, Embakasi project without a collateral security from the company to cover the advance. The Fund has not been able to recover the advance.

##### **Management Response**

The Acting Managing Trustee informed the Committee that the firm partially completed the project and another contractor was appointed and eventually all the units were completed and sold. The contract with Muggy Construction Company was terminated in 2004 due to nonperformance but the company sued claiming Kshs. 7.057 billion. The management further informed the Committee that the company filed a suit against the Fund claiming Kshs. 7,057,915, 245 while the Fund filed a counter claim for Kshs. 9, 873,038,869 together with other non-liquidated claims. The matter was referred for arbitration under retired Justice Akilano Akiwumi but he later disqualified himself due to claims of bias by the plaintiffs' lawyers. Hon. Justice Torgbor and Mr. Norman Mururu were appointed as new arbitrators but the claimant changed his lawyers and expressed the desire for a negotiated settlement. The matter is still pending in court; however the Fund has made full provision in the books and made recommendation to the Board of Trustees for a write off.

The Committee further heard that arbitration is the best option even though the case is still in court.

##### **Committee Observation**

**The Committee observed that the Fund advanced a private company, Mugoya Construction Company, a total of Kshs. 324,355,699 to facilitate completion of phase 2 of Nyayo Estate, Embakasi project without a collateral security from the company to cover the advance in total contravention of the law.**

**The Committee further heard that the matter is still pending in court.**

##### **Committee Recommendation**

**The Committee recommends that the EACC investigates with the aim of recovering the money and recommend prosecution of those found culpable.**

#### **11.5 LAND WITHOUT TITLE DEED: FY 2008/2009 ACCOUNTS**

The Committee heard that the Fund has undeveloped property valued at Kshs. 5,927,253,000 out of which land valued at Kshs. 400,000,000 located in Langata area has no ownership documents.

### **Management Response**

The Acting Managing Trustee informed the Committee that the Fund had the title of the land (the Langata area) but this was not availed to the auditors for verification since it was with the Funds lawyers for the purpose of disposal. The land was disposed of in 2008/2009 financial year to M/s Five Star Agencies for Kshs. 385,000,000.

### **Committee observation**

**The Committee observed that primary documents were not availed to the auditors in time for their audit review contrary to section 37(b) of the Public Audit Act, 2003.**

### **Committee Recommendation**

**The Committee recommends that the management ensures that primary documents are availed to the auditors in time and when requested for audit review as per section 37(b) of the Public Audit Act, 2003.**

#### **11.6 SHARES WITHOUT CERTIFICATES: FY 2008/2009 ACCOUNTS**

The Committee heard that the Fund had shares worth Kshs. 778,452, 776 which do not have share certificates.

### **Management Response**

The Acting Managing Trustee informed the Committee that shares worth Kshs. 778,452,776 were in joint nominee accounts and the transfer forms were signed for purposes of issuance of certificates. The shares are at an advanced stage of being transferred to the Fund. The share transfers will be done in two weeks period and certificate issued.

### **Committee Observation**

**The Committee observed that it had taken long to transfer shares to the name of the Fund and issue certificates.**

### **Committee Recommendation**

**The Committee recommends that the Managing Trustee ensures that the purchase of shares is accompanied with share certificates. Further the management should ensure that necessary documents are submitted to the national audit office when required in accordance with section 37(b) of the Public Audit Act, 2003.**

#### **11.7 DISCOUNT SECURITIES LIMITED: FY 2007/2008 ACCOUNTS**

The Committee heard that in the FY 2007/2008 an amount of Kshs. 1,201,143,000 in respect of shares purchased through Discount Securities Ltd., a stock brokerage firm placed under receivership in 2009 was excluded from the financial statements.

### **Management Response**

The Committee was informed that the Fund executed Discount Securities Limited discount client claim in April 2012 and asked for special consideration over and above the maximum compensation of Kshs. 10,000 for the first phase as directed by the Capital Markets Authority. The Fund is awaiting the compensation.

The EACC investigation report was finalized and sent to the Attorney General for prosecution and possible recovery of lost assets/shares. The case is ongoing.

### **Committee Observation**

**The Committee observed that there was laxity on the part of the Fund to finalize the cases and directed that the criminal case should be concluded expeditiously.**

**The Committee further observed that the EACC investigation report was finalized and sent to the Attorney General for prosecution and possible recovery of lost assets/shares.**

### **Committee Recommendation**

**The Committee recommends that the Fund finalizes the cases.**

#### **11.8 LOSS OF CASH: FY 2008/2009, 2009/2010, 2010/2011 AND 2011/2012 ACCOUNTS**

The Committee heard that in FY 2007/2008 the cash and bank balances excluded an amount of Kshs. 7,243,000 representing cash lost through fraudulent practices at the Funds Westland's Branch.

### **Management Response**

The Acting Managing Trustee informed the Committee that the officers involved Mr. Samuel Kerich Bor was dismissed and criminal proceedings instituted against him. The criminal case is still pending in Court and will be heard on 10<sup>th</sup> September, 2013.

### **Committee Observation**

**The Committee recommends that the Managing Trustee ensures that the case is concluded and lost funds recovered.**

### **Committee Recommendation**

**The Committee recommends that the Managing Trustees ensures that the Fund develops a policy to prevent and curb fraud.**

#### **11.9 LETTING CONTRACTS: FY 2008/2009 ACCOUNTS**

The Committee heard that the Fund flouted the Public Procurement and Disposal Act, 2005 in identifying various tenants in letting contracts for five plots ref. Nos. 209/11412, 209/11331, 209/12219, 209/12220 and 209/12287 along Kenyatta

Avenue and others under Nos L.R. 209/10669 along Hospital Road; 209/11305 along Elgon Road; 2535/1/MW, 2537, 254/1/MN, 982/1/MN in Bamburi Mombasa and 17545 in Mlolongo, Mavoko.

### **Management Response**

The Committee was informed that:-

- (i) The plots along Kenyatta Avenue were leased in 2009 to Cheraik Agencies and Caryl Agencies to operate car park services at a monthly fee payable to the Fund. The plots were later leased to M/s Value Zone Ltd within the provisions of the Public Procurement and Disposal Act.
- (ii) The plots along Hospital Road and Elgon Road were leased to tenants at a monthly rent payable directly to NSSF. The properties were later sold at competitive prices.
- (iii) Bamburi parcels No. 982, 2535, 2537, 2538, 2539 and 2540 were leased to M/s SIFA International which sued the Fund in 2006. The matter is pending in Court and the Fund has not been able to lease/sell the property competitively.
- (iv) L. R. No. 17645 in Mlolongo is in dispute with the Ministry of Roads. The matter is pending in court. The site has not been leased or sold.

### **Committee Observations**

The Committee observed that:-

- (i) The lease to Cheraik Agencies and Caryl Agencies was single sourced without justification and exceptions as provided for under Section 74 of the Public Procurement and Disposal Act, 2005 and Regulation 62 of the Public Procurement and Disposal Regulations 2006.**
- (ii) The disposal process of plots No. L.R. 1075, 1088 and 1089 was not clear.**
- (iii) There was a concerted effort by the Corporation to write off the debts even without exhausting all available means of debt recovery.**

### **Committee Recommendations**

The Committee recommends that:-

- (i) The Fund vigorously pursues the cases relating to the plots with a view to finalizing them.**
- (ii) The EACC investigates and prosecutes the disposal of plots No. L.R. 1075, 1088 and 1089 and to report to the Committee within six months of adoption of this Report;**
- (iii) The then Managing Trustee be held responsible and accountable for:**

**(a) Single sourcing the lease of plots to Cheraik Agencies and Caryl Agencies without justification and exceptions as provided for under Section 74 of the Public Procurement and Disposal Act, 2005 and Regulation 62 of the Public Procurement and Disposal Regulations, 2006.**

**(b) Abuse of office in contravention of Section 101 of the Penal Code and Section 10 of the Public Officer Ethics Act, 2003.**

#### **11.10 SUNDRY DEBTORS: FY 2009/2010 ACCOUNTS**

The Committee heard that debtors and prepayments included long outstanding sundry debts of Kshs. 251,516,000 invested in Euro Bank that was placed under receivership in February 2013. The investment was to have matured in 2002; rental incomes amounting to Kshs. 30,681,000 collected from tenants in Bruce House, Hazina, Viewpark Towers and Nyayo Estate by various agents had not been remitted to the fund by June 30, 2010 and drawer contribution cheques for an amount of Kshs. 53,038,000 relating to rents and members contributions.

#### **Management Response**

The Committee was informed that the Fund sued Shah Munge and Partners Ltd and was awarded the sum of Kshs. 258,133,333. Shah Munge however filed an appeal of Kshs 500 million which and therefore the fund cannot enforce the award.

The Fund has issued instructions to all branch managers to promptly follow up all employers who issue bad cheques knowing that their accounts have insufficient funds in contravention of Section 316A(1)(b) of the Penal Code. The Fund is then to ensure replacement or legal action taken. To discourage issuance of bad cheques knowing that one's account has insufficient funds, the Fund has imposed an additional Kshs. 5,000 penalty.

Rental income collected by M/s Miligan and Company (Kshs. 25,744,000) Llyod Masika Ltd (Kshs. 4,787,000) and Regent Management (Kshs. 150,000) were demanded by the Fund. The amount due from Miligan is fully provided in the financial statements for the year ended 2012. The company went under receivership.

Llyod Masika is disputing the amounts owing and negotiations are ongoing while regent management amounts are to be recovered from the management fees due to the company.

#### **Committee Observation**

**The Committee observed that the Fund had debts which had been outstanding for a long time and which need to be recovered.**

### **Committee Recommendation**

**The Committee recommends that the Managing Trustee ensures the full recovery of the amount owed.**

### **11.11 CASH AND BANK BALANCES – BANK RECONCILIATION STATEMENT: FY 2009/2010 ACCOUNTS**

The Committee heard that no reconciliation was done in the Tenant Purchase Scheme (TPS) Account, expenditure account and further the Fund did not avail bank reconciliation statements for various accounts.

### **Management Response**

The Acting Managing Trustee informed the Committee that both hard and soft copies of bank reconciliation statements were presented to the auditors for review.

### **Committee Observation**

**The Committee observed that issuance of bad cheques when one knows that his/her accounts has insufficient funds is a criminal offence under Section 316A(1)(a) of the Penal Code which attracts a fine not exceeding Kshs 50,000 or imprisonment not exceeding one year or both.**

**The Committee also noted with concern that the Fund had failed to provide the bank reconciliation statements during audit.**

### **Committee Recommendation**

**The Committee recommends that the EACC investigates and recommends prosecution by the Director of Public Prosecutions for breach of Section 316A (1) (a) of the Penal Code.**

### **11.12 PURCHASE OF GENERATORS FOR NSSF BLOCKS A AND B: FY 2009/2010 ACCOUNTS**

The Committee heard that the Fund purchased 2 No. 650 KVA sound proof generators at Kshs. 33,234,912 inclusive of VAT but it has not been indicated how the generators were recorded and accounted for in the books of the Fund.

### **Management Response**

The Acting Managing Trustee informed the Committee that the generators acquisition and installation costs are recognized/capitalized in the financial statements as additional investments in land and building and not additions to property, plant and equipment.

### **Committee Observation**

**The Committee observed that the generators were not properly recorded/recognized in the Fund's books of Accounts.**

### **Committee Recommendation**

**The Committee recommends that the Fund capitalizes the generators as property, plant and equipment.**

#### **11.13 TENANT PURCHASE SCHEME: FY 2009/2010 ACCOUNTS**

The Committee heard that it was not possible to confirm the accuracy of the tenant purchase scheme balance of Kshs. 5,428,006,000 as at June 30, 2010 which differed from the amount of Kshs. 5,849,431,295 appearing in the supporting documents.

### **Management Response**

The Acting Managing Trustee informed the Committee that an un-reconciled figure of Kshs. 421,365,295 related to the cases that were either in Court or to deceased tenants and arrears below three months in Tassia II Project and Nyayo Estate Embakasi respectively.

### **Committee Observation**

**The Committee observed that the un-reconciled figures require to be cleared.**

### **Committee Recommendation**

**The Committee recommends that the Managing Trustee ensures that the Fund properly and accurately records and reconciles figures in its tenant purchase scheme.**

#### **11.14 CREDITORS AND ACCRUALS: FY 2009/2010 ACCOUNTS**

The Committee heard that creditors and accruals figure of Kshs. 2,221,540,000 as at June 30, 2010 includes an amount of Kshs. 599,913,690 which was not supported with the relevant documents. In the circumstances it was not possible to ascertain the accuracy of the balance of Kshs. 2,221,540,000.

### **Management Response**

The Acting Managing Trustee informed the Committee that the analysis of the creditors and accruals figure of Kshs. 2,221,540,000 as at June 30, 2010 has been provided to the Auditor General for verification.

### **Committee Observation**

**The Committee observed that the analysis was not made available to the auditor for verification contrary to section 37(b) of the Public Audit Act, 2003.**

### **Committee Recommendation**

**The Committee recommends that the Managing Trustee ensures that the Fund undertakes analysis of its creditors and accruals in a timely manner.**

### **11.15 BUDGETARY CONTROL: FY 2009/2010 ACCOUNTS**

The Committee heard that the Fund over spent against various items; general insurance, board expenses and legal expenses without approval of the Board of Trustees, Parent Ministry and National Treasury.

#### **Management Response**

The Acting Managing Trustee informed the Committee that though the Fund exceeded the budget in the above items, the overall budget expenditure for the Financial Year 2009/2010 was not exceeded. The Fund has improved its budgetary processes to ensure that all expenditure lines are within the approved budget.

#### **Committee Observation**

**The Committee observed that the Fund spent beyond its budgetary provisions without the approval of the Parent Ministry or National Treasury contrary to Section 12 of the State Corporations Act, Cap 446.**

#### **Committee Recommendations**

**The Committee recommends that:-**

- 1. The then Managing Trustee and the Board of Trustees under whose tenure the over expenditure was incurred be held accountable for contravention of Section 12 of the State Corporations Act, Cap. 446.**
- 2. The EACC investigates the Trustees and prosecute them if found culpable for over expenditure without approval of the Parent Ministry or National Treasury in contravention of Section 12 of the State Corporations Act, Cap. 446.**
- 3. The Trustees be investigated by EACC for abuse of office with a view to recovering money lost and recommending prosecution by the Director Of Public Prosecutions. If found culpable they should be barred from holding public office.**

### **11.16 CONTRACTS FOR LIFTS INSTALLATION WORKS: FY 2010/2011 ACCOUNTS**

The Committee heard that the Fund awarded lifts installation contracts works at Social Security House Block C and the Annex Parking Silo to M/s Mits Electrical Co. who subcontracted the works to Epco Builders Limited at a contract price of Kshs. 18,995,000 and Kshs. 13,857,660 respectively. The Fund however issued Letters of Credit to Mitsubishi Company Limited who was not party to the contract.

#### **Management Response**

The Acting Managing Trustee informed the Committee that the Fund raised the Letter of Credit and the money was paid by KCB after lifts were manufactured and ready for

shipment. The lifts arrived in Mombasa in October, 2011 and inspection report issued and was capitalized as part of Land and Buildings in the financial statements.

### **Committee Observation**

**The Committee observed that Letter of Credit was issued to a firm that was not party to the contract.**

### **Committee Recommendation**

**The Committee recommends that:-**

- 1. The Fund ensures that payment is made to the contracted firms and not subsidiaries that the Fund has not signed agreements with.**
- 2. The EACC should investigate the Trustees and if found culpable to be surcharged and held accountable for abuse of office, barred from holding public office and Companies found culpable should not transact business with any public entity in the Republic of Kenya.**

## **11.17 UNQUOTED STOCKS AND EQUITY: FYs 2010/2011 AND 2011/2012 ACCOUNTS**

### **Consolidated Bank Shares**

The Committee heard that the Fund holds 8,050,000 4% cumulative preference shares and 2,22,5000 ordinary shares in Consolidated Bank. The Fund got no return on this investment during the year under review even though the bank posted positive returns and further that the Fund's investments at consolidated bank whose cost is Kshs. 154,470,822 is stated at par value of Kshs. 205,500,000.

### **Management Response**

The Acting Managing Trustee informed the Committee that the Fund is discussing and negotiating with LAPTRUST, which has expressed interest in buying the Fund's investments in consolidated bank.

### **Committee Observation**

**The Committee observed that the Fund did not get a return on their investment with Consolidated Bank.**

### **Committee Recommendation**

**The Committee recommends that the Fund reviews its investment policy and dispose investments with no returns.**

### **Nairobi City Council Stocks**

The Committee heard that the figure for 12.25% NCC stock 1994 as disclosed under financial statements increased from Kshs. 253,435,000 in 2009/2010 to Kshs. 1,100,367,200 in FY 2010/2011.

### **Management Response**

The Acting Managing Trustee informed the Committee that the principal amount of Kshs. 296,597,000 has been fully provided.

### **Committee Observation**

**The Committee observed that the 12.25% NCC stock 1994 as disclosed increased from Kshs. 253,435,000 to Kshs 1,100,367,200**

### **Committee Recommendation**

**The Committee recommends that the Fund makes full provision for its investment.**

### **11.18 PERSONNEL MATTERS: FYS 2010/11 AND 2011/2012 ACCOUNTS**

#### **Severance pay to former General Manager – Corporate Services, Mr. Albert Odero**

The Committee heard that a total of Kshs. 16,917,240 was paid to Mr. Odero towards his exit under unclear circumstances. It has not been possible to confirm the basis and regularity of the payments since there was no approval from the Government for the payment of benefits to staff retired under the voluntary early retirement scheme.

### **Management Response**

The Committee was informed that the Board of Trustees deliberated on the abolition of office of the General Manager, Corporate Services and the resultant expenditure that was paid to Mr. Albert Odero. The case was handled on its own merit and not pegged to Voluntary Early Retirement Scheme (VERS).

### **Committee Observation**

**The Committee observed that the Fund irregularly paid a severance pay to an employee under the voluntary early retirement scheme under unclear circumstances**

### **Committee Recommendation**

**The Committee recommends that the Fund adheres to the Public Service Regulations and the Funds policy on retirement and abolition of office.**

### **11.19 CAPITAL PROJECTS: FY 2010/2011 ACCOUNTS**

#### **Completion of Hazina Trade Centre**

The Committee heard that during FY 2010/2011 financial year the Fund paid Kshs. 233,843,148 to consultants for the completion of the above building. In addition the Fund intends to construct up to 36 floors. It has not been explained why the Fund engaged new consultants while this was already done and paid for during the initial construction of the building. Further, the Fund did not inform the existing tenant,

(Nakumatt Supermarket) who has leased the building for a period of 20 years, their intention to develop the centre. The tenant has obtained a court order to stop the development. This might lead to a sunken in pensioners' funds due to the amount paid to the consultants.

### **Management Response**

The Management informed the Committee that the consultant was paid due to restructuring and redesigning of the centre to increase office space.

The Committee was further informed that consultative meetings were held between the Fund and Nakumatt Supermarket and it was agreed that the project should proceed with minimal interruptions to the tenant hence there will be no loss of the pensioners' funds.

### **Committee Observation**

**The Committee observed that:-**

- (i) There are pending court cases between NSSF and Nakumatt and between NSSF and County Government of Nairobi and that the Committee has not been given a status report.**
- (ii) A new contractor was appointed even though there was already an existing contractor and that money had already been paid to the consultancy and the contracts signed with the contractor.**

### **Committee Recommendation**

**The Committee recommends that the Auditor General undertakes a forensic audit on the procurement and completion of Hazina Towers within one month of adoption of this Report.**

## **12.0 KENYA INDUSTRIAL RESEARCH DEVELOPMENT INSTITUTE: FY 2001/2002 TO 2011/2012**

### **REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF KENYA INDUSTRIAL RESEARCH DEVELOPMENT INSTITUTE FOR THE YEAR ENDED 30 JUNE 2002 TO 2012**

**The Director, Kenya Industrial Research and Development Institute Dr. Charles Z. Moturi accompanied by Ms. Nancy W Muya Alternate Director PS Ministry of Industrialization & Enterprise Development, Mr. Floise Mukabana, Assistant Director Finance, Mr. John N. Kahura, Principal Internal Auditor, Mr. James L. Nyagah Deputy Director, Corporate Services, Mr. Mark Sichangi, Head Procurement and Mr. Jairus Ombui Assistant Director HR appeared before the Committee to respond to audit queries on accounts of Kenya Industrial Research and Development Institute for FY 2001/2002- 2011/2012.**

#### **12.1 FINANCIAL PERFORMANCE: FYs 2001/2002, 2003/2004 TO 2005/2006 ACCOUNTS**

The Committee heard that the Institute incurred a deficit of Kshs 497,121 during the year to bring the accumulated deficit to Kshs 52,209,405.95 even after debiting a prior year's adjustment of Kshs 213,928 which was not explained nor documents produced for verification.

##### **Management Response**

The Director, Kenya Industrial Research and Development Institute told the Committee that the Kshs 213,928 was a result of debiting prior years adjustment which was payments paid for during the year under review. The Institute has improved its A.I.A collection and its budgetary allocation through exchequer funding.

##### **Committee Observation**

**The Committee observed that the Institute incurred a deficit during the year under review even after debiting a prior year adjustment.**

##### **Committee Recommendation**

**The Committee recommends that the Institute diversifies its revenue base to reduce over reliance on Government support.**

#### **12.2 FIXED ASSETS: FY 2001/2002 AND 2002/2003 ACCOUNTS**

The Committee heard that included in the fixed asset figure was Kshs 1,950,000 relating to a parcel of land LR 15292, Kibos Road Kisumu whose title has not been registered in the name of the Institute making it difficult to confirm the Institute's ownership of the said land.

### **Management Response**

The Director, KIRDI presented to the Committee that the Institute had acquired a title for the land and had produced it for audit verification.

### **Committee Observation**

**The Committee observed that the Institute at the time of audit lacked ownership documents for a parcel of land whose value it had included in its books of accounts.**

### **Committee Recommendation**

**The Committee recommends that the Director ensures that the Institute acquires title for the land and all other parcels of land it has.**

### **12.3 WORK IN PROGRESS: FY 2001/2002 ACCOUNTS**

The Committee heard that the work in progress balance included additions to the amount of Kshs 1,730,152 which differed from the figure of Kshs 1,743,805 deduced from the supporting schedules produced for audit verification which showed Kshs 1,743,805, hence a difference of Kshs 13,653. The total work in progress figure of Kshs 64,847,182 had not been analyzed and the necessary supporting documents produced for audit verifications.

### **Management Response**

The Director, KIRDI informed the Committee that the difference of Kshs 13,653 could not be classified as work in progress as it was a non-capital expenditure.

### **Committee Observation**

**The Committee observed that the total work in progress figure of Kshs 64,847,182 had not been analyzed and the necessary supporting documents produced for audit verification.**

### **Committee Recommendation**

**The Committee recommends that the Institute undertakes a reconciliation of its work in progress.**

### **12.4 ADDITIONS OF MACHINERY AND EQUIPMENT: FY 2001/2002 ACCOUNTS**

The Committee was informed that in the financial statements the Machinery and Equipment figure of Kshs. 54,383,646 included additions during the year amounting to Kshs. 1,276,274, while that in the General ledger reflected a figure of Kshs. 1,518,112 leaving an unexplained difference of Kshs 246,588.

### **Management Response**

The Director, KIRDI informed the Committee that the difference of Kshs 246,588 was non- capital expenditure and hence could not be capitalized. A journal entry no. 2 for Kshs 1,276,274 took into account only expenses that could be capitalized.

### **Committee Observation**

**The Committee observed that the institute had an unexplained difference of Kshs 246,588 in its financial statements.**

### **Committee Recommendation**

**The Committee recommends that the management ensures that it reconciles its expenditure and that capitalization be done accurately.**

### **12.5 PAYROLL DEDUCTIONS: FY 2001/2002 ACCOUNTS**

The Committee heard that the Institute's Balance sheet Debtors of Kshs 8,057,287 and creditor's figure of Kshs 21,515,600 include Kshs 2,051,260 and Kshs. 1,355,089 respectively in respect of payroll deductions, whose analyses and reconciliations were not provided for audit review.

### **Management Response**

The Director, KIRDI presented to the Committee that the debtor's and creditor's figure had since been reconciled and availed to the Auditor General's office for verification.

### **Committee Observation**

**The Committee observed that the Institute had payroll deductions, whose analyses and reconciliations were not provided for audit review.**

### **Committee Recommendation**

**The Committee recommends that the management ensures proper reconciliation of its accounts.**

### **12.6 DEBTORS: FY 2001/2002, 2003/2004, 2005/2006 AND 2009/2010 ACCOUNTS**

The Committee was informed that the debtor's balance incorporates a figure of Kshs. 4,274,656 brought forward from 1980/81 indicating that debts have remained outstanding for a long time. The collection of these debts is doubtful and such a provision ought to have been done in the financial statements for bad and doubtful debts.

### **Management Response**

The Director, KIRDI informed the Committee that the Institute had difficulties part enforcing recovery of debts forcing the Board of Management to recommend write off of bad debts of Kshs 286,975 in 1997 and Kshs 4,274,655.65 in 2010. The Institute has come up with a new credit policy whereby a 50% down payment is required at the commissioning stage with remaining 50% payment being demanded at the collection point to avoid recurrence.

### **Committee Observation**

**The Committee observed that the institute had debts that are long outstanding with little effort on recovery the debts.**

### **Committee Recommendations**

**The Committee recommends that the institute develops a credit policy.**

**The Committee further recommends that the institute ensures full recovery of the long outstanding debts.**

### **12.7 PRIOR YEAR ADJUSTMENT: FY 2002/2003 ACCOUNTS**

The Committee heard that included in the reported cumulative deficit figure was a deficit of Kshs. 2,259,508.90 described as prior year adjustment but which had not been explained nor documents produced for its verification.

### **Management Response**

The Director, KIRDI presented to the Committee that Kshs. 2,259,508.90 was prior year adjustment as a result of payments for the previous year which were made during the year under audit. Vouchers were availed to the Auditor General for verification and the matter resolved.

### **Committee Observation**

**The Committee observed that included in the reported cumulative deficit figure was a deficit of Kshs. 2,259,508.90 described as prior year adjustment but which had not been explained nor documents produced for its verification.**

### **Committee Recommendation**

**The Committee recommends that the Director ensures that primary documents are produced for audit verification.**

### **12.8 PREPARATION AND PRESENTATION OF FINANCIAL STATEMENTS: FY 2003/2004 AND 2004/2005 ACCOUNTS**

The Committee heard that the financial statements submitted for audit were not prepared and presented in accordance with the requirements of the International Financial Reporting Standards and International Accounting Standards. Contrary to IAS No 1 notes comprising a summary of significant accounting policies and other explanatory notes are missing. Comparative information in respect of previous years amounts on some notes to the accounts have not been disclosed and there is lack of consistency of preparation of the financial statements.

### **Management Response**

The Director, KIRDI presented to the Committee that adherence to IAS and IFRS as recommended by the Auditor General required a complete shift from previous reporting methods. The Institute had difficulties attracting and retaining qualified staff due to poor remuneration. The IAS and IFRS took a while to be implemented in the financial statements since they require employees to be trained on them

### **Committee Observation**

The Committee observed that the consequences of not preparing financial statements as per the IAS and IFRS are that the accounts cannot be relied upon by third parties to make decisions e.g. to give loans. The Committee acknowledged that once audit certificates have been issued, it would not have been possible for the Auditor General to reissue the Audit Certificate even if the Institute changed their Financial Statements. The Committee also acknowledged that a system change has a grace period of 5 years for the new system to be fully implemented.

### **Committee Recommendation**

The Committee recommends that the Director and Finance Manager ensure that the Institute complies with International Financial Reporting Standards and International Accounting Standards.

### **12.9 INACCURACIES OF ACCOUNTS: FY 2003/2004 ACCOUNTS**

The Committee heard that the FY 2002/2003 closing balances for the creditors and general reserves did not agree with the FY 2003/2004 opening balances leaving unexplained difference of Kshs. 6,349,880 and Kshs. 5,273,091 respectively. Also the UNIDO donations and revenue reserves in the balance sheet differs with those in the supporting Note 10 thus resulting in an unexplained differences of Kshs 819,694 and Kshs 1,345,568 respectively. The difference have neither been investigated nor adjusted.

### **Management Response**

The Director, KIRDI informed the Committee that the creditor's figure combination of trade creditors of Kshs 3,978,950 referred to note 8 and miscellaneous deposits of Kshs 6,349,879.60 as per note 9 in the financial statements. The General reserve figure comprised of revaluation reserve, special reserve, general reserve, pension dues and provision of doubtful debts. Kshs 819,694.25 in note 5 in the financial statements in respect of project grants is excluded in the UNIDO donations figure.

### **Committee Observation**

The Committee observed that the accounts of the Institute are not accurate and have been reconciled properly.

### **Committee Recommendation**

The Committee recommends that the Director ensures that the accounts of the Institute are accurate, analyzed and reconciled.

### **12.10 CASH AND BANK BALANCE: FY 2004/2005 ACCOUNTS**

The Committee heard that the bank reconciliations for three bank accounts: E.D.S.C, K.S.P.P and N.I.I.C, were not availed to support the respective amounts reflected in the accounts. The amounts in the accounts reflected in note 6 of the Institute's financial statements do not agree with those reflected in the underlying reconciliation statements. No explanations have been given for the differences.

### **Committee Observation**

**The Committee deferred taking evidence on this matter because the account presented in the management response was N.I.C and not N.I.I.C as per the audit query.**

### **Committee Recommendation**

**The Committee recommends that the Auditor General undertakes verification of the accounts and informs the Committee on the same.**

### **12.11 UNSUPPORTED BALANCES: FY 2004/2005**

The Committee heard that supporting schedules and analyses were not availed for audit verification in support of Kshs 2,900,282 creditors' balance appearing in the balance sheet.

### **Management Response**

The Director, KIRDI informed the Committee that the supporting schedules and analyses were not availed at the time of the audit but had since been provided for verification.

### **Committee Observation**

**The Committee observed that the management failed to cooperate with the auditor during the audit period as required under Section 37 of the Public Audit Act, 2003 and Article 229(4) and (5) of the Constitution.**

### **Committee Recommendations**

**The Committee recommends that the EACC investigates the conduct of the then Director and recommend prosecution by the Director of Public Prosecutions and for the recovery of any money lost contrary to Section 11(1)(d), (j) of the Ethics and Anti-Corruption Commission Act.**

**The Committee further recommends that the Director be held responsible for abuse of office contrary to Section 101 of the Penal Code and the Public Officer Ethics Act, 2003 and for failing to cooperate with the auditor as required under Section 37 of the Public Audit Act, 2003 and Article 229(4) and (5) of the Constitution.**

### **12.12 BUDGETARY CONTROL: FY 2007/2008 ACCOUNTS**

The Committee heard that the Institute incurred a total expenditure of Kshs 250,461,175 against a budgetary provision of Kshs. 193,441,365 leading to an over expenditure of Kshs. 57,019,810. No explanation was given for the over- expenditure which was incurred without the Parent Ministry and National Treasury approval as required by Sec 12 of the State Corporation Act (Cap 446).

### **Management Response**

The Director, KIRDI informed the Committee that the over- expenditure was as a result of non-cash items of Kshs 16,947,694 in form of depreciation charge and a stock

adjustment of Kshs 499,332. Further there was increased spending on staff administrative expenses and other recurrent items. The extra expenditure was financed through savings from previous years.

#### **Committee Observation**

**The Committee observed that the institute spent money over and above the provision without approval from either the Parent Ministry or of the National Treasury in contravention of Section 12 of the State Corporation Act (Cap 446).**

#### **Committee Recommendation**

**The Committee recommends that the then Director and Board of Directors be held individually responsible and accountable for the over expenditure without approval from National Treasury or Parent Ministry in contravention of Section 12 of the State Corporation Act (Cap 446).**

#### **12.13 RESEARCH AND DEVELOPMENT: FY 2008/2009 ACCOUNTS**

The Committee heard that the Institute received GoK Development Grants totaling Kshs 238,716,000 out of which amount Kshs 84,124,080 was utilized on research and development projects. However, supporting documents for projects undertaken were not availed for audit review.

#### **Management Response**

The Director, KIRDI was informed that despite availing payment vouchers to the auditors, the list of projects had not been properly reconciled at the time of audit. This list was availed in the next audit period for verification.

#### **Committee Observation**

**The Committee observed that primary documents had not been availed for audit verification as required under Section 37 of the Public Audit Act.**

#### **Committee Recommendation**

**The Committee recommends that the Director ensures that all relevant primary documents are submitted during audit for verification as required under Section 37 of the Public Audit Act.**

#### **12.14 UNQUALIFIED ACCOUNTS: FY 2010/2011 ACCOUNTS**

The Committee was informed that the Institute received unqualified accounts in the Financial Year 2010/2011.

#### **Committee Observation**

**The Committee observed the Institute received a clean report from the Auditor General for Accounts of the FY 2010/2011.**

#### **Committee Recommendation**

**The Committee commended the Institute for the clean books of accounts**

### **12.15 CASH AND CASH EQUIVALENT: 2011/2012 ACCOUNTS**

The Committee heard that the cash and cash equivalents balance of Kshs 81,013,519 included amounts which did not have bank balance confirmation certificates or other supporting schedules produced for audit review in the FY 2011/2012.

- (i) The bank reconciliation statement of head-quarter's main account reflected receipts in cash book but not in bank statement of Kshs 681,937
- (ii) The statement of cash flows reflects stock movement of Kshs 4,824,174 while the statement of financial position for the same item reflects a change of Kshs 673,890. Management has not provided any explanation.

#### **Management Response**

The Director, KIRDI informed the Committee that:-

- (i) The bank reconciliation statement of the main account reflected a receipt in cash book but not in bank statement of Kshs 421,205.40 understatement in the cash book entry and a differential Kshs 260,731.60. This was corrected in July 2013 and the evidence provided for audit review.
- (ii) Kshs 673,890 refers to the difference between general stock (Kshs 4,824,174) and loose tools (Kshs 4,150,284). Hence the difference arose because the change in these two items were shown individually in the cash flow statement but were reflected as a single item in the statement of financial position.

#### **Committee Observation**

**The Committee observed that the proper accounting systems had not been observed.**

#### **Committee Recommendation**

**The Committee recommends that the Institute ensures that proper bank reconciliations are done on time.**

### **13.0 COTTON DEVELOPMENT AUTHORITY: FY 2001/2002 TO 2012/2013**

#### **REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF COTTON DEVELOPMENT AUTHORITY FOR THE YEAR ENDED 30 JUNE 2002 TO 2012**

**The Ag Chief Executive Officer, Cotton Development Authority, Mr. Anthony Muriithi, accompanied by Mr. Joseph Muigai, Finance Manager and Ms. Kellen Njue, Assistant Manager, Legal Affairs appeared before the Committee and gave evidence on the accounts of the Board for the 2009/2010 to 2011/2012.**

#### **13.1 PROPERTY, PLANT AND EQUIPMENT: FY 2009/2010, 2010/2011 AND 2011/2012 ACCOUNTS**

The Committee heard that the Authority excluded the value of Riverside Estate Property L.R. No. 209/4389/3 where its' Head Office is located from Property, Plant & Equipment. The property is said to belong to the defunct Cotton Board of Kenya and had been charged against a bank loan that the Board failed to service. Consequently, the bank sold the Property for Kshs. 21.5 million through public auction. The purchaser paid the bank Kshs. 8,375,000 and received the property title before clearing the balance of Kshs. 13,125,000. The purchaser sought to transfer the title of the property in his name but the Board declined resulting to the purchaser filing a case at the High Court in November, 2008.

#### **Management Response**

The Ag Chief Executive Officer informed the Committee that upon establishment of the Authority through the Cotton (Amendment) Act 2006, its Interim Management Team that was settled at KARI offices was verbally instructed by the Minister of Agriculture to occupy the said property. Since the property previously belonged to the defunct Cotton Board of Kenya, the Authority did not have a title and therefore could not include it in the assets value.

#### **Committee Observations**

**The Committee observed that:-**

- 1. The Authority delayed to appeal in the property case whose judgment was entered in November, 2008 and the appeal was done in June 2009.**
- 2. The Cotton (Amendment) Act 2006 did not vest the ownership of properties of the defunct Cotton Board on the newly created Cotton Development Authority and has ambiguous clauses about the existence of the Board and the Authority.**

### **Committee Recommendation**

**(i) The defunct Cotton Board of Kenya should be legally removed and its assets vested on Cotton Development Authority.**

**(ii) The Authority pushes for the speedy conclusion of the dispute of the Riverside property.**

### **13.2 FINANCIAL POSITION: FY 2010/2011 ACCOUNTS**

The Committee heard that the Authority recorded a net deficit of Kshs. 1,322,438 as at 30 June 2011 compared to a net surplus of Kshs. 34,066,218 in the previous financial year. The Authority attributed the shortfalls to remittances of Government grants amounting to Kshs. 7,964,000.

### **Management Response**

The Ag Chief Executive Officer informed the Committee that the Government approved grant for FY 2010/2011 was Kshs. 180 million but the amount remitted was Kshs. 172,035,400 giving a deficit of Kshs. 7,964,600, which gave rise to a net deficit of Kshs. 1,322,438. However, the Parent Ministry is currently remitting the approved amounts for the Authority.

### **Committee Observation**

**The Committee observed that the Ministry of Agriculture had failed to remit to the Authority the total grant due to the Authority as approved in the budget thus leading to a deficit in the Authority's budget.**

### **Committee Recommendation**

**The Committee recommends that the Ministry should remit all the approved Government grants to the Authority as approved in the budget.**

### **13.3 MINISTRY OF AGRICULTURE, LIVESTOCK AND FISHERIES SUBMISSION**

The alternate Director for the Ministry of Agriculture, Livestock and Fisheries briefed the Committee on the following issues:-

**(i) Existence of the Cotton Board of Kenya and the Cotton Development Authority.**

The Committee heard that the defunct Cotton Board of Kenya was established under Section 3 of the 1990 Cotton Act. The Act was then amended in 2006 creating the Cotton Development Authority but this amendment failed to dissolve the Cotton Board or provide for a transition clause to cater for the management of the assets of the defunct Cotton Board. This therefore means that there are two statutory Corporations existing under the Cotton Act.

The Attorney General advised that one of the two Corporations be dissolved since they exist for a similar purpose but the Ministry could not immediately embark on the

exercise due to the anticipated restructuring of State Corporations under the Ministry through the envisaged Agriculture, Fisheries and Food Authority Act (AFFAA) and the Crops Act.

**(ii) Assets, Liabilities and Employees of the former Cotton Board of Kenya**

The Committee was informed that records of the defunct Cotton Board were tampered with thus no accurate records were available.

**(iii) Auction of the Cotton Boards Riverside property - LR No. 209/4389/3**

The Committee heard that the Cotton Board of Kenya property LR No. 209/4389/3 measuring 1.287 acres was charged to Co-operative Bank of Kenya on 2<sup>nd</sup> February, 1987 as a security for a loan. The Board defaulted in paying and the Bank sold the property by public auction on 8<sup>th</sup> November, 2000. Mr. John Mututho was the highest bidder with Kshs. 21.5 million. He paid Kshs. 5,375,000 being 25% of the purchase price at the fall of the hammer. He later paid Kshs. 3 million to the Bank but failed to pay the balance of Kshs. 13,125,000 within time resulting in a protracted court case that is pending at the Court of Appeal.

**(iv) Substantive Board for the Cotton Development Authority**

The term of the Board of the Cotton Development Authority expired on 2<sup>nd</sup> September 2013. Following the repeal of the Cotton Act and the enactment of the Crops Act, 2013 and the AFFA Act which have restructured ten State Corporations in the Ministry thus establishing one State Corporation, the Board cannot therefore be appointed under the repealed Cotton Act.

**13.4 THE RIVERSIDE PROPERTY (LR NO 209/4389/3)**

The Ag Chief Executive Officer, Cotton Development Authority presented that the land measuring 1.287 ha owned by the Cotton Board of Kenya was charged to Cooperative Bank as security for a loan (1997). The Board defaulted and via public auction, the land was sold to Mr. John Mututho as the highest bidder of Kshs. 21.5 Million. Mr. Mututho has failed to pay the balance of Kshs. 13,125,000 to date which resulted in a case which is currently pending in the Court of Appeal. Question remains the Cooperative Bank released the title to Mr. Mututho before he made full repayment of the loan.

Though Cotton Board Authority occupied the land via oral instructions from the Ministry of Agriculture, Livestock and Fisheries, the property and other assets remain under Cotton Board of Kenya

The Cotton Act Cap 335 of 1990 and 2006 Amendment created two legal separate entities, Cotton Board of Kenya and Cotton Development Authority and did not provide for dissolution of the Cotton Board and Cotton Development Authority Board as its successor. As a result, the assets of the Cotton Board remain in limbo pending advice from the State Corporations Advisory Committee, Attorney General and Treasury. Further to this, Cotton Development Authority has been merged with 7 other State Corporations to form AFFA.

The Cotton Development Authority had made efforts to safeguard the Riverside property by retaining lawyers Kimamo Kuria Advocates to represent it in their cause in the Court of Appeal, payment of land rates and guarding the property.

### **Committee Observation**

**The Committee observed that:-**

- (i) There was laxity on the part of the Ministry and the Cotton Development Authority officials to safeguard the properties of the public entrusted to the Cotton Board of Kenya and Cotton Development Authority.**
- (ii) Most of the properties of the defunct Cotton Board are listed as dilapidated or condemned.**
- (iii) The Cotton (Amendment) Act 2006 failed to provide for a transition clause thus jeopardizing the assets of the defunct Cotton Board.**

**The management of the Cotton Board of Kenya and Cotton Development Authority does not reflect the face of Kenya.**

### **Committee Recommendation**

**The Committee recommends that:-**

- (i) The Chief Executive Officer ensures that Cotton Development Authority receives rent from private individuals and institutions currently using some of the assets of the defunct Cotton Board of Kenya.**
- (ii) The Cotton Development Authority puts a caveat on the title document LR 209/4389/3 at the Lands Registry for the Riverside Property.**
- (iii) The Ministry of Agriculture, Livestock and Fisheries vests all properties belonging to the defunct Cotton Board of Kenya to the Cotton Development Authority.**
- (iv) The EACC and National Land Commission investigates the irregular sale of land LR. 209/4389/3.**

## **14.0 NURSING COUNCIL OF KENYA: FY 2000/2001 TO 2011/2012**

### **REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF NURSING COUNCIL OF KENYA FOR THE YEAR ENDED 30 JUNE 2001 TO 2012**

**The Registrar, Nursing Council of Kenya Ms. Elizabeth Oywer accompanied by Mr. Duncan Muisyo- Finance Manager, Dr. J Masasai Wekesa- Deputy Director Medical Services, Ministry of Health, Mr. Michael Wachira- Internal Auditor and Mr. Augustine Apande- Administration appeared before the Committee and gave evidence on the accounts of the council for the Financial Years 2000/2001 to 2011/2012.**

#### **14.1 FIXED ASSETS: FY 2000/2001 ACCOUNTS**

The Committee heard that computers worth Kshs. 247,210 were not supported by purchase documents and not reflected in the assets register. Further no supporting documents for expenditure of Kshs. 240,755 reportedly incurred on the renovation of a Council house on plot LR 209/7858 Kyuna Nairobi.

#### **Management Response**

The Committee was informed by the Registrar that the Council was in its formative stages and requisite control had not been established. The staffing levels were poor and no proper record keeping. The Council has however adopted proper control measures whereby the Procurement Department is distinct from the Accounts Department.

#### **Committee Observation**

**The Committee observed that the Council did not have adequate and qualified personnel thus the poor record keeping.**

#### **Committee Recommendation**

**The Committee recommends that the Ministry of Health should ensure that adequate and qualified personnel are seconded to newly established institutions for proper and strong foundations and systems to be put in place.**

#### **14.2 DEBTORS AND PREPAYMENTS: FY 2000/2001 ACCOUNTS**

The Committee heard that debtors and prepayments balance of Kshs. 34,542 as at June 2001 excludes an amount of Kshs. 495,000 being outstanding house rent receivable from the firm which is also the subject of a court case.

#### **Management Response**

The Registrar informed the Committee that the Council recovered the outstanding debt of Kshs. 495,000 however the long outstanding debt of Kshs. 175,000 was written off.

### **Committee Observation**

**The Committee observed that the Council wrote off an outstanding debt of Kshs. 175,000.**

### **Committee Recommendation**

**The Committee recommends that the Council should in future ensure that it exhausts all available avenues before resorting to writing off debts.**

## **14.3 CASH AND BANK BALANCES: FY 2000/2002 AND 2001/2002 ACCOUNTS**

### **Management Response**

The Registrar informed the Committee that the Council had just been established and lacked personnel to undertake proper reconciliation of cash and bank balances. The only person doing the accounts then was not a qualified accountant.

### **Committee Observation**

**The Committee observed that the Council lacked personnel to undertake proper reconciliation of cash and bank balances in its formative stages.**

### **Committee Recommendation**

**The Committee recommends that the Ministry of Health should ensure that adequate and qualified staff are seconded to any new institution for purposes of establishing systems to avoid situations where the newly established institutions lack qualified personnel leading to losses.**

## **14.4 INVESTMENTS: FY 2001/2002 ACCOUNTS**

The Committee was informed that the Council operated a fixed account to boost its revenue for a short period of time but ceased to operate after advice of the audit team on investments procedure. The Council got interest from the investment and there was no loss.

### **Committee Observation**

**The Committee observed that the Council operated a fixed account to boost its revenue for a short period of time but ceased to operate after advice of the audit team.**

### **Committee Recommendation**

**The Committee recommends that the Council develops an investment policy in line with National Treasury guidelines and ensures adherence to its mandate.**

## **14.5 IRREGULAR ALLOWANCES: FY 2003/2004 ACCOUNTS**

The Committee heard that the Council paid allowances to staff and Council Members totaling Kshs. 163,042 without authority from parent Ministry.

### **Management Response**

The Committee was informed that the Council paid allowances amounting to Kshs. 163,042 for inspection visits made to health training facilities. The allowances were made to facilitate officers attending such visits.

### **Committee Observation**

**The Committee observed that allowances were paid to facilitate officers who were on inspection visits.**

### **Committee Recommendation**

**The Committee recommends that the Council ensures adherence to government policy on payment of allowances for officers out of station.**

### **14.6 IRREGULAR PROCUREMENT OF GOODS: FY 2003/2004 ACCOUNTS**

The Committee heard that the Council procured goods worth Kshs. 7,364,218 without following the due process of the Public Procurement and Disposal Act.

### **Management Response**

The Committee was informed that the Council had poor staffing levels in both accounts and procurement departments. The Council has however adopted proper control measures whereby the procurement department is distinct from the accounts department.

### **Committee Observation**

**The Committee observed that the Council contravened the procurement procedures of the Public Procurement and Disposal Act 2005 and breached Articles 10, 226(5), 227 and 229 of the Constitution.**

### **Committee Recommendations**

**The Committee recommends that:-**

- (i) The EACC investigates the then management of the Council and recommend prosecution to the Director of Public Prosecutions and for the recovery of any money lost in line with Section 11(1)(d), (j) of the Ethics and Anticorruption Commission Act.**
- (ii) The Director of Public Prosecutions institutes criminal proceedings against the then management of the Council for abuse of office in contravention of Section 101 of the Penal Code and the Public Officer Ethics Act, 2003.**
- (iii) The Council should adhere to provision of the Public Procurement and Disposal Act in all its procurement processes.**

#### **14.7 FINANCIAL POSITION: FY 2007/2008 ACCOUNTS**

The Committee heard that although the Council realized a surplus of income over expenditure of Kshs. 7,222,960 during the year FY 2007/2008. The balance sheet reflects a negative working capital of Kshs. 15,035,202. The Council is therefore technically insolvent.

#### **Management Response**

The Committee was informed that the Council commissioned construction of new offices (NCK PLAZA) which required major capital expenditure. The post-election violence of 2007/2008 disrupted the revenue of the Council which is mainly from fees from Medical Training Colleges since the Colleges were closed. The Council has however completed the project in 2009 at a cost of Kshs. 40 million and the offices are currently in use.

#### **Committee Observation**

**The Committee observed that the financial position of the Council had declined due to the post-election violence but this had improved in the subsequent years.**

#### **Committee Recommendation**

**The Committee recommends that the council diversifies its sources of revenue so as to prevent over reliance on fees.**

#### **14.8 AUDIT FEES: FY 2009/2010 ACCOUNTS**

The Committee heard that the Council failed to pay audit fees in the financial year 2009/2010 as required.

#### **Management Response**

The Registrar informed the Committee that the audit fees were paid later due to failure to provide the audit fee invoice on time.

#### **Committee Observation**

**The Committee observed that the Council had failed to pay audit fees in time but the issue had been rectified.**

#### **Committee Recommendation**

**The Committee recommends that the Council should ensure that audit fees are paid as required.**

#### **14.9 UNQUALIFIED ACCOUNTS: FY 2010/2011 AND 2011/2012 ACCOUNTS**

The Committee heard that the Councils accounts for the Financial Years 2010/2011 and 2011/2012 were unqualified.

### **Committee Observation**

**The Committee observed that the Council received a clean report from the Auditor General for the FYs 2010-2012**

### **Committee Recommendation**

**The Committee lauded the Council for the great improvement in resolving the Audit queries and having clean accounts for the past two years.**

## **15.0 KENYA PORTS AUTHORITY: FY 2009/2010 TO 2011/2012**

### **REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF KENYA PORTS AUTHORITY FOR THE YEAR ENDED 30 JUNE 2010 TO 2012**

**The Managing Director, Kenya Ports Authority, Mr. Gichiri Ndua, accompanied by Eng. Abdulahi M. Samatra - General Manager, Infrastructure Development; John Turasha - Head Litigation and Disputes; Muthomi Gatere - General Manager, Board and Legal; and Catherine Mturi Wairi- General Manager, Finance appeared before the Committee to give evidence on the accounts of the Board for the 2010/2011 to 2011/2012.**

### **15.1 NON- CURRENT ASSETS: FYS 2010/2011 TO 2012/2013 ACCOUNTS**

The Committee heard that the property, plant and equipment balance of Kshs. 44,289,464,000 as at June 2011 included four parcels of land located in Mombasa valued at Kshs. 230,000,000 whose ownership documents were not availed for audit review. Further fifteen separate parcels of land situated in Mombasa valued at Kshs. 555,700,000 are registered in the name of the defunct East African Railways and Harbours Corporation.

### **Management Response**

The Managing Director, Kenya Ports Authority informed the Committee that of the four parcels MSA/BLOCK XXVI/508, MSA/BLOCK XXVI/591, MSA/BLOCK XXVI/1001 and MSA/BLOCK 1/471-SHIMANZI.

The first three properties belonged to the Authority but were irregularly allocated to third parties by the Commissioner of Lands. The same parcels were featured in the Ndung'u Report and the Authority has sued the Lands Commissioner for return of the same. The fourth property is on a 99 year leasehold issued by the Government and it refers to the Authority's Shimanzi Staff Quarters.

The 15 plots were actually 2 plots with 15 blocks of flats registered as MS/BLOCK XXV/R54, which is a consolidation of Dedan Kimathi Estate and Lotus Estate. The other block is MS/BLOCK/XLVII/122 which was initially allocated to East Africa Railways for 99 years with effect from 1<sup>st</sup> January 1970. By virtue of KPA developing and its proximity, East African Harbors (read KPA) leased the property from Kenya Railways for 99 years at an annual rent of Kshs 110,000 per annum.

### **Committee Observation**

**The Committee made the following observations regarding the Authority:**

- i) There was no proper assets register;**
- ii) There was no proper valuation of the assets;**
- iii) There were no proper security measures to ward off would-be grabbers.**

### **Committee Recommendations**

**The Committee recommends as follows:**

- (i) The Managing Director ensures that the Authority acquires ownership documents for all its land including land that was irregularly allocated to third parties.**
  
- (ii) The National Land Commission and the EACC should investigate the circumstances surrounding the ownership of land belonging to the Authority and recommend prosecution by the Director of Public Prosecutions in accordance with Section 11(1)(d), (j) of the Ethics and Anti-Corruption Commission Act.**
  
- (iii) The Ministry of Transport and Infrastructure Development; National Land Commission and the Ministry of Lands, Housing and Urban Development should quickly intervene to have the land recovered and the title issued to the Authority**

### **15.2 TRADE AND OTHER RECEIVABLES: FYS 2010/2011 TO 2012/2013 ACCOUNTS**

**The Committee heard that the Trade and other Receivables balance includes:-**

- (i) Kshs 287,231,402 and Kshs. 342,599,000 owed by the Ministry of Transport and Kenya Ferry Services Limited respectively. These amounts have been outstanding for more than 15 years. Although the Public Investments Committee in its ninth report recommended that the CEO communicates with both the Parent Ministry and Treasury with a view to ensuring that the receivables are paid to the Authority, no meaningful progress has been made in this regard. No provision has been made in respect of the debts;**
- (ii) Kshs. 587,168,997 is owed by four firms. They have been outstanding for a long time, management appears to have made little effort to collect on the same and no provision for the debts has been made.**
- (iii) The Trade and other Receivables balance of Kshs. 4,479,708,000 was arrived at after netting off debtors with credit balances amounting to Kshs. 141,105,818.**

This is contrary to the International Accounting Standards No.1 that prohibits set-off of assets against liabilities.

- (iv) In addition, the Trade and other Receivables balance includes an amount of Kshs. 1,321,704 in respect of staff advances which also includes Kshs 302,025 owed from ex-staff who have either retired or deceased and whose recoverability is doubtful. No provision has been made for such debts in the financial statements.

### **Management Response**

The Managing Director, Kenya Ports Authority presented that as per the recommendations of the Ninth Report of Public Investments Committee, the Corporation has made several communications on the same, but both Kenya Ferries Services and the Ministry of Transport have reimbursed the Authority the sums advanced. The Management requested that National Treasury should approve offsetting of respective debtors and creditors provided the Auditor General verifies these outstanding positions as equal.

The MD, KPA further informed the Committee that KPA had instituted legal proceedings against Kobil Petroleum Limited (Kshs. 431,665,040) and Kenol/Kobil Ltd (Kshs. 121,883,700) for recoverability of the amounts. M/s Tata Chemicals Magadi amount of Kshs. 31,856,660 has been fully recovered. M/s Ocean Freight (E.A) Ltd amount of Kshs. 33,472,163 has been partially paid and a balance of Kshs. 7,268,906 is still outstanding. To ensure compliance with IFRS and the Authority's Impairment Policy of 100% of debts over 2 years, the Authority impaired the overdue debts.

The short-term credits arose from precautions taken by customers with business beyond their bond of guarantee. Such customers would deposit monies into their accounts in anticipation of moving large volumes of business with short notices. Management has changed the accounting treatment for such deposits as recommended by the auditor.

Staff amounts outstanding include Kshs. 859,062 by Mr. James Mulewa, which will be recovered from his final dues once a court case against him is concluded. Kshs. 49,516 relates to Mr. Chai Mangale Lungazi and from whom monthly recoveries are being done. Mr. Kennedy Oballa Oaga owes Kshs 49,516 and recovery is underway.

### **Committee Observations**

**The Committee observed as follows:**

- (i) That although the Public Investments Committee in its Ninth Report recommended that the CEO communicates with both the Parent Ministry and National Treasury with a view to ensuring that the receivables are paid to the Authority, no meaningful progress has been made in this regard. No provision has been made in respect of the debts.**

- (ii) That four firms had debts that have been outstanding for a long time, management appears to have made little effort to collect on the same and no provision for the debts has been made.
- (iii) That contrary to the International Accounting Standards No.1 that prohibits set-off of assets against liabilities, the Corporation netted off assets against liabilities.
- (iv) That there were staff advances which also include Kshs 302,025 owed from an ex-staff who have either retired or been deceased and whose recoverability is doubtful. No provision has been made for such debts in the financial statements.

#### **Committee Recommendations**

The Committee recommends that:

- (i) The Authority adheres to the International Accounting Standards.
- (ii) The Authority liaises with the National Treasury to recover the debts owed by the Ministry of Transport and Infrastructure Development and the Kenya Ferry Services expeditiously and seek the conclusion of the cases in court with a view to recovering the debts.
- (iii) That the Authority provides the status of the debts owed within six months of adoption of this Report.

#### **15.3 FOREIGN CURRENCY TRANSACTION – KSHS 132 MILLION: FY 2010/2011 ACCOUNTS**

The Committee was informed that the profit after tax of Kshs. 3,335,506,000 was arrived at before charging an amount of Kshs. 132,549,000 representing loss on foreign exchange transaction. However, the loss has been charged to the General Reserve in the statements of Changes in Equity that is inconsistent with the IAS No. 21. Had the Authority complied with the requirements of the IAS No. 21, the reported profit after tax would have amounted to Kshs. 3,202,957,000 instead of Kshs. 3, 3335,506,000 now reported.

#### **Management Response**

The Managing Director informed the Committee that the Authority is now complying with International Accounting Standards 21 as regards reporting of profits. Prior year adjustments were passed by the Authority to correct the anomaly.

#### **Committee Observation**

The Committee observed that the overstatement of profits could have been a manipulation of figures to portray a positive picture of the organization and reflect that financial targets were met thus deliberately misleading or misrepresenting facts.

### **Committee Recommendation**

**The Committee recommends that the Managing Director ensures that the Authority complies with International Accounting Standards as regards reporting of profits.**

### **15.4 MOMBASA PORT DEVELOPMENT PROJECT (SECOND CONTAINER TERMINAL): FY 2011/2012 ACCOUNTS**

The Committee heard that the initial budget to compensate the Project Affected Persons (PAP) was based on a 2007 valuation report and compensation was not paid immediately. By 2011 the value of the properties had gone up from Kshs. 500 million to Kshs. 692,320,695 and it's not clear how the Authority will get the difference.

Further, the project was funded through the Japan Government. The Government provided Kshs 300 million out of the initial Kshs. 500 million. The Authority paid Kshs. 392,320,695 on behalf of the Government without an agreement on how they will be refunded.

The Committee heard that the Authority successfully tendered and awarded a contract for Terminal Operator. A contract Agreement was executed at a contract price of USD 667,707 for foreign currency and local component of Kshs. 57,212,610. The Government directed the contract to be suspended. The management did not assess the legal and financial implication of the suspension and its effects on the project implementation. The full implementation of the project was therefore deemed doubtful.

### **Management Response**

The Managing Director, KPA informed the Committee that the ongoing construction of the Second Container Terminal required an access road, which was hived off from private properties to be compensated. The National Treasury only disbursed Kshs. 300 million of the Kshs. 500 million initially budgeted for. In the meantime property prices went up. The Authority requested for additional funding to pay the PAP but the Government advised the Authority to pay to avoid escalation of penalties and possible withdrawal by the Japanese Government. The Government has reinstated the Project Consultancy service it had initially suspended. Since the consultant had not started mobilizing resources by the time of the suspension, they agreed not to penalize the Authority for the period of suspension. The contractor is currently on site.

### **Committee Observations**

**The Committee observed that the Government provided Kshs 300 million out of the initial Kshs. 500 million and the Authority paid Kshs. 392,320,695 on behalf of the Government without an agreement on how it will be refunded.**

**The Committee further observed that the Government directed the contract to be suspended. Further, the management has not assessed the legal and financial implication of the suspension and its effects on the project implementation.**

### **Committee Recommendations**

**The Committee recommends that the National Treasury pays the Authority Kshs. 392,320,695 arising from payments made by the Authority on behalf of Government of Kenya for construction of second container terminal.**

**The Committee further recommends that no payment on behalf of another organization whether the Government or State Corporation should be paid without a valid agreement on how and when repayments will be made.**

### **15.5 STALLED PROJECTS: FY 2010/2011 TO 2012/2013 ACCOUNTS**

The Committee heard that the property and equipment figure includes amount totaling Kshs. 110,535,738 in respect to work-in-progress of six projects which have stalled for more than five years.

### **Management Response**

The Managing Director informed the Committee that the Authority completed the first phase of construction of the Staff Canteen at a cost of Kshs. 5,884,681. The second phase was however stopped by M/s Export Processing Zone Authority because the land in on which the Canteen sits is in dispute.

The design of alternative road to Container Terminal at a total cost of Kshs. 15,594,547 was suspended when the final designs for the Second Container access road were completed and the Government undertook to build Southern Bypass and therefore is no immediate need to build the road.

The Cruise Ship facility at berth no.1 project at a cost of Kshs 83, 772,586.90 has been stopped for a period of time until such a time when conditions of piracy menace improve in the Indian Ocean.

### **Committee Observation**

**The Committee observed that Kenya Ports Authority did not seek the necessary approvals from the relevant authorities before carrying out any construction.**

**The Committee further observed that the Authority commenced construction of the canteen without confirming the ownership of the plot.**

**The Committee also observed that the works at the canteen might not be worth the amount of money spent.**

## **Committee Recommendations**

**The Committee recommends that:-**

- (i) The Authority seeks the necessary approvals from the relevant government agencies before construction or commencement of any project.**
- (ii) The Authority confirms ownership of plots before commencement of projects.**
- (iii) The EACC investigates the circumstances surrounding the canteen, the conduct of the Authority's Managing Director, Mr. Gichiri Ndua and surveyor for failure to advise the Authority on the ownership of the plot and recommends prosecution by the Director of Public Prosecutions.**
- (iv) The Managing Director be held responsible for any loss incurred by the corporation in the canteen project and recovery of any money lost be instituted against the Mr. Gichiri Ndua and surveyor in line with Section 11(1)(d), (i) of the Ethics and Anti-Corruption Commission Act and in contravention of Article 226(5) of the Constitution.**
- (v) The Auditor General undertakes a value for money audit on the canteen project and report to the Committee within one month.**

## **JICA LOAN: FY 2012/2013 ACCOUNTS**

The Committee heard that the Financial Statement as at 30<sup>th</sup> June, 2013 reflects borrowings totaling to Kshs. 11,624,462,000 which includes a JICA loan balance of Kshs 9,703,755,021. Excluded from JICA loan balance is an amount of Kshs 377, 217,595 disbursed on 28<sup>th</sup> June, 2013 but recorded in KPA books in July 2013. This has resulted in the disbursement of total borrowing as at 30<sup>th</sup> June 2013.

The General Manager Finance informed the Committee that the date of the accounting document is used as a proof of the date of disbursement as opposed to recording in the books. The loan has been paid and debited in the beneficiary accounts.

## **Committee Observation**

**The Committee observed that the Authority excluded an amount of Kshs 377,217,595 from JICA loan balance disbursed on 28<sup>th</sup> June, 2013 but recorded in KPA books in July 2013.**

## **Committee Recommendation**

**The Committee recommends that the Authority ensures proper recording of debts in its accounts.**

## **15.6 LEGAL AND MEDICAL EXPENDITURE: FY 2011/2012 ACCOUNTS**

The Committee heard that it was not possible to confirm the propriety of the Kshs 455,651,915 expenditure, some of which is Kshs 96,667,824 spent on external legal services. It was not clear nor did management explain how the services were procured as no valid contract agreements were available for audit review.

### **Management Response**

The Management of K.P.A presented that the two external law firms were Timamy& Co. advocates whose services were from 2001 to 2007 followed by AB Patel and Patel Advocates from 2007 to date. They gave figures of what the law firms have been paid. They also confirmed they have 7 in-house lawyers employed full time.

### **Committee Observation**

**The Committee noted with concern that the Authority had many lawyers on its payroll yet it was hiring in unclear circumstances the services of external lawyers and paying them colossal amounts without conclusion of the cases.**

### **Committee Recommendation**

**The Committee recommends that the Authority ensures the expeditious conclusion of cases handled by the external law firms and ensures that sourcing of external lawyers is on need/priority basis and as per the Public Procurement and Disposal Act, 2005.**

**The Committee directed that the Auditor General confirms agreements on the matter and that the Corporation provides a report on the prequalification of its legal and medical providers.**

## **15.7 OPERATING REVENUE AGAINST EXPENDITURE: FY 2012/2013 ACCOUNTS**

The Committee heard that in the financial year ending 30<sup>th</sup> June 2013, the operating revenue of Kshs. 15,535,000 does not match the increase in operating expenses of Kshs. 2,568,710,000 which may indicate revenue leakage which may affect the long term sustainability of the business.

The management of KPA presented that that decrease in operating revenue from the previous financial year was due to a decline in storage revenue due to improved cargo take off and also a stronger Kenya shilling to the US dollar. The operating expenditure increased due to increased staff costs occasioned by the implementation of the Collective Bargaining Agreement between KPA and the Union as well as the increase in depreciation expenses of major projects under taken especially the Dredging project and Berth 19.

### **Committee Observation**

The Committee observed that the operating revenue of Kshs. 15,535,000 does not match the increase in operating expenses of Kshs. 2,568,710,000 which may indicate revenue leakage which may affect the long term sustainability of the business.

### **Committee Recommendation**

The Committee recommends that the management puts in place stringent measures to ensure no loss of public funds through revenue leakage.

## **16.0 KENYA RAILWAYS CORPORATION: FY 2007/2008 TO 2009/2010**

### **REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF KENYA RAILWAYS CORPORATION FOR THE YEAR ENDED 30 JUNE 2008 TO 2010**

The Ag Managing Director, Kenya Railways, Mr. Alfred Matheka, accompanied by Mr. A. G. Hunda- Alternate Director, Ministry of Transport and Infrastructure; J. M'mbogah - Acting General Manager, Finance; Mr. D. Njogu - Legal Officer; Ms. Helen Mungania-Corporation Secretary; Mr. Remmy Koech - Risk and Audit Manager appeared before the Committee to give evidence on the accounts of the Board for the 2007/2008 to 2009/2010.

### **16.1 FINANCIAL POSITION: FY 2007/2008 ACCOUNTS**

The Committee heard that by June 2008 the Corporation realized a loss of Kshs. 481,288,213 bringing its net appropriation to negative Kshs20, 040,709,311

### **Management Response**

The Acting Managing Director informed the Committee that the Corporations financial position depicted a high dependency on the support of creditors and principal shareholder. To improve its financial position the Corporation embarked on:-

- (i) A balance sheet clean up;
- (ii) Request to government to waive penalties and interest on Kenya Railways Corporation tax liabilities;
- (iii) Request to Government to inject fresh equity to improve the Corporations balance sheet for purposes of attracting strategic investment partners;
- (iv) Debt restructuring;
- (v) Process of disposing of non-strategic assets;
- (vi) Negotiation for a debt settlement program to liquidate its accrued debts using current cash flow.

### **Committee Observation**

**The Committee observed that the corporation heavily relies on the support of creditors and the Government who is the principal shareholder.**

### **Committee Recommendation**

**The Committee recommends that the Managing Director ensures that the Corporation adopts a diversified revenue base to reduce its high dependency on the support of creditors and the Government.**

## **16.2 RECEIVABLES AND PAYABLES: FY 2007/2008 ACCOUNTS**

### **(i) Management of accounts receivables**

The Committee heard that the Kenya Railways Corporation's (KRC) debtors increased from Kshs. 4,949,457,658 in the previous year to Kshs. 7,377,658,568. Included in the receivables is an amount of Kshs. 5,435,421,188 in respect of traffic account which includes a suspense account figure of Kshs. 1,919,500,718 whose analysis and reconciliation has not been provided for audit review.

### **Management Response**

The management informed the Committee that the increase in debtors is attributed to nonpayment by Rift Valley Railways of concession fees, rent and spares parts for the last one year thus having accumulating significant receivables and provision of uncollectable debts. The debtors balance will be collected with the support of debt collectors. The suspense accounts will be dealt within the ongoing balance sheet clean up exercise.

### **Committee Observations**

**The Committee observed that the Corporation had failed to provide an analysis and reconciliation of its accounts receivable for audit review. This has however been done.**

**The Committee observed that Rift Valley Railways was not paying the concession fees, rent and spare parts.**

### **Committee Recommendations**

**The Committee recommends that the Corporation ensures a cleanup of the Corporation's balance sheet.**

**The Committee further recommends that the management ensures payment by Rift Valley Railways of concession fees, rent and spares parts.**

**(ii) Debt to Numerical Machining Complex**

The Committee heard that after balance sheet clean-up it was established that KRC owes Numerical Machining Complex Kshs. 6, 986,092. KRC had paid part of the debt and the balance as at 30<sup>th</sup> June 2013 was Kshs. 4,940,394.

**Management Response**

The management informed the Committee that KRC has put in place measures to pay the debt that it owes Numerical Machining Complex

**Committee Observation**

**The Committee observed that KRC owes Numerical Machining Complex Kshs. 6,986,092, however KRC had paid part of the debt.**

**Committee Recommendation**

**The Committee recommends that KRC pays the debt owed to Numerical Machining Complex in a mutually agreed time frame.**

**16.3 PROPERTY, PLANT AND EQUIPMENT: FY 2007/2008 ACCOUNTS**

The Committee heard that the property, plant and equipment balance of Kshs. 6, 585,623,878 as at June 2008 excludes several parcels of land with undetermined value. Further parts of the Corporations land hand been allocated to private developers by either the Commissioner of Lands or the local councils without the permission of the authority.

**Committee Observation**

**The Committee observed that several parcels of land of undetermined value were excluded from the property, plant and equipment balance**

**Committee Recommendations**

**The Committee recommends that the Corporation ensures that all its land is valued and owning documents acquired.**

**The Committee further recommends that the EACC investigates the circumstances leading to the irregular allocation of public land belonging to Kenya Railways Corporation and those found culpable be prosecuted.**

**The Committee also recommends that the National Land Commission revokes all titles issued to third parties for land belonging to Kenya Railways Corporation.**

**16.4 STORES INVENTORIES: FY 2007/2008 ACCOUNTS**

The Committee heard that the Corporation did not carry out physical stock taking to determine the actual stock holding as at June 2008 and as a result it was not possible to confirm the carrying value of stores inventories figure of Kshs. 1, 698, 597, 177.

### **Management Response**

The management informed the Committee that the Corporation had not been able to carry out physical stock taking for many years against relevant accounting standards and practices due to poor financial constraints. The current management is carrying out stock take in all stores.

### **Committee Observation**

**The Committee observed that the Corporation had not carried out physical stock taking for long in contravention of accounting standards (IAS)**

### **Committee Recommendation**

**The Committee recommends that the Managing Director ensures that the corporation undertakes regular stock taking in line with international accounting standards and practices.**

### **16.5 PAYABLES AND ACCRUED CHARGES: FY 2007/2008 ACCOUNTS**

The Committee heard that payables and accrued charges of Kshs. 4, 382, 694, 560 include a balance of Kshs. 1,256,409,660 payable to Uganda Railways but the amount is captured as due from Uganda Railways. Reconciliations between the Corporation and Uganda Railways indicates that the Corporation owes Uganda Railways Kshs. 4,666,900 (USD 66,670)

### **Management Response**

The management informed the Committee that it has communicated to the National Treasury regarding the outstanding statutory obligations which continued to accrue interest and penalties.

### **Committee Observation**

**The Committee observed that the non-servicing of the amount owed to Uganda Railways Corporation was accumulating interest and penalties.**

### **Committee Recommendation**

**The Committee recommends that the management of KRC undertakes reconciliation of the debts with Uganda Railways Corporation and clears the outstanding debt promptly to avoid interest and penalties.**

### **16.6 LONG TERM LOANS: FY 2007/2008 ACCOUNTS**

The Committee heard that the net public debt for the Corporation as at June 2008 stood at Kshs. 4,364,853,490. The reconciliation of the public debt between the Corporation and the Government of Kenya has not been carried out and therefore it is not possible to confirm the accuracy of the debt figure.

### **Management Response**

The management informed the Committee that a comprehensive reconciliation of the loans is being carried out.

### **Committee Observation**

**The Committee observed that the reconciliation of the public debt between the Corporation and the Government of Kenya has not been carried out and therefore it is not possible to confirm the accuracy of the debt figure.**

### **Committee Recommendations**

**The Committee recommends that the Corporation undertakes reconciliation of the public debt between the Corporation and the Government of Kenya within six months.**

**The Committee further recommends that the Corporation should not incur additional debt without reconciliation of its public debt.**

### **16.7 KENYA RAILWAYS CORPORATION RETIREMENT BENEFITS SCHEME: FY 2007/2008 ACCOUNTS**

The Corporation in 2007 awarded a Consultancy Service for the development of the Corporations idle land to a consultancy firm at a cost of Kshs. 787,273,700. Part of the land on which the expenditure for feasibility study had been incurred is owned by Kenya Railways Staff Retirement Benefits Scheme.

### **Management Response**

The management informed the Committee that the Corporation did not sign any contract for Kshs. 787 million with Aegis. Aegis had been procured through restricted tendering and KRC terminated its work on completing works of Kshs. 20 million as required in the procurement regulations. The Kenya Railways Staff Retirement Benefits scheme which owns part of the land mentioned above gave consent to KRC to look for a viable partner to develop a Golf City.

### **Committee Observation**

**The Committee observed that the Corporation was not paying pensions and there was need for the Corporation to pay its pensioners. This has been used to siphon off assets from KRC. There should be a clear way to dispose of the property.**

**The Committee further observed that KRC procured and paid for the services of Aegis to undertake a feasibility study on a land partly owned by Kenya Railways Staff Retirement Benefits Scheme. The contract was terminated upon completion of works worth Kshs. 20 million.**

### **Committee Recommendations**

**The Committee recommends that the Managing Director ensures that Kenya Railways Corporation does not incur expenditure on land it does not fully own.**

**The Committee further recommends that the Corporation ensures that contracts once awarded are fully concluded to avoid cost escalation.**

**The Committee also recommends that the EACC investigates the circumstances under KRC procured and paid for the services of Aegis to undertake a feasibility study on a land partly owned by Kenya Railways Staff Retirement Benefits Scheme.**

### **17.0 KENYA POWER AND LIGHTING COMPANY: FY 2004/2005 TO 2011/2012**

#### **REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF KENYA POWER COMPANY LIMITED FOR THE YEAR ENDED 30 JUNE 2005 TO 2012**

**The Acting Managing Director, Kenya Power and Lighting Company Limited, Dr. Ben Chumo accompanied by Mr. L. Yego - General Manager, Finance and Ms. Rosemary K. Gitonga - GM, Commercial Services appeared before the Committee to give evidence on the accounts of the Corporation for the FY 2004/2005 to 2011/2012.**

#### **17.1 UNQUALIFIED ACCOUNTS: FYS 2004/2005 TO 2011/2012 ACCOUNTS**

The Committee was informed by the Auditor-General that the accounts of Kenya Power and Lighting Company Limited for the Financial Years 2004/2005 to 2011/2012 were unqualified. The Accounts were audited by private auditors, Deloitte and Touché, appointed by the Auditor General.

#### **Committee Observation**

**The Committee observed that the Auditor General had not audited the accounts of the Kenya Power and Lighting Company Limited in spite the provisions of Article 229 of the Constitution of Kenya 2010.**

**The Committee further observed that KPLC is one of the strategic infrastructure sector state corporations that have been audited by a private audit firm since its inception.**

#### **Committee Recommendation**

**The Committee recommends that the Auditor General undertakes the audit of the accounts of Kenya Power and Lighting Company Limited pursuant to Article 229 of the Constitution.**

**The Committee further recommends that the Auditor-General should not outsource the audit services of strategic state corporations such as KPLC.**

## **17.2 GOVERNMENT SHAREHOLDING**

The Acting Managing Director, KPLC informed the Committee that the Government's shareholding in KPLC started in 1960 when the Government offered an asset in Nyeri to KPLC (EAPL) which was then a private company in exchange of 150,000 shares (2.5%). The Government shares have since increased steadily to the current 50.1%.

In 2010 the Government's shareholding stood at 69.7%. Due to demands by donors and international lenders conditionalities, the Government shareholding was collapsed and split thus reducing the shareholding to 50.1%.

KPLC's main source of revenue is supplying and selling electricity to consumers. From this revenue KPLC only gets 25% which is used to cover its operating costs.

### **Committee Observation**

**The Committee observed that the Government shareholding in the company reduced from 69.7% to 50.1% as a result of demands by donors and international lenders conditionalities.**

### **Committee Recommendation**

**The Committee recommends that the Government should strive to maintain a super majority shareholding in KPLC and other companies that provide essential services that are critical to the development of the country's economy.**

## **17.3 CLAIMS BY TARDA - DEBTS**

### **Management Response**

The Acting Managing Director informed the Committee that KPLC's obligations to TARDA followed the commissioning of the Kiambere power station in 1987, a station which the Authority (TARDA) had developed. When the plant was commissioned it was necessary to review the electricity retail tariffs. The additional charges that would have been made by TARDA to KPLC which included the enhancement of its agricultural projects in Tana Basin were removed from the electricity tariff since the Government did not wish to have high electricity charges. The Government issued directives to KPLC to service the power station loans directly to National Treasury and not TARDA. The Government then advised TARDA that its requirements that were not met through the KPLC contract would be addressed directly by National Treasury.

### **Committee Observations**

**The Committee observed that the loan was still reflected in TARDA accounts and there was need to address the matter with finality through a joint inter-ministerial and energy sector inter agency meeting.**

The Committee further observed that the hiring of private auditors to audit crucial State Corporations was compromising accountability in crucial State Corporations.

### **Committee Recommendations**

The Committee recommends that the National Treasury and the Parent Ministry mediates between TARDA and KPLC with the aim of resolving the issue of the debt and KPLC financial obligations to TARDA as a result of commissioning of Kiambere dam.

## **18.0 CENTRAL BANK OF KENYA: FY 2001/2002 TO 2011/2012**

### **REPORTS OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF CENTRAL BANK OF KENYA FOR THE FINANCIAL YEARS 2001/2002 TO 2011/2012**

The Deputy Governor, Central Bank of Kenya, Mr. Harun Sirma accompanied by Mr. Peter Rotich, Director Finance and Mr. Stanley Langat, Manager Central Bank of Kenya appeared before the Committee to adduce evidence on the financial years 2001/2002 to 2011/2012.

#### **18.1 UNAUDITED ACCOUNTS: FYS 2001/2002 TO 2011/2012 ACCOUNTS**

The Committee was informed by the Auditor General that the accounts of the Central Bank of Kenya for the Financial Years 2001/2002 – 2011/2012 have not been audited by the Auditor General. The accounts were audited by a private auditor appointed by the Bank. The Auditor General is therefore not in a position to comment on the accounts of Central Bank of Kenya for the years before 2013. The Auditor General pursuant to the new Constitutional dispensation has just completed the 2012/2013 audit of the Accounts of Central Bank of Kenya.

The Deputy Governor, Central Bank of Kenya informed the Committee that the Bank was previously exempted from being audited by the Auditor General. The accounts of the Bank were however audited by a private auditor appointed by the Bank with the concurrence of the Minister for Finance pursuant to Section 54 and 56 of the Central Bank of Kenya Act, Laws of Kenya.

#### **Committee Observation**

The Committee observed that the Auditor-General had not audited the accounts of the Central Bank of Kenya in spite the provisions of Article 229 of the Constitution of Kenya 2010.

The Committee further observed that the accounts of the Bank have been audited by a private auditor appointed by the Bank with the concurrence of the Minister for Finance since its establishment.

## **Committee Recommendations**

The Committee recommends as follows:

- (i) That the Auditor-General undertakes an audit of the accounts of Central Bank of Kenya beginning 2010 pursuant to Article 229 of the Constitution of Kenya 2010 and provides a Report to the National Assembly within six months of adoption of this Report.**
- (ii) That the Central Bank of Kenya Act be reviewed to be in tandem with the Constitution of Kenya as regards auditing of books of accounts of the Bank.**

### **19.0 EWASO NG'IRO NORTH DEVELOPMENT AUTHORITY: FY 2007/2008 TO 2011/2-12**

#### **REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF EWASO NG'IRO NORTH DEVELOPMENT AUTHORITY FOR THE YEAR ENDED 30 JUNE 2008 TO 2012**

**Mr. Omar M. Sheikh, Managing Director, Ewaso Ng'iro North Development Authority, accompanied by Mr. Abdi Maalim, Chief Accountant; Mr. Peter Ngechu, Finance Manager; Mr. Josiah Mulwa, Chief Technical Service & Operations Manager; Ms. Batula Maalim, Environmentalist; and Ms. Lucy Wamaru, Accountant appeared before the Committee and gave evidence on the accounts of the Authority for the Financial Years 2007/2008 to 2011/2012.**

#### **19.1 PROPERTY, PLANT AND EQUIPMENT: FYs 2007/2008 TO 2011/2012 ACCOUNTS**

The Committee was informed that the Property, Plant and Equipment balance excluded undetermined value of three (3) developed and three (3) undeveloped parcels of land in Isiolo and Garissa. Despite obtaining allotment for four (4) parcels of land measuring 4.4 hectares in Isiolo, the parcels had not been registered in the name of the Authority. Further, the Authority did not have allotment letters from the Ministry of Lands for two other parcels of land in Isiolo and Garissa measuring 10 hectares each thus making them insecure.

#### **Management Response**

The Managing Director informed the Committee that the Authority had 6 parcels of land viz; 3 developed and 2 undeveloped parcels in Isiolo and 1 developed parcel in Garissa. Survey and computation had been done and submitted to the Director of Survey for necessary action. The management further informed the Committee that they were making efforts to acquire title deeds for the six (6) parcels of land.

### **Committee Observation**

**The Committee observed that it was important for the Ministry of Lands, Housing & Urban Development and National Lands Commission to regularize the ownership of the Corporation's land.**

### **Committee Recommendation**

**The Committee recommends that the Authority follows up the issue of property with the Ministry of Lands/National Land Commission with the view of securing ownership documents.**

### **19.2 TRADE CREDITORS AND OTHER PAYABLES: FY 2008/2009 ACCOUNTS**

The Committee was informed that trade creditors and other payables of Kshs. 677,336 had been outstanding for a long period of time. Despite the management explaining that the creditors were not traceable, no evidence in that regard has been given and neither were there steps taken to write back the amounts to the respective accounts.

### **Management Response**

The management informed the Committee that the outstanding amount of Kshs. 677,336 related to trade creditors who were for years before 2000 and that they had requested the Board for approval to write back the amounts to their respective accounts which was granted vide 66<sup>th</sup> Board Meeting held on 6<sup>th</sup> October, 2010.

### **Committee Observation**

**The Committee observed that the Authority had failed to pay Kshs. 677,336 owed by well-known creditors.**

### **Committee Recommendation**

**The Committee recommends that the Authority pays the debts the current owners of the creditors namely Isiolo County Council (Isiolo County government), Isiolo Holding Ground Users Association, Kenya Media Trust, Kenya Times and Esso Motors Ltd without resorting to write off.**

### **19.3 FINANCIAL PERFORMANCE: FY 2011/2012 ACCOUNTS**

The Committee was informed that the Authority had recorded a deficit of Kshs. 1,845,781,000 resulting to a decrease of accumulated fund balance from Kshs. 1,322,745,000 the previous year to a negative of Kshs. 523,036,000 as at 30<sup>th</sup> June, 2012. Further, the Authority's current liabilities of Kshs. 1,073,182,000 exceeded the current assets of Kshs. 16,859,000 by Kshs. 1,056,323,000 as at 30<sup>th</sup> June, 2012. The Authority's financial position was precarious and its operations as a going concern depended on its bankers, creditors and the Government.

### **Management Response**

The Management informed the Committee that the Government had in FY 2010/2011 allocated through printed estimates Kshs 2,382,624,433 to implement Economic Recovery and Poverty Alleviation Project, however the actual disbursement was less by Kshs. 560 million in 2010/2011 FY and less by Kshs. 180 million in 2011/2012 FY. The Authority therefore had to pay some of the contracts undertaken from the accumulated funds hence decreasing the accumulated fund balance on liability with the pending bills of FY 2011/2012.

### **Committee Observation**

**The Committee observed that the Authority engaged contractors before the Government could disburse funds and therefore there was no assurance of funding for the projects contrary to Section 26(6) of the Public Procurement and Disposal Act, 2005 that require that the procuring entity should satisfy itself that there are funds available before engaging in any procurement.**

### **Committee Recommendations**

**The Committee recommends that the EACC investigates the conduct of the then Managing Director Mr. Rashid Amin and the Board of Directors Dr. Abdulahi Waqo, Mr. Hussein Bare Shill, Mr. Issak Sheikh Gabow, Mr. Alois Leariwala, Ms. Halima Ahmed Ibrahim for contravening Section 26(5) of the public procurement and Disposal Act, 2005, by committing the Authority to contracts without adequate funding or approved budget.**

**The Committee recommends that the Director of Public Prosecutions institutes criminal proceedings against the then Managing Director and the Board of Directors for abuse of office contrary to Section 101 of the Penal Code and Public Officer Ethics Act, 2003 and that they be surcharged or money recovered from them.**

## **20.0 KENYA PETROLEUM REFINERIES LIMITED: FY 2008/2008 TO 2011/2012**

### **REPORTS OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF KENYA PETROLEUM REFINERIES LIMITED FOR THE FINANCIAL YEARS 2007/2008 TO 2011/2012**

**The Chief Executive Officer, Kenya Petroleum Refineries Limited, Mr. B. M. Bansal, accompanied by Hon. Suleiman Shakombo, Chairman; Mr. Stephen Mbui, Chief Finance Officer; Ms. Caroline Katuya, Company Secretary/Legal Officer; and Mr. Stephen Wafula, Senior Economist, Ministry of Energy and Petroleum appeared before the Committee to give evidence on the auditing of accounts of the refinery by the Auditor General.**

#### **20.1 UNAUDITED ACCOUNTS**

The Committee was informed by the Auditor-General that the accounts of the Kenya Petroleum Refineries Limited have never been audited by the Auditor General. The accounts were audited by a private auditor appointed by the refinery. The Auditor General is therefore not in a position to comment on the accounts of the Refinery.

#### **Management Response**

The Chief Executive Officer, KPRL informed the Committee that the Company had written to the Auditor General on the auditing of its accounts but no reply had been obtained from the Audit Office. KPRL is a private company established under the Companies Act, Cap 486 and not a State Corporation and therefore cannot be audited by the Auditor General. KPRL is a 50:50 joint venture between Essar Energy Overseas Limited and the Government of Kenya and is therefore not a state Corporation as defined by Section 2 of the State Corporations Act, Cap 446. KPRL is owned through the Permanent Secretary, Treasury which is excluded from being termed a State Corporation.

The Committee was further informed that Section 89 of the Public Finance Management Act of 2012 requires the National Treasury to submit a consolidated report to the Auditor General every year and sets out the information required from Government linked Corporations. KPRL has complied with Treasury's request for the requisite information even though it does not fall in the category of such Government linked Corporations.

The Chief Executive Officer also informed the Committee that accounts of the Refinery were audited by a private auditor appointed by the Board of Directors. In the audit, the company has enjoyed unqualified audit reports. The change of auditors could have an impact on the operations and management of the company.

The performance of the company has been on the down trend since the industry switched to the merchant mode. The company has been on shut down since September 4<sup>th</sup> 2013 since no crude oil has been imported by the marketers.

### Committee Observation

The Committee observed that Article 229 (5) of the Constitution provides that the Auditor-General may audit the accounts of any public entity that attracts public funding notwithstanding the mandatory entities that the Auditor-General must audit.

### Committee Recommendation

The Committee recommends that the Auditor-General audits all companies that the Government has a stake irrespective of the shareholding as provided for by Article 229 (5) of the Constitution of Kenya.

## **21.0 KENYA ELECTRICITY GENERATING COMPANY (KENGEN): FY 2005/2006 TO 2011/2-12**

### **REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF KENYA ELECTRICITY GENERATING COMPANY LIMITED FOR THE FINANCIAL YEARS 2005/2006 TO 2011/2012**

The Ag Managing Director, Kenya Electricity Generating Company, Mr. Simon Ngunjiri, accompanied by Eng. Richard Nderitu, Operations Director; Mr. John Mudeny, Director, Finance; Mr. John Omenge, Chief Geologist; Ms. Rebecca Miano, Company Secretary; Mr. Albert Mugo, Business Development and Strategy Director; Mr. Daniel Bakali, Chief Accountant; Mr. Kaara Wainaina, Senior Communication Officer; Mr. David Muthike, Transformation Manager; Ms. Beatrice Misoy, Human Resource and Administration Manager; Mr. Henry Nyachae, Finance Manager; and Mr. Henry Ithiami, Ag. Regulatory Affairs Director appeared before the Committee to adduce evidence on the accounts of FYS 2005/2006 - 2011/2012.

### **20.1 UNQUALIFIED ACCOUNTS: FYS 2005/06 TO 2011/12 ACCOUNTS**

The Committee heard that the Company's Accounts for the Financial Years 2005/06, 2006/07, 2007/08 and 2011/12 were unqualified.

### Committee Observation

The Committee observed that the Auditor General gave the Kenya Electricity Generating Company a clean report on Accounts for the FYS 2005/06, 2006/07, 2007/08 and 2011/12.

### Committee Recommendation

The Committee commended KENGEN for receiving unqualified Accounts for the FYS 2005/06, 2006/07, 2007/08 and 2011/12.

## **20.2 CHANGE IN ACCOUNTING POLICY –FOREIGN CURRENCY TRANSLATION: FYs 2008/09, 2009/10 AND 2010/11 ACCOUNTS**

The Committee heard that the Directors had approved a change in accounting policy as affects the accounting treatment of unrealized exchange gains and losses relating to foreign currency dominated borrowing, in contravention of International Accounting Standards (IAS) No. 21 – The Effect of Changes in Foreign Exchange Rates.

### **Management Response**

The Chief Executive Officer informed the Committee that the fluctuations arising from the revaluation of loans at the end of the year varied significantly from year to year depending on the movement in market exchange rates. This fluctuation created unrealized exchange losses/gains, which if passed through the income statement could distort the results of the company from year to year depending on the weakening/strengthening of the shilling against hard currencies thus misleading the users of the financial statements.

In the opinion of the Directors therefore, the change in accounting policy allowed for fair representation of the financial statements as relates to understandability, comparability and identifying of operational trends in the company's financial position and performance over time. It is on this basis that the directors approved a change in the accounting policy to allow exchange differences to be recognized in foreign currency revaluation reserve in the Statement of Changes in Equity.

To address the issue of treatment of foreign exchange fluctuations on loans/borrowing and to conform to IAS 21 while taking cognizant of the pass through mechanism which allows the differences between the Gazetted base rates and actual exchange rates to be recovered as a pass through to KPLC, it was agreed that the fluctuations be dealt with in the income statements and at the same time recognize a deferred asset to be recovered from KPLC in future and a liability to be paid to lenders in future through the pass through mechanism in the PPAs.

### **Committee Observations**

**The Committee observed that the Company flouted International Accounting Standards No. 21 –The Effect of Changes in Foreign Exchange Rates as captured by the Auditor General. The Company has however addressed the Auditor's concern and was thereby issued with a clean report in the subsequent financial reports.**

**The Committee further observed that reconciliation of the public debt between the Corporation and the Government of Kenya has not been carried out and therefore it is not possible to confirm the accuracy of the debt figure.**

**The Committee also observed that there was no clear division of the roles and mandate that KENGEN and GDC play which was brought about conflict and duplication of roles and function between the two strategic state corporations.**

### **Committee Recommendation**

**The Committee recommends that the Company should ensure adherence to the International Accounting Standards.**

**The Committee recommends that Ministry of Energy resolves the issue of KenGen and GDC debts as well as their respective mandate by creating geographical area of operation for each of the entities and specific spheres of operation.**

**The Committee further recommends that the Ministry of Energy and Petroleum fast tracks the process of vesting of wells with clear records of all the wells established.**

**The Committee also recommends that the Ministry of Energy and Petroleum should clearly separate the mandates of GDC from that of KENGEN so as to avoid duplication of mandates and overlaps in functions.**

## **22.0 NZOIA SUGAR COMPANY: FY 2001/2002 TO 2011/2012**

### **REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF NZOIA SUGAR COMPANY FOR THE YEAR ENDED JUNE 2002 TO 2012**

**The Managing Director, Nzoia Sugar Company, Mr. Saul Wasilwa accompanied by Mr. Wasike Simiyu, Chairman Board of Directors, the Finance Manager, Mr. Godfrey S. Wanyonyi, Ms. Monica Mweni Senior Deputy Director Ministry of Agriculture, Livestock and Fisheries and Ms Roselinda Simiyu Atwoli and appeared before the Committee and gave evidence on the accounts of the Company for the financial years 2001/2002 to 2011/2012.**

### **22.1 FINANCIAL PERFORMANCE (GOING CONCERN): FYs 2000/2001 – 2011/2012** **ACCOUNTS**

The Committee heard that the financial results of the Company during the year under review ended with a profit of Kshs. 226,299,840 reducing the accumulated losses to Kshs. 16,885,153,918 compared to restated amount of Kshs. 17,111,453,753 in 2010/2011. The current liabilities of Kshs. 21,095,692,406 as at June, 2012 exceeded the current assets of Kshs. 4,851,660,647 resulting in a negative net working capital of Kshs. 16,244,031,758 as at the same date. The Company prepared its financial statements on a going concern basis on assumption that Government and creditors will continue supporting it financially.

### **Management Response**

The Managing Director informed the Committee that the Company was in a precarious financial position which resulted into accumulated losses, negative working capital and inability to meet its financial obligations on due dates. The situation is attributed to; poor initial Debt/Equity ratio of the company's project which was at 4:1 and the grace

period for the loans being only one year; and smuggling of cheap sugar and cane poaching

### **Committee Observation**

**The Committee observed that it was not prudent to start repaying back the loan within one year of borrowing as it had put the Company in a precarious situation. Further, the Committee observed that there was need for a feasibility study before commencing on projects.**

### **Committee Recommendation**

**The Committee recommends that the National Treasury intervenes and writes off debts owed by the sugar company as was recommended in the previous resolution in the cabinet sessional paper in 2012.**

## **22.2 LOANS: FY 2011/2012 ACCOUNTS**

The Committee heard that principal loans amounting to Kshs. 10,418,015,912 as at 30<sup>th</sup> June, 2012 consisting of Government of Kenya on lent loans of Kshs. 948,578,602, Government of Kenya guaranteed loans of Kshs. 8,628,801,039 and Kenya Sugar Board Loan of Kshs. 840,636,211. The loans were obtained on diverse dates from 1986 for payment to cane farmers, cane development, road maintenance, factory expansion and maintenance and financing of the working capital. The loans had not been serviced except for Kshs. 43,514,669 payable to Kenya Sugar Board and the loan agreements were not available.

### **Management Response**

The Managing Director informed the Committee that the Company had not been able to service the debts because of some high value projects such as the factory expansion by Arkel that had since stalled and thus not generating any income. The loans were a subject of Sessional Paper No. 12 of 2012 – on write off of excess Government of Kenya Debts owed by the Public Sector owned sugar companies and were also being handled by the Privatization Commission of Kenya. The loan agreements had since been obtained.

### **Committee Observation**

**The Committee observed that the National Assembly had made a resolution for the write off of the loan but the National Treasury had not acted thus exacerbating the loan portfolio of the company.**

### **Committee Recommendations**

**The Committee recommends that the Cabinet Secretary, National Treasury should fully implement the House resolution on debt waiver for Nzoia Sugar Company Limited and the other sugar companies that are lined up for privatization.**

**The Committee further recommends that the National Treasury expeditiously writes off the loans owned by Nzoia Sugar as resolved by the National Assembly in 2012.**

### **22.3 TRADE AND OTHER PAYABLES:**

The Committee heard that the Company had defaulted on tax remittance to Kenya Revenue Authority prior to 2003 consequent upon which the Authority demanded Kshs. 1,087,250,003, as per assessment done in April, 2006. The Company indicated that it had paid the principal tax of Kshs. 280,533,295 and applied for waiver of Kshs. 806,715,709. However, no records of the waiver granted were available. Further, the Company had carried forward an amount of Kshs. 8,662,712 belonging to Fives Cails Babcock and whose supporting documents were unavailable for audit verification.

#### **Management Response**

The Managing Director informed the Committee that the Company experienced severe cash flow problems in 1990s resulting to some financial obligations not being met. The tax assessment resulted from non-remittance of taxes in that period. However, through the Ministry of Finance, it was agreed that the Company pays Kshs. 280,533,295 and request for a waiver of penalties and interests. The debt of Kshs. 8,662,712 owed to Five Cails Babcock was incurred by M/s Shaffer, a management agent whose contract was terminated in 2003. No documents were available after the agents left.

#### **Committee Observation**

**The Committee observed that the company was undergoing financial distress during the period under review leading to its failure to meet its financial obligations including remittance of taxes to KRA.**

#### **Committee Recommendations**

**The Committee recommends that the company seeks waiver of penalties and interest from the Kenya Revenue Authority while it pays all its tax obligations. The company should ensure that all tax obligations due are paid without delay in accordance with relevant laws and financial regulations.**

**The Committee recommends that the EACC investigates the conduct of the former Managing Directors of the company, prior to 2003, and circumstances that led to financial loss and recommends prosecution by the Director of Public Prosecution abuse of office contrary to Section 101 of the Penal Code and Section 10 of the Public Officer Ethics Act, 2003 and that the money lost be recovered.**

### **22.4 RECEIVABLES INCLUDING DEBTORS AND PREPAYMENTS: FY 2011/2012 ACCOUNTS**

The Committee was informed that trade and other receivables balance of Kshs. 553,785,287 included debtors amounting to Kshs. 187,527,291 comprising dues from FC Schaffer of Kshs. 28,745,896, NSC Staff Retirement, Kshs. 1,635,879, former staff debtors, Kshs. 3,419,960, court deposit, Kshs. 20,560,991, sugar debtors, Kshs. 53,363,650, KRA PIT Kshs. 13,838,055 and out growers, Kshs. 65,962,860 which had remained outstanding for many years with minimal movement and no sign of recovery from the debtors. It was therefore not possible to ascertain the adequacy of the provision of the bad and doubtful debts figure of Kshs. 134,000,010 and the

recoverability of the trade and other receivables balance of Kshs. 553,785,287 as at 30<sup>th</sup> June, 2012.

### **Management Response**

The Managing Director informed the Committee that;

- (a) Farmers' debts – the Company had given notices to farmers to pay up and would sue those who would not pay within the given time limit.
- (b) Cheque for Kshs. 5,656,000 – Turbo Highway purchased sugar from the Company and issued a banker's cheque that was dishonored. The Company launched a claim in court in 2000 and the case is still in court.
- (c) Follow up on suppliers advances – advances are given to suppliers with whom the Company does not have credit agreements but are reliable in terms of quality and delivery time. All advances outstanding between the period 2002 and 2005 had either been recovered from subsequent deliveries or goods were actually delivered.
- (d) Analysis of farmers balances – the Company is in the process of acquiring new software that will be able to analyze the farmers' balances.
- (e) Staff debts – the Company had made considerable efforts to recover past imprests though an outstanding amount of Kshs. 3,419,960 had not been recovered since some employees had either passed away or gone to court against the company. Currently, no imprest is given before surrendering the previous one.
- (f) Adequacy of accruals for doubtful debts - the Company believes that the accrual for doubtful debts was adequate and had updated the company's policy manual to reduce the gap between the opinion of the auditor and that of the Company.

### **Committee Observation**

**The Committee observed that the Company had not done due diligence while doing business with Turbo Highway. Further, the Committee observed that the Company needed to further pursue M/s Shaffer to recover the money due.**

### **Committee Recommendation**

**The Committee recommends that Nzoia Sugar Company recovers all debts owed including outstanding imprest within six months after adoption of the report and report to the Committee on the status of recovery.**

### **22.5 SHARE CAPITAL: FY 2010/2011 ACCOUNTS**

The Committee heard that the Company had 30 million shares authorized and issued share capital of Kshs. 20 each. The maximum value of issued shares was Kshs. 600 million. However, the note shows the total value at Kshs. 611 million and the

comparative value of issued share capital was Kshs. 532 million as at 30<sup>th</sup> June, 2011 and the same restated as Kshs. 611 million with no explanation.

### **Management Response**

The Managing Director informed the Committee that the change in the shareholding structure was due to conversion of some Government debt into equity thereby increasing Government shareholding in the Company. The Company issued a share certificate of 26,600,000 shares to the Government but the register was not adjusted. However, the Company through the Board once constituted will discuss and update the Company Register to show the correct position.

### **Committee Observation**

**The Committee observed that though the share certificates were issued to reflect the shares, the same was not reflected in the company's shares register.**

### **Committee Recommendation**

**The Committee recommends that the company addresses the issue of shareholding structure in its records/register to reflect the current status.**

## **22.6 BOARD EXPENSES**

The Committee was informed that the Company was in breach of law in paying Kshs. 570,000 as sitting allowance to non-Board Members in attendance during board committee meetings.

### **Management Response**

The Management informed the Committee that the allowances were paid to the representative of the Inspector of State Corporations who attended both Board and Committee meetings as a member under Section 18(2) c of the State Corporations Act Cap 446. The Company had since been guided by the Head of Public Service and the Attorney General and the same was not payable.

### **Committee Observation**

**The Committee observed that the Company contravened Section 10 of the State Corporations Act, CAP 446 by paying non-Board members sitting allowances.**

### **Committee Recommendations**

**The Committee recommends that the EACC investigates and recommends prosecution by the Director of Public Prosecutions of the then Managing Director/CEO and the Board Members for breaching Section 10 of the State Corporations Act, CAP 446 and for abuse of office contrary to Section 101 of the Penal Code and Section 10 of the Public Officer Ethics Act, 2003.**

**The Committee recommends that the Kshs. 570,000 should be recovered from the concerned officers through surcharge by the State Corporations Advisory Committee and the recovered amount should be remitted to Nzoia Sugar Company.**

## **22.7 STALLED FACTORY EXPANSION: FY 2005/2006 TO 2008/2009 ACCOUNTS**

The Committee heard that the company set to expand its factory between 1989 and 1991 and obtained a Government guaranteed loan of Kshs. 8,017,639,620. However, the project stalled at the foundation level incurring an expenditure of Kshs. 2,975,000,296 which included work done and machines parts left on site. The Company capitalized interest payable and foreign exchange losses of Kshs. 2,783,833,915 and described it as deferred expenditure in the balance sheet. Work in Progress costs and deferred expenditure totaling Kshs. 5,758,834,211 were included in the balance sheet as Non-Current Assets. There was no information on why the project stalled or when the Company intended to complete it.

### **Management Response**

The Management informed the Committee that the carrying value of assets included capitalized work in progress, interest and penalties on loans on the stalled projects. The costs were written off when individual asset revaluation was done in 2009. The company would be carrying out a valuation of all its assets at an interval of 5 years.

### **Committee Observations**

**The Committee observed that the factory expansion project undertaken by the company stalled at the foundation level when the company had incurred an expenditure of Kshs. 2,975,000,296 which included work done and machines parts left on site.**

**The Committee also observed that the company had for a very long time failed to conduct valuation of its assets so as to determine the actual value of its assets.**

### **Committee Recommendations**

**The Committee recommends that EACC investigates circumstances under which the factory expansion project stalled and the propriety of expenditure incurred by the company with a view to prosecuting those found culpable.**

**The Committee further recommends that M/s Arkel, the company that was contracted to undertake the factory expansion be debarred from doing business with the named institution and other corporation owned by the government of Kenya.**

## **22.8 TITLE DOCUMENTS: FY 2008/2009 ACCOUNTS**

The Committee was informed that the Property, Plant and Equipment balance of Kshs. 1,563,536,575 as at 30<sup>th</sup> June, 2009 included Kshs. 616,647,767 for land development out of which depreciation of Kshs. 185,921,149 had been charged leaving a balance of Kshs. 430,726,618. Documents for land were not made available for audit verification.

### **Management Response**

The Management informed the Committee that at the time of audit, there were no complete documents of ownership of land. However, the documents were later obtained.

The Committee directed that the documents be availed to the Auditor General for verification.

### **Committee Observations**

**The Management informed the Committee that at the time of audit, there were no complete documents of ownership of land. However, they were later obtained.**

**The Committee observed that the company did not have all the documents of ownership of assets.**

### **Committee Recommendation**

**The Committee recommends that the management fast tracks the process of acquisition of ownership documents so as to protect the properties owned by the Government.**

## **22.9 PROPERTY PLANT AND EQUIPMENT**

The Committee heard that included in Property, Plant and Equipment figure of Kshs. 1,586,433,979 was Kshs. 275,285,136 out of which Kshs. 153,228,736 relates to work in progress. Supporting schedule and other documents for this balance were not made available for audit verification.

### **Management Response**

The Management informed the Committee that the balance of Kshs. 153,228,736 was accumulated over the years and some of the figures could not be verified. However, that was normalized when individual asset revaluation was done in 2009.

### **Committee Observations**

**The Committee observed that the management had failed to provide supporting documents for property, plant and equipment figures to the auditors for verification.**

### **Committee Recommendations**

**The Committee recommends that then Managing Director should be held responsible for contravening Section 37(b) of the Public Audit Act 2003 by not availing its financial statements and primary documents for audit by the Auditor-General.**

**The Committee recommends that the management should ensure that it the Company avails all relevant primary and other documents to the Office of the Auditor-General for verification to avoid similar incidences from recurring in future.**

## **22.10 INVENTORIES AND STORES**

The Committee was informed that included in the inventories of Kshs. 744,584,981 were sugar stock worth Kshs. 166,465,839. During the stock taking exercise, sugar stocks were not arranged in a manner that would have facilitated counting with the

result that the sugar stock were computed rather than being based on a physical stock count at the end of the year.

### **Management Response**

The Management informed the Committee that the issues raised were outstanding at the time of reporting. The same had however been reconciled.

### **Committee Observation**

**The Committee observed that the company failed to undertake a physical stock count of its sugar stock but instead computed it.**

### **Committee Recommendation**

**The Committee recommends that the management of the company ensures that it undertakes physical stock count of its sugar stock as opposed to computed figures so as to ensure accurate values of its inventories.**

## **22.11 ASSETS VALUATION**

The Committee heard that the Company had engaged the services of a professional valuation firm at a cost of Kshs. 700,000 to value its assets. The valuation report reflected the Company assets at Kshs. 4,260,047 which was adopted by the Board of Directors. The Company's financial statements did not reflect the Company's assets at the revalued amount.

### **Management Response**

The Management informed the Committee that the Company which was engaged in valuation was to value for insurance purposes only. It could not have been possible to include the valuation amount in the financial statements. However, a proper valuation was carried out in 2009 and the relevant values included in the financial statements.

### **Committee Observation**

**The Committee observed that the company failed to include the actual value of its assets after valuation in the financial statements.**

### **Committee Recommendation**

**The Committee recommends that the management should ensure that the company assets are valued periodically and actual values included in the financial statements so as to reflect the true value of the assets.**

## **22.12 INCOMPLETE RECORDS AND INACCURACIES IN THE FINANCIAL STATEMENTS**

The Committee heard that the Company's Trial Balance presented for audit verification had unexplained variance of Kshs. 28,680,439,437 between the total debits of Kshs. 88,515,040,220 and total credits of Kshs. 117,245,479,657. The Company's general ledger and other subsidiary ledgers verified lacked adequate supporting documentation and information and had to be reconstructed a fresh. A fixed Asset Register, cash books,

loans and shares registers were not maintained and instead the Company maintained computer generated data in the form of lists, schedules and statements which lacked appropriate necessary details as is required of financial records. The Company had issued cheques amounting to Kshs. 4,062,199 which had been cleared by the Company's bankers, but still shown in the bank reconciliation statements as un-presented cheques.

#### **Management Response**

The Management informed the Committee that they faced many challenges including mis-statements when they were moving the Sera Software to the Syspro Software that was acquired in 2004/2005 financial year. Any inaccuracies had since been reconciled.

#### **Committee Observation**

**The Committee observed that the company did not maintain FAR, cash books, loans and shares registers and in addition there was poor record keeping at the finance and accounts department of the company to the extent that cleared cheques were shown in the bank reconciliation statements as un-presented cheques.**

#### **Committee Recommendations**

**The Committee recommends that the then Managing Director and Finance Manager be held accountable for failure to maintain basic accounting documents such as cash books, loan register and share certificates and for poor record keeping.**

#### **22.13 CANE VALUATION: FY 2003/2004 ACCOUNTS**

The Committee was informed that included in the growing cane valuation of Kshs. 100,814,012 was Kshs. 14,269,680 in respect of seed cane supplied to out growers from the nucleus estate of the Company. The Management had not explained why the seed cane was not deducted from the valuation figure. It was also noted that the value of such seed had been credited to the farmers' accounts as an advance, pending recovery at harvest time.

#### **Management Response**

The Management informed the Committee that the situation was corrected in the subsequent periods.

#### **Committee Observation**

**The Committee observed that the company had failed to deduct the value of seed cane from the valuation figure and that the value of the seed cane had been credited on the farmers accounts as advance.**

#### **Committee Recommendation**

**The Committee recommends that proper cane valuation is undertaken and values posted correctly.**

## **22.14 PROCUREMENT OF GOODS AND SERVICES - PROCUREMENT OF INSURANCE SERVICES: FY 2003/2004 ACCOUNTS**

The Committee heard that the Company awarded a contract for insurance to the 8<sup>th</sup> lowest bidder at a contract sum of Kshs. 19,968,750 instead of the lowest bidder at a contract sum of Kshs. 12,877,403 which would have saved Kshs. 7,091,347. The Company further entered into a financial arrangement with a financial institution which made full payment of premiums to the insurer with interest amounting to Kshs. 1,198,115 without Board approval.

### **Management Response**

The Management informed the Committee that the lowest bidder lacked professional indemnity certificate and tender security bond which were requirements of the tender and therefore technically disqualified. The Company found it necessary to have insurance premiums financed by a third party since it was experiencing financial constraints. There was however an oversight by not seeking approval from the Board. Currently, premiums are paid promptly from own funds.

### **Committee Observation**

**The Committee observed that the Company failed to adhere to the provisions of the Public Procurement and Disposal Act, 2005 by awarding a contract for insurance to the 8<sup>th</sup> lowest bidder and further procured insurance premiums financed by a third party without Board approval.**

### **Committee Recommendations**

**The Committee recommends that the EACC investigates the conduct of the then Managing Director and recommends prosecution by the Director of Public Prosecutions for flouting provisions of the Public Procurement and Disposal Act, 2005, abuse of office contrary to Section 101 of the Penal Code and loss of Kshs. 7,091,347 which the company paid over and above the amount it would have paid had it awarded the contract to the lowest bidder as required by the procurement law.**

**The Committee further recommends that the amount of Kshs. 7,091,347 which the company paid over and above the amount it would have paid had it awarded the contract to the lowest bidder as required by the procurement law be recovered from the then Managing Director**

**The Committee also recommends that the then Managing Director be held responsible and accountable for any loss that the company made as a result of insurance procurement that was done without board approval. The procurement of the insurance was therefore null and void.**

## **22.15 PROCUREMENT OF HIGH TEMPERATURE CASTABLE DUREX 1600CC (FINE CEMENT): FY 2003/2004 ACCOUNTS**

The Committee heard that the Company procured 20,000 kg and 3,000kg of high temperature Castable Durex 1600cc at Kshs. 380 and Kshs. 375 per kg respectively from

a supplier for out of crop maintenance at different dates. In previous purchase on 25<sup>th</sup> October 2001, the Company procured 1,250kg of the same product from a previous supplier at Kshs. 100 per kg thereby resulting into a significant price variation.

The Company had imported the same commodity in July 2003 from a firm in UK at Kshs. 56.289 per kg cum delivery expenses indicating an overpricing during 2002/2003.

### **Management Response**

The Management informed the Committee that there were instances of overpricing citing that the lowest bidder – M/s General Equipment 1978 Ltd could not supply due to change in prices and yet the factory had been stopped for annual maintenance. It was therefore decided to procure the expensive product from M/s Equip Agencies to forestall a delay in completing the annual maintenance. Currently all maintenance materials are competitively acquired in good time.

The Committee observed that the company failed to procure the high temperature Castable Durex 1600cc competitively resulting in overpricing as compared to previous purchases.

### **Committee Observation**

**The Committee observed that the company imported the same product from a different supplier that caused it to incur an overpricing on the product.**

### **Committee Recommendations**

**The Committee recommends that the Company procures all its goods and services competitively.**

**The Committee further recommends that the EACC investigates the conduct of the then Managing Director which resulted in the loss that the company incurred as a result of non-competitive procurement and recommends prosecution by the Director of Public Prosecutions and recovery of the accumulated loss from the then Managing Director.**

## **23.0 AGRO CHEMICAL AND FOOD COMPANY LIMITED: FY 2000/2001 TO 2011/2012**

### **REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF AGRO CHEMICAL COMPANY LIMITED FOR THE YEAR ENDED JUNE 2002 TO 2012**

#### **23.1 EXTERNAL LOAN:**

ACFC took a loan from Giro Credit Bank of Austria of Austrian Schillings 250.750 million (137.9 million) in 1979/1980 for construction of the power alcohol project. The loan was to be repaid in 16 half yearly installments starting 1983. The full repayment was to be made by June 1990 with an interest rate of 7.75% p. a. The initial loan agreement was between Agro Chemical and Food Company and Girozentrale Bank.

The Company has paid a total of Kshs. 2.204 billion (US\$ 31.860 Million) of the principal loan amount of Kshs. 137.9 million and has been paying Kshs. 150 million annually to the National Treasury as part of the loan. However the loan balance continues to grow due to the high interest of approximately Kshs. 340 million annually.

### **Management Response**

The Management informed the Committee that Company has been facing challenges in marketing the product, short supply of molasses and repayment of the loan. Some companies are using molasses without licenses from the Sugar Board.

The Government as a guarantor assumed on behalf of ACFC a major part of the foreign loan US\$ 34.96 million and advised ACFC to enter into 'on-lent loan agreement'.

The continued devaluation of the Kenya Shilling since the time the loan was taken has hugely contributed to the huge loan balances since part of the loan is denominated in US dollars. This has had a spiral effect on the loan balances when translated to Kenyan currency at the ruling rate.

Efforts to rescue the company from the huge loan included the Treasury approval for the conversion of the US denominated loan to Kenya shillings in June 2012, request to write-off part of the loan (Kshs. 4.516 billion) that is not supported by the company assets (Kshs. 3.3 Billion).

The current loan amount is Kshs. 8. 257 million as at June 2013 and comprises of:-

- GoK On - lent Loan converted - 2, 941.884 million
- Interest on converted GoK Loan - 4,515.792 million
- Interest on unconverted GoK Loan - 800.030 million
- Total** **Kshs. 8,257.406 million**

### **Committee Observation**

**The Committee observed that the company is technically insolvent and that there is limited possibility of the company repaying the loan under the current conditions.**

### **Committee Recommendations**

**The Committee recommends that National Treasury should consider bailing out the company before its value depreciates further.**

**The Committee further recommends that Government of Kenya should restructure the company.**

**The Committee also recommends that Government of Kenya should limit sale of molasses to genuine farmers only and licensed users.**

#### **24.0 KENYA FOREST SERVICE: FY 2007/2008 TO 2011/2012**

##### **REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF KENYA FOREST SERVICE FOR THE FINANCIAL YEARS 2007/2008 TO 2011/2012**

**The Ag. Managing Director, Kenya Forest Service, Mr. David K Mbugua accompanied by Mr. Patrick Nyaga Senior Deputy Director Finance & Administration; Mr. Esan Omollo Deputy Director; Mrs. Anastasia Masiya Deputy Director Finance and Administration; and Mr. Anthony Kiumbuku Accountant appeared before the Committee to adduce evidence on the Accounts of the Corporation for the FY 2007/2008 - 2011/2012.**

##### **24.1 PROPERTY PLANT AND EQUIPMENT ACCOUNTS: FY 2008/2009 ACCOUNTS**

The Committee heard that in 2008/2009 financial year, Property Plant and Equipment balance of Kshs 99,014,489 excludes 19 parcels of land including office buildings without title documents. The parcels of land whose value has also not been established are in Kabarnet, Kisumu, Nakuru, Iten extension office, Nyando Siaya, Busia Kuria, Nandi South Narok, Teso Mombasa, Machakos Mwingi, Garissa, Kilifi, Embu, Kitui and Bondo (Got Winyo).

Further the Kenya Forestry Service owns other large tracts of land across the country with plantations of trees whose value has not been disclosed or incorporated in the financial statements.

In the circumstances it has not been possible to confirm that the Service Property Plant and Equipment balance of Kshs. 99,014,489 is fairly stated as at June 2009.

##### **Management Response**

The management informed the Committee that at the inception of the Service the organization had only 8 titles deeds. However the Service initiated the process of acquiring other title deeds for all the remaining parcels of land it owned across the country.

On the valuation of gazetted forests, the Service sought advice from the Ministry of Lands Housing and Urban Development and was advised that:-

- (i) Forest exists mostly for non-economical purpose for example, conservation of rare flora and fauna species, medicinal tree preservation.
- (ii) Forests are game habitats
- (iii) Gazetted forest is not available for sale hence difficult to quantify.

### **Committee Observation**

**The Committee observed that the Kenya Forest Service did not have ownership documents for most of its assets including the forests and other protected areas.**

### **Committee Recommendation**

**The Committee recommends that that the Cabinet Secretary, Ministry of Environment, Water and Natural Resources and the Managing Director of Kenya Forest Service(KFS) work closely together to fast track the acquisition of the remaining one hundred and eighty eight (188)title deeds before the next audit so as to protect its assets from encroachment.**

### **24.2 CASH AND CASH EQUIVALENTS: FY 2008/2009 ACCOUNTS**

The Committee heard that in financial year 2008/2009 accounts the Balance sheet reflects a cash and cash equivalent of figure of Kshs. 851, 952,805 while the cashbook shows a balance of Kshs 684, 528,224 as at 30 June 2009, resulting in an un-reconciled and unexplained variance of Kshs. 167,424,581, further payments totaling Kshs 223,542, 210 in the Bank statements in respect to Grant Account had not been reconciled with the cash book as at 30 June 2009, while receipts in Cashbook totaling Kshs. 6,629,449 collected between October 2008 and May 2009 had not been entered in the Bank statements as at the same date. In the circumstance it has not been possible to confirm the validity and accuracy of Cash and Cash Equivalents balance of Kshs. 851,952, 805as at 30<sup>th</sup> June 2009.

The Management informed the Committee that the variance was an issue of reconciliation between the system and manual cashbook which was resolved and confirmed by the Kenya National Audit Office.

### **Committee Observation**

**The Committee observed that the Kenya Forest Service had failed to undertake reconciliation in its cash book and in the bank statements resulting in variance in the cash and cash equivalent balance.**

### **Committee Recommendation**

**The Committee recommends that the Kenya Forest Service undertakes proper reconciliation of its cash book and bank statements timely.**

### **24.3 TRADE AND OTHER RECEIVABLES: FY 2011/2012 ACCOUNTS**

The Committee had that in the financial year 2011/2012 accounts, trade and other receivables balance of Kshs. 251,373,495 includes debtors totaling Kshs. 82,530,320 (33%) which have remained outstanding for over one year. Management has indicated that the debts are owed by Government agencies, like National Intelligence Services (NIS), Kenya Army, Kenya Police and Kenya Broadcasting Corporation claiming to be providing essential services to the country.

The matter has been handed over to the parent Ministry for arbitration, however the Service has not made any provision in the financial statements for these debts whose

recoverability is obviously doubtful. In the foregoing it could not be established whether the trade and other receivable balance of Kshs. 251, 373,495 as 30<sup>th</sup> June is fairly stated.

### **Management Response**

The Management informed the Committee that the Service issued invoices to all Government agencies who have installations in gazetted forests, some responded positively while others such as the NIS, Kenya Police Service argued that the installations in the Forest are all used for security purposes and for the public good.

The Service Board of Directors and the Parent Ministry had resolved to escalate the matter to various government departments e.g. Treasury, Attorney General and Kenya National Assembly to give direction on the matter.

### **Committee Observation**

**The Committee observed that the National Intelligence Services (NIS), Kenya Army, Kenya Police and Kenya Broadcasting Corporation owe Kenya Forest Service a long outstanding debt totaling Kshs. 82,530,320 which is equivalent to 33% of the service total debts owed.**

### **Committee Recommendations**

**The Committee recommends that, notwithstanding the purpose, National Intelligence Services, the Kenya Police, Kenya Broadcasting Corporation and all other Government agencies having installations at gazetted forests should pay the money owed to Kenya Forest Service because every organization expenditure is budgeted for by the Exchequer and should in future promptly pay lease or other charges legally levied for use of forest land which is a public asset under the custody of Kenya Forests Service.**

**The Committee recommends that all named Government Agencies should pay the monies owed to KFS within two months of adoption of the report and KFS to give a status report in four months.**

## 25.0 KENYA WILDLIFE SERVICES: FY 2007/2008 TO 2011/2012

### REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF KENYA WILDLIFE SERVICES FOR THE FINANCIAL YEARS 2007/ 2008 TO 2011/2012

**Mr. William Kiprono, Director KWS, accompanied by Ms. Joycelyn Makena, officer in the Land Management Department, Mr. Wiliam Waweru, Finance Officer, Mr. Tom Sipul, Deputy Director Corporate Services, Mr. Gideon Gathara, Conservation Secretary, Ministry of Environment & Natural Resources and Mr. Moses Mulonzo appeared before the Committee to adduce evidence on KWS audited accounts for FY 2007/2008 to 2011/2012.**

#### **25.1 FIXED ASSETS:**

The Committee heard that the fixed assets excludes land held by Kenya Wildlife Service(KWS) comprising of 26 Parks, measuring 29,368 sq. km, 33 National Reserves measuring 15, 723 sq. km but includes 101 parcels of land outside the protected areas. Assets records for the KWS however show that except for the boundary plans and the related Kenya Gazette Notices, KWS does not hold title deeds for the National Parks measuring 31,616 sq. km and also for some 84 parcels of land. It has, therefore, not been possible to confirm the ownership and security of the land or even the correctness of the value of Kshs. 325,018,000 reflected in the accounts against such land.

##### **(i) Residential Staff House –Mombasa Marine**

The Committee heard that KWS undertook construction of staff houses on a piece of land at Mombasa Marine National Park headquarters near Jomo Kenyatta Public Beach. This land had been erroneously allocated to a private developer in 1996 when the service was already in occupation of the same piece of land. The Government has since recovered and allocated the piece of Land to the Permanent Secretary Treasury who was in charge of all Government Assets.

#### **Management Response**

The Director, KWS informed the Committee that the Corporation has put a spirited campaign to have the erroneous allocation revoked and in 1998 the Commissioner of Lands wrote to the Town Clerk of Mombasa Municipal Council recommending that the land belongs Kenya Wildlife Service for use in Marine Conservation. In 2002 the Organization presented the case to Public Investment Committee which recommended the irregular allocation of the land be reverted to Kenya Wildlife Services.

##### **(ii) Mombasa Marine National Park**

The Committee heard that the ownership of Mombasa National Park was in question as the land had been allocated to third parties.

#### **Management Response**

The Management informed the committee that Mombasa Marine National Park belonged to the Kenya Wild life Service as per Legal Notice number 315 of 11<sup>th</sup>

December 1998, Letter of Allotment Ref. No.202021/II dated 21<sup>st</sup> January 2000 and Delineated by Boundary plan number 204/59 dated 10<sup>th</sup> December 1986.

**(iii) Amboseli National Park L.R N.O13205**

The Committee was informed that the Park was owned by Kenya Wildlife Service as per the Legal notice number 120 of 29<sup>th</sup> September 2005. And a letter of allotment issued to the organization on 27<sup>th</sup> August 1997 by the Commissioner of lands. However during the preparation of the title documentation Olekejuado County Council went to court claiming ownership of the Land. The case has since been determined in favor of Kenya Wildlife Service as per the court order dated 10<sup>th</sup> November 2010. The Organization is in the process of finalizing preparation of the title documents.

**(iv) Namanga**

The Committee heard that the parcel of land is not a park but it is a Kenya Wildlife Service station used as an outpost. However the Government Compulsorily acquired it for one stop border post vide Gazette Notice Vo. CXIV-NO.1 of 6<sup>th</sup> January 2012 and later Kenya Wildlife Service and other organizations that were affected by the compulsory acquisition were compensated and given temporarily alternative vide a (Gazette Notice Vol. CXIV- NO.1)

**(v) Loitoktok**

The Committee heard that three parcels of land had not been surveyed. The Organization has put in place planning, surveying and plan preparation and finally registering to obtain the titles, so far the organization has managed to prepare Part Development Plan for the three plots.

Kenya Wildlife Service has requested the Director of Surveys to assist in undertaking the surveys of the three parcels of land within Loitoktok and the process is ongoing.

**Committee Observation**

**The Committee observed that;**

- i. KWS did not hold title deeds for various National Parks and Game Reserves measuring 31, 616 sq. km.**
- ii. Some of the KWS land had been allocated to private entities while some remain unsurveyed.**

**Committee Recommendation**

**The Committee recommends that;**

- i. KWS should seek the intervention of the National Lands Commission for the pieces of land to be reverted to the Service.**
- ii. KWS should request the Director of Surveys to assist in undertaking the surveys of the three parcels of land within Loitoktok.**

## **26.0 KENYATTA NATIONAL HOSPITAL: FY 2007/2008 TO 2011/2012**

### **REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF KENYATTA NATIONAL HOSPITAL FOR THE FINANCIAL YEARS 2007/2008 TO 2011/2012**

The CEO, Kenyatta National Hospital (KNH) Ms. Lily Koros Tare accompanied Mr. Carylus Och'ango D.D.F.A K.N.H; Mr. Michael Kihuga S.A.D Finance K.N.H; Ms. Ludmila Shitakha S.A.D/C.S.S; Dr. T. Muite S.A.D Medical services; Mr. Wasonga Chief Accountant; Mr. Josphat Wambugu D.S.A.D Tec Services; Ms .Joyce K. Ongayo H.R.M; Ms. Rose Mugambi S.A.D Supply chain management; Mr. Clavin Nyachoti S.A.D Corporation Sec. and Dr. Odera Ag. D.D.Cs K.N.H appeared before the committee to present documentary evidence requested for in the audit queries raised in the last meeting.

#### **26.1 INVENTORIES: FYs 2007/2008 TO 2011/2012 ACCOUNTS**

The Committee heard that the validity and accuracy of inventory balances between FYs 2007/2008 to 2011/2012 whose cause was investigated and established as due to deficits, surpluses and obsolete stocks but adjustments not effected, could not be ascertained. The Board had established that the deficits/surpluses were mainly caused by inadequate documentation and had therefore recommended disciplinary action against the staff in charge of the stores.

#### **Management Response**

The Chief Executive Officer informed the Committee that disciplinary action including surcharge was taken against officers in charge of the stores and that the Hospital had installed automated inventory software to reduce stock deficiencies.

#### **Committee Observation**

The Committee observed that the management had taken inordinately long to institute disciplinary measures against the concerned officers; Ms Sharon Gitari - Kshs. 2,501,453, Mr. Zablon Mokaya - Kshs.757,591.13, Mr. Geoffrey Nguya - Kshs.43,853, Mr. James Mungira - Kshs.54,025.84, Mr. John Munyao - Kshs. 2,896.50, Ms Lynette Muraga - Kshs. 3,555,625.82, Ms. Juliana Mulei - 2,715,815.35, and Ms. Margaret Ingudi - 30,041.73.

#### **Committee Recommendations**

The Committee further observed that stock taking was not done periodically as required thus leaving room for pilferage and abuse.

The Committee recommends that disciplinary action be taken against; Ms Sharon Gitari - Kshs. 2,501,453, Mr. Zablon Mokaya - Kshs.757,591.13, Mr. Geoffrey

Nguya – Kshs.43,853, Mr. James Mungira – Kshs.54,025.84, Mr. John Munyao – Kshs. 2,896.50, Ms Lynette Muraga – Kshs. 3,555,625.82, Ms. Juliana Mulei – 2,715,815.35, and Ms. Margaret Ingudi – 30,041.73. Surcharge procedures should also be expeditiously instituted and money recovered for the loss incurred by the hospital.

#### **26.2 TRADE AND OTHER RECEIVABLES: FY 1994/1995 ACCOUNTS**

The Committee heard that out of the Kshs 16 million, Kshs 11, 538, 177.60 relates to unsettled losses during the FY 1994/1995, through fraudulent clearance for cheques which were then credited in other accounts instead of the intended payees.

##### **Management Response**

The Chief Executive Officer informed the Committee that the employee involved had been dismissed from service. Further the Committee was informed that KNH had made requests to the National Treasury for the write off Kshs. 1,853,127,172.80 both on the 26<sup>th</sup> Feb 2011 and 7<sup>th</sup> March 2014. But National Treasury is yet to respond.

The Committee observed that in spite having made the request to Treasury for the write off, no response had been obtained by the Hospital.

##### **Committee Observation**

**The Committee observed that Kenyatta National Hospital incurred losses amounting to Kshs 11,538, 177.60 during the FY 1994/1995, through fraudulent clearance for cheques which were then credited in other accounts instead of the intended payees.**

##### **Committee Recommendations**

**The Committee recommends that disciplinary action be taken against the employee involved in the fraudulent clearance of the cheques including surcharge, recovering of money and prosecution.**

**The Committee further recommends that EACC investigates the circumstances under which cheques were fraudulently cleared with the aim of recovering the money and prosecuting those found culpable.**

#### **26.3 PREPAYMENTS: FY 2002/2003 ACCOUNTS**

The Committee heard that the Trade and receivables included prepayment amount totaling Kshs. 31,733,575 related to three supply contracts which included Kshs 15,792,611 which is in dispute; Kshs. 13,727,655 was under investigation and the Kshs. 2,213,309 whose job was incomplete.

##### **Management Response**

The Chief Executive Officer informed the Committee that the Glotecx Medical Kenya Ltd had been paid Kshs. 13,727,655 in the 2002/2003 financial year through Cheque No. 023904 but no recovery of the money paid had been done yet. The Hospital conducted

an official search at the registrar of companies but there were no details of the company directors at the companies' registry.

The Committee was further informed that the matter had been reported to EACC who had taken all the files relating to Glotecx Medical Kenya Ltd and Microtec Office Supplies for further investigations.

### **Committee Observations**

**The Committee observed that KNH awarded a contract to Glotecx Medical Kenya Ltd and paid Kshs. 13,727,655 through Cheque No. 023904 and another contract was awarded to Microtec Office Supplies which failed to deliver.**

**The Committee noted with concern that EACC has been handling the matter for the past 6 years without meaningful progress.**

**The Committee also noted that the two companies were not registered with the Registrar of Companies.**

### **Committee Recommendations**

**The Committee recommends as follows:-**

- 1) That EACC fast tracks and finalizes the case within six months with the aim of recovering the lost money and prosecute those involved.**
- 2) That EACC investigates the circumstances under which the two companies that were not registered managed to secure tenders from the hospital and how they were paid. EACC should also investigate the procurement processes leading to award of tender to the two companies.**
- 3) That the then Chief Executive Dr. Meshack Onguti be held accountable for the loss incurred by the Hospital as a result of award of contracts to companies that did not have capacity to deliver.**
- 4) That EACC investigates and recommends prosecution by the Director of Public Prosecutions of the then Chief Executive Officer for:
  - i) His role in the award of tenders to Glotecx Medical Kenya Ltd and Microtec Office Supplies, companies that failed to deliver in spite being paid;**
  - ii) Abuse of office contrary to Section 101 of the Penal Code;**
  - iii) Contravention of Section 10 of the Public Officer Ethics Act, 2003 and**
  - iv) Contravention of the Public Procurement and Disposal Act, 2005****
- 5) That the then Chief Executive Officer Dr. Onguti be surcharged or money recovered from them to make for the loss caused.**

## **26.4 PROPERTY, PLANT AND EQUIPMENT: FY 2011/2012 ACCOUNTS**

The Committee heard that the Property, Plant and Equipment balance of Kshs. 11,720,065,688 as at 30<sup>th</sup> June 2012 includes 4 parcels of land with total hectares of 0.685 located at upper hill and valued at Kshs. 50,600,000 which have been excised and allocated to other parties. Further the property plant and equipment balance of Kshs. 11,720,065,688 also include 3 parcels of land with total hectares of 4.471 valued at Kshs. 329,000,000 whose ownership is contested between Kenyatta National Hospital, Kenya Medical Training College and National Quality Control Laboratory. It is not possible to ascertain the ownership status of the parcels of land in dispute and that the balance of Kshs. 11,720,065,688 as at 30<sup>th</sup> June 2012 is fairly stated.

### **Management Response**

The KNH management responded that they had been making informal meetings with the National Land Commission and Ministry of Lands, Housing and Urban Development on the matter including email communication. Attempts to do a formal search on the on the six parcels of land that had been grabbed were unsuccessful due to lack of an original title deed. The Management also informed the Committee that the remaining two parcels of land had a caveat and that the titles are yet to be revoked. The Committee was also informed that the Hospital had scheduled a meeting with the Cabinet Secretary, Ministry of Lands, Housing and Urban Development on 4<sup>th</sup> June 2014.

The Committee was further informed that LR 209/12767 irregularly allocated to Chal developers Ltd, LR 209/12822 irregularly allocated to Grace Njoki Gikiria and LR 11976 have caveats while files for LR 209/11460 irregularly allocated to Isaac G. Wanjohi and LR 209/13319 irregularly allocated to Margaret Nyakererio Onyango and Petronilla Muli and LR. 209/14269 are missing at the land registry.

### **Committee Observation**

**The Committee observed that the Corporation had done little to protect public land and address the issue of land and had provided adequate information.**

### **Committee Recommendations**

**The Committee recommends that the National Land Commission revokes titles irregularly issued to the private entities and that new titles be issued to Kenyatta National Hospital.**

**The Committee also recommends that the management of Kenyatta National Hospital should urgently take appropriate measures to secure the land and ensure no further encroachment.**

**The Committee further recommends that the EACC investigates circumstances under which public land under the custody of KNH was allocated to individuals with the view of recovering the land and recommend prosecution by the Director of Public Prosecution for abuse of office contrary to Section 101 of the Penal Code and Section 10 of the Public Officer Ethics Act, 2003 of all those involved in the irregular transaction including the then CEO of KNH, Ministry of Lands, Housing**

and Urban Development officials, and private entities by the names; Chal Developers Ltd LR 209/12767, Grace Njoki Gikiria LR 209/12822, Isaac G. Wanjohi LR 209/11460, Margaret Nyakererio Onyango LR 209/13319 and Petronilla Muli LR. 209/14269 who irregularly acquired the land

The Committee further recommends that the then CEO of KNH be surcharged or money recovered from them to make for the loss incurred by them.

## **27.0 KENYA SEED COMPANY LIMITED: FY 2007/2008 TO 2011/2012**

### **REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF KENYA SEED COMPANY LIMITED FOR THE FINANCIAL YEARS 2007/2008 TO 2011/2012**

The Managing Director, Mr. Willy Bett accompanied by Ms. Catherine Musaka, Mr. Michael Rotich, PA to the MD, Mr. Patrick Thuo, Head of Finance, Ms. Rose Cauri Company Secretary and Head of Legal Services, Mr. Ambrose Ngare and Mr. Anthony Korir Head of Procurement appeared before the Committee to adduce evidence on the audited accounts of the Corporation for the period 2007/2008 to 2012/2013.

#### **27.1 DISPUTED TAX: FY 2005/2006 ACCOUNTS**

The Committee heard that the company failed to make provision for tax during the year under review.

##### **Management Response**

The management informed the Committee that there is a dispute on the tax to be paid however the company is following the issue of tax through arbitration. There was no provision made for tax in the year under review but subsequent years the company has paid all its taxes and has put in place risk management unit.

##### **Committee Observation**

**The Committee observed that company failed to make provision for tax.**

##### **Committee Recommendation**

**The Committee recommends that the Managing Director ensures that the Company pays tax in a timely manner**

#### **27.2 SHAREHOLDING/INVESTMENT: FYs 2010/2011 AND 2011/2012 ACCOUNTS**

The Committee was informed that in the financial years 2010/2011 and 2011/2012 accounts share investments in the subsidiary companies of Kenya Seed Company Limited could not be confirmed due to lack of share certificates. The Share certificates were not availed for audit review.

### **Management Response**

The Management informed the Committee that the share investments in subsidiary companies could not be confirmed due to lack of share certificate. The certificates are not available since the company documents were destroyed in a fire incident.

### **Committee Observation**

**The Committee observed that private individuals were issued with shares of the company under mysterious circumstances and further that the company does not have share certificates for subsidiary companies.**

### **Committee Recommendations**

**The Committee recommends that EACC investigates the circumstances under which private individuals acquired shares in a public company, Kenya Seed Company and recommends prosecution by the Director of Public Prosecutions.**

**The Committee also recommends that the management ensures that the company acquires share certificates of the subsidiary companies.**

**The Committee further recommends that the share certificates irregularly acquired should be reverted back to the Government of Kenya as the sole shareholder within six months of adoption of the Report.**

### **27.3 GOING CONCERN STATUS: FYs 2005/2006 TO 2011/2012**

The Committee was informed that the subsidiaries of Kenya Seed Company (Kibo Seed, Mt. Elgon Company) are making losses and only surviving on support from Kenya Seed Company Limited.

### **Management Response**

The Managing Director, Kenya Seed Company Limited informed the Committee that this was because the capital base of the subsidiaries was not established well, the subsidiaries were not formally established, and that some of the subsidiaries used money from seed stock sales for operational expenses.

### **Committee Observation**

**The Committee observed that the operational expenses of the subsidiaries were higher than the stock sales and further that there was embezzlement of revenue from stock sales and that there was under capitalization of the subsidiaries.**

### **Committee Recommendations**

**The Committee recommends that the Kenya Seed Company winds up the operations of subsidiary companies that were making losses and capitalizes those that are generating revenue.**

**The Committee further recommends that investigation be undertaken by the Inspectorate of State Corporations on how the subsidiaries were established and reasons for the dismal performance.**

## **27.5 SHAREHOLDING/ADC: FY 2009/2010 AND 2011/2012 ACCOUNTS**

The Committee was informed that ADC has been buying shares from the private company over time.

### **Management Response**

The Managing Director informed the Committee that there was need to invest in strategic seed reserve and irrigation for food security in light of the ever-shrinking arable land.

### **Committee Observation**

**The Committee observed that Agricultural Development Corporation (ADC) is the majority shareholder of Kenya Seed Company Limited yet it was represented in the Board by only one director.**

### **Committee Recommendation**

**The Committee recommends that Agricultural Development Corporation (ADC) as a majority shareholder should have commensurate number of Board Members on the Kenya Seed Board.**

## **28.0 KENYA MARITIME AUTHORITY: FY 2005/2006 TO 2011/2012**

### **REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF KENYA MARITIME AUTHORITY FOR THE FINANCIAL YEARS 2005/2006 TO 2011/2012.**

The Director General Nancy Karigithu, accompanied by Head of Corporate Services Cosmas Cherop, ICT Officer Mr. Alphonse Kioko and Port State Control Officer Capt. Mbarak Zaunga appeared before the Committee to give evidence on the Kenya Maritime Authority's accounts for the 2005/2006 to 2011/2012 financial years.

The Committee also visited the Kenya Maritime Authority in their premises in Mombasa.

### **28.1 BALANCE SHEET, FUNDS AND LIABILITIES: FY 2005/2006 ACCOUNTS**

The Committee heard that during the audit no documents were produced to confirm the transfer of funds, assets and liabilities formerly held by the Merchant Shipping Superintendent (MSS) to Kenya Maritime Authority (KMA). It was therefore not possible to confirm the accuracy and completeness of the assets, liabilities and funds reflected in the financial statements as at 30<sup>th</sup> June, 2006.

### **Management Response**

The Director General informed the Committee the Authority is operating under the Kenya Maritime Act, 2006.

### **Committee Observation**

The Committee observed that in the absence of documents on the transfer of funds, assets and liabilities formerly held by the Merchant Shipping Superintendent (MSS) to Kenya Maritime Authority (KMA) the accuracy of the assets, liabilities and funds of Kenya Maritime Authority could not be ascertained.

### **Committee Recommendations**

The Committee recommends that the Kenya Maritime Authority (KMA) management should ensure that all assets and liabilities of Merchant Shipping and Superintendent are transferred to KMA and should be reflected in the financial statements.

### **28.2 OFFICE RENOVATIONS: FY 2005/2006 ACCOUNTS**

The Committee heard that during the year under review the Authority undertook renovations of White House building belonging to Kenya Ports Authority whose tenancy agreement has not been signed at a cost of Kshs. 1,550,312. In the absence of a tenancy agreement, it is not possible to ascertain how the expenditure of Kshs. 1,550,312 will be treated in the books of accounts.

### **Management Response**

The Director General informed the Committee that the tenancy agreement was later signed with the Kenya Ports Authority.

### **Committee Observation**

The Committee observed that Kenya Maritime Authority embarked on renovation of White House building at a cost of Kshs. 1,550,312 belonging to Kenya Ports Authority without having signed a tenancy agreement that would have given them the legal mandate to occupy the building and undertake renovations.

### **Committee Recommendation**

The Committee recommends that KMA should desist from engaging in renovation activities of any building without having signed a tenancy agreement.

### **28.3 RECURRENT INCOME: FY 2006/2007 ACCOUNTS**

The Committee heard that during the year under review the Income and Expenditure statement reflects an amount of Kshs. 102,295,874 under M.S.S Levy income. According to the available information, the levy is collected on behalf of the Kenya Maritime Authority by Kenya Ports Authority. However no documents have been availed indicating the basis on which the levy is charged. Consequently, it has not been possible to confirm the validity and accuracy of the M.S.S levy figure of Kshs. 102,295,874.

The Director General informed the Committee that legal regulations on the deduction of the levy were put in place. The collecting agent was changed to Kenya Revenue Authority.

### **Committee Observation**

The Committee observed that Kenya Maritime Authority (KMA) failed to avail documents during audit indicating the legal basis for collection of M.S.S levy which was reflected in the Authority's income and expenditure statement contrary to Section 37 of the Public Audit Act, 2003

### **Committee Recommendation**

The Committee recommends that the Authority should ensure that all relevant primary documents are availed during audit as per Section 37 of the Public Audit Act, 2003.

## **29.0 KENYA MARINE AND FISHERIES RESEARCH INSTITUTE: FY 2003/2004 TO 2011/2012**

### **REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF KENYA MARINE AND FISHERIES RESEARCH INSTITUTE FOR THE FINANCIAL YEAR 2003/2004 TO 2011/2012**

The Ag. Director, Kenya Marine and Fisheries Research Institute(KEMFRI) Dr. Renison Ruwa accompanied by Mr. Abraham Kagwima Deputy Director Finance; Dr. Jacqueline Uku KCDP-Project; Mr. Oduor Odote BDM; Ms Phidilia Mjomba Planning Officer; Ms Betty Mindraa Nyonje Assistant Director MARK; Mr. Edward Kimani AD M&C Director Fisheries; Ms Treza Bwaumo PMS KDP; Mr. Stephen Mwangi TC KCDP; Mr. Morris Munene Senior Public Relations Officer; Mr. Charles Magori AD(OH); Mr. Sam Ngete Ag CICTO; Mr. Patrick Gwada CD-MSA; Mr. Patrick Guchu S.I.A; Mr. Nyakundi Nyangodi Ag. C.A appeared before the Committee to respond to the audit queries raised by the Auditor General.

### **29.1 DEBTORS: FY 2003/2004 ACCOUNTS**

The Committee heard that the debtor's figure of Kshs 1,487,564 represents money misappropriated by the former director and some staff, and since the matter is in court, it's not possible to ascertain whether and how much of the amount is recoverable.

### **Management Response**

The management of KEMFRI presented that the Director had been acquitted of the charges.

### **Committee Observation**

The Committee visited Kenya Marine and Fisheries Research Institute (KEMFRI) at their premises in Mombasa.

The Committee observed that the former Director, Ms A. C. Koske and some Institute staff; Migara Kinara, James Macharia, Sam Ngate, Peter Nyangwasa,

**Michael Mosoti, James Mutunga, Peter Kombo, Eunice Onyango, Titus Kioko, Dorothy Kuva, Elijah Mokaya, Pamela Ochieng and Phylis Mutere misappropriated funds amounting to Kshs. 1,487,564 contrary to Article 226(5) of the Constitution.**

#### **Committee Recommendations**

**The Committee recommends that the EACC investigates the conduct of the former Director Ms A. C. Koske and some staff; Migara Kinara, Mr. James Macharia, Mr. Sam Ngate, Mr. Peter Nyangwasa, Mr. Michael Mosoti, Mr. James Mutunga, Mr. Peter Kombo, Ms. Eunice Onyango, Mr. Titus Kioko, Ms. Dorothy Kuva, Mr. Elijah Mokaya, Ms. Pamela Ochieng and Ms. Phylis Mutere of the Institute in relation to the misappropriation of money amounting to Kshs. 1,487,564 and recommends prosecution by the Director of Public Prosecutions for:**

- i) Abuse of office contrary to Section 101 of the Penal Code and**
- ii) Fraud contrary to Section 127 of the Penal Code**

**The Committee recommends that money lost from former Director Ms A. C. Koske and staff; Migara Kinara, Mr. James Macharia, Mr. Sam Ngate, Mr. Peter Nyangwasa, Mr. Michael Mosoti, Mr. James Mutunga, Mr. Peter Kombo, Ms. Eunice Onyango, Mr. Titus Kioko, Ms. Dorothy Kuva, Mr. Elijah Mokaya, Ms. Pamela Ochieng and Ms. Phylis Mutere be recovered.**

**The Committee recommends that the Corporation should institute civil cases as opposed to criminal cases so as to be able to recover lost funds.**

#### **29.2 PENSION LIABILITY: FY 2003/2004 ACCOUNTS**

The Committee heard that the balance sheet reflects Kshs. 4,656,914 as pension liability to the staff pension scheme which may actually be an overpayment.

#### **Management Response**

The Ag. Director of KEMFRI presented that the scheme was contributory at 7.5% by the staff and 15% by the organization and it was managed by Alexander Forbes. They had done an actuarial valuation which increased the amount to Kshs. 118.4 million for which the Institute has so far paid Kshs. 57,600,000 and is remaining with a balance of Kshs. 60,800,000.

#### **Committee Observations**

**The Committee commended the Institute for doing the actuarial valuation and paying the liability.**

**The Committee observed that the pension scheme was doing well; however, the office of the Auditor-General had failed to report the actual value of the scheme.**

### **Committee Recommendation**

**The Committee recommends that the actual payment figures of the pension scheme should be reflected in the balance sheet.**

### **29.3 FIXED ASSETS: FY 2004/2005 ACCOUNTS**

The Committee heard that balance sheet figure of Kshs. 125,186,694 was not reconciled to fixed asset register which has not been updated and as such the physical assets could not be verified.

### **Management Response**

The Ag. Director, KEMFRI informed the Committee that the Institute was trying to value the fixed assets and that they were working with a manual register in constructing the Quick books Register which was 95% complete. Further the Committee was informed that the Institute had done a physical stock take about a year before.

### **Committee Observation**

**The Committee observed that the management of KEMFRI lacked the will to have a complete assets register in place. The failure to have an updated asset register may be used to disenfranchise the Institute and the public of its assets.**

### **Committee Recommendation**

**The Committee recommends that the management develops a complete and updated assets register.**

### **29.4 INCORRECT OPENING BALANCES: FY 2004/2005 ACCOUNTS**

The Committee heard that incorrect debtors opening balances were observed on employees' imprest, mobile phone advances, station imprest, foreign currency receivables and other advances. The differences had not been investigated neither adjusted nor adequate supporting records and documentation provided.

### **Management Response**

The Ag. Director, KEMFRI presented that the differences arose between the manual accounts books and Quick books accounting system.

### **Committee Observation**

**The Committee observed that the Institute had incorrect balances of employees' imprest, mobile phone advances, station imprest, foreign currency receivables and other advances and therefore it was not possible to confirm their accuracy.**

### **Committee Recommendation**

**The Committee recommends that the then Director Ms A. C. Koske should be held responsible for failure to undertake this responsibility.**

**The Committee further recommends that the Institute should keep proper books of accounts with the correct figures.**

#### **29.5 NON-COMPLIANCE WITH INTERNATIONAL FINANCIAL REPORTING STANDARDS: FY 2004/2005 ACCOUNTS**

The Committee heard that contrary to the IFRS, the financial statements did not contain comparative notes in respect to notes to the accounts and further the notes to the accounts have not been identified and cross-referenced to the balances in the financial statements. The accumulated fund statement contains an unsupported prior year adjustment of Kshs 5,221,848.

##### **Management Response**

The Ag. Director, KEMFRI informed the Committee that the comparative columns have been added to the stated schedules.

##### **Committee Observation**

**The Committee observed that non-compliance with the IAS may be attributed to the poor qualifications of the accountants.**

##### **Committee Recommendations**

**The Committee recommends that the Institute should ensure that qualified accountants are employed including an internal auditor.**

**The Committee further recommends that there should have continuous training and capacity building of staff and a succession system in place to ensure continuity.**

#### **29.6 PROPERTY, PLANT AND EQUIPMENT: FYs 2006/2007, 2010/2011 ACCOUNTS**

The Committee heard that the balance Kshs.247, 017,305 was not reconciled to the fixed asset register which made physical verification of the assets not possible.

##### **Management Response**

The Ag. Director presented that though the Fixed Asset Register (FAR) was incomplete, the individual accounts card for each asset were available.

##### **Committee Observation**

**The Committee observed that the Corporation failed to reconcile its fixed asset register thus making the physical verification of the assets impossible.**

##### **Committee Recommendation**

**The Committee recommends that the Institute should ensure that property, plant and machinery balance is reconciled with the fixed assets register for proper physical verification of assets.**

## **29.7 DIRECT BANK DEBIT: FYs 2007/2008, 2008/2009, 2009/2010, 2010/2011 ACCOUNTS**

The Committee heard that Kshs. 249,604 was withdrawn from the Institute's bank account without management approval. The same was not incorporated in the financial statements or disclosure done as per IAS No. 37 nor the accumulated deficit verifiable.

### **Management Response**

The Ag. Director informed the Committee that the money was a withdrawn from a savings account by their Kisumu Center Senior Accountant who had not been confirmed and who forged the signature of the second signatory. The Senior Accountant has since died. Though the matter was with the police, the management requested for Board approval to write off the debt. They had also instituted clearance policy and changed the account to a current account.

### **Committee Observation**

**The Committee observed that indebtedness is not terminated by death but the administrator of the deceased estate can be sued for recovery of the debt**

### **Committee Recommendation**

**The Committee recommends that monies owed be recovered from the administrator of the estate of the deceased.**

**The Committee further recommends that the Corporation writes off debts owed after exhausting all avenues to recover especially from those who had died and have no estates.**

## **29.8 CASH AND CASH EQUIVALENTS: FYs 2005/2006, 2008/2009, 2009/2010, 2010/2011 ACCOUNTS**

The Committee heard that a reconciliation statement between the opening manual cashbook balance of Kshs 65,529,945 and the corresponding QuickBooks balance of Kshs. 69,260,471 had not been prepared. The closing cashbook figure of Kshs. 99,242,497 was not reconciled with the closing amount of Kshs 107,604,208 in the QuickBooks System.

### **Management Response**

The Ag. Director, KEMFRI informed the Committee that the reconciliation differences arose after the Institute procured and installed Quick Books software to computerize the accounting records. The accounts have been reconciled.

### **Committee Observation**

**The Committee observed that the Corporation failed to reconcile its cash and cash equivalent figures.**

### **Committee Recommendation**

**The Committee recommends that the director ensures that the Institute undertakes reconciliations of its accounts as per the financial regulations.**

### **29.9 CASH AND CASH EQUIVALENTS (DONOR PROJECT BANK ACCOUNTS): FY 2008/2009 ACCOUNTS**

The Committee heard that 55 Bank accounts with a total of Kshs. 8,556,838 were un-reconciled. 16 bank account balances in Quick books were lower than their equivalent in the manual system showing a variance of Kshs. 7,330,037. 30 bank account balances were higher in Quick books than in manual system giving a variance of Kshs. 8,626,552.

### **Management Response**

The Ag. Director, KEMFRI presented that bank reconciliations are now done monthly.

### **Committee Observation**

**The Committee observed that the Institute failed to reconcile various accounts and did not close project accounts after the projects ended.**

### **Committee Recommendation**

**The Committee recommends that the Managing Director ensures that the institute undertakes timely reconciliation of its accounts and that project accounts should be closed as soon as the project has ended.**

### **29.10 REVALUATION RESERVE: FY 2009/2010 ACCOUNTS**

The Committee heard that Kshs. 114,114,661 represented accumulated revaluation reserve surplus from previous years which was charged to statement of comprehensive income instead of directly to retained earnings as per IAS no. 16 paragraph 41. Also transfers from revaluation surplus to retained earnings are not made through the profit or loss.

### **Management Response**

The Ag. Director, KEMFRI presented that the revaluation surplus arose from revaluation of land and buildings. The surplus was posted to the wrong account and had since been corrected.

### **Committee Observation**

**The Committee observed that the Institute failed to adhere to international accounting standards No. 16 as relating to handling of accumulated revaluation reserve surplus.**

### **Committee Recommendations**

**The Committee recommends that the institute adheres to the International Accounting Standards.**

**29.11 PROPERTY, PLANT AND EQUIPMENT: FYs 2007/2008, 2009/2010, 2010/11, 2011/2012 ACCOUNTS**

The Committee heard that the Institute owned two un-surveyed land in Baringo and Mtwapa and one surveyed parcel in Shimoni which were not valued nor included in the Property, Plant and equipment figure. A parcel at Sangoro valued at Kshs.2, 392,000 did not have title documents.

**Management Response**

The Ag Director, KEMFRI informed the Committee that the Sangoro land had been community land donated by seven owners in exchange for employment, four of which signed the transfer forms for which the Institute has title documents. They are still negotiating with the other three. The Institute presented that the lands in Baringo, Mtwapa and Kisumu had been grabbed by private developers. They had reported the matter to EACC and the police.

**Committee Observation**

**The Committee observed that Institute owned two un-surveyed parcels of land in Baringo and Mtwapa and one surveyed parcel in Shimoni which were not valued nor included in the Property, Plant and equipment accounts.**

**Committee Recommendations**

**The Committee recommends that the Director ensures that the Institute acquires ownership documents for all its land.**

**The Committee further recommends that the National Land Commission revokes ownership documents issued to third parties for land belonging to Kenya Marine and Fisheries Research Institute and reissues the title deeds to KEMFRI.**

**The Committee also recommends that the EACC investigates the circumstances surrounding the irregular allocation of public land under the custody of KEMFRI to third parties with a view to recovery and prosecution of those found culpable.**

**29.12 SALE OF KONGOWEA PLOT: FY 2010/2011 ACCOUNTS**

The Committee heard that the Kongowea plot though valued at Kshs. 22,800,000 was sold at Kshs. 15,020,000 from which the lawyers involved in the transaction kept Kshs. 1, 575,077 making a payment of Kshs. 13,444,923 after 2 years to the Institute. Further the lawyers did not pay accrued interest for the two years.

**Management Response**

The Ag. Director, KEMFRI informed the Committee that the Institute had acquired the land to build staff housing but this changed when the Government policy on staff

housing changed. They obtained the bid competitively of Kshs 15m after advertising. The land had been invaded by squatters which caused the value to fluctuate. The transaction amount paid to the lawyers was deposited in their general account thus not accruing interest. The Kshs. 1,575,077 included legal fees, municipal council land rates and rates clearance certificate.

### **Committee Observation**

**The Committee observed that the land belonging to the Research Institute was disposed of through a flawed disposal process at a price below the market price, and that it had taken long to pay the bid price.**

**The Committee observed that the land was critical to the development of research in the country.**

### **Committee Recommendations**

**The Committee recommends that EACC investigates the circumstances surrounding the disposal of the property including the role of the then Director of KEMFRI Dr. Johnson Kazungu, why the bid price was paid long after the sale.**

**The Committee also recommends that the Government should repossess the land and reverted for use by KEMFRI.**

### **29.13 FINANCIAL PERFORMANCE: FY 2011/2012 ACCOUNTS**

The Committee heard that the Institute recorded a deficit of Kshs 28,570,460 resulting in an accumulated deficit of Kshs. 190,134,812. This was attributed to the Government underfunding the Institute.

### **Management Response**

The Ag. Director, KEMFRI presented that the accumulated deficit occurred due to annual depreciation charge of Kshs. 10.6 million and underfunding from the Government. The Institute was liaising with the National Treasury for additional funds under Agriculture and Rural development.

### **Committee Observation**

**The Committee observed that the Institute is reliant on Government funding.**

### **Committee Recommendation**

**The Committee recommends that the Institute diversifies its revenue base to reduce over reliance on Government support.**

### **30.0 KENYA FERRY SERVICES LIMITED: FY 2003/2004 TO 2011/2012**

#### **REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF KENYA FERRY SERVICES LIMITED FOR THE FINANCIAL YEARS 2003/2004 TO 2011/2012**

**The Managing Director Musa Hassan; Finance Officer Bakari Gowa; Administrative Officer Jackson Baragu; Principal Engineer Athmani Washenga; Procurement and Supplies Manager Jeniffer Cirindi; Procurement Officer Samuel Mbiri; Operations Manager Anthony Mwadzungu; Security Officer Hamisi Kamanya; Mwasaha Kalu, Hamet Ngeenda, Elizabeth Wachira appeared before the Committee to adduce evidence on the accounts of Kenya Ferry Services for the Financial Years 2003/2004 - 2011/2012**

#### **30.1 UNQUALIFIED AUDIT REPORT FOR FY 2003/2004 ACCOUNTS**

The Committee was informed that the Company in this financial year obtained an unqualified audit report and financial statements.

##### **Committee observation**

**The Committee observed that the Auditor General gave Kenya Ferry Services Limited a clean report on Accounts for the FY 2003/2004**

##### **Committee Recommendation**

**The Committee commended Kenya Ferry Services Limited for receiving a clean report for in accounts for the FY 2003/2004**

#### **30.2 FINANCIAL PERFORMANCE: FY 2004/2005 ACCOUNTS**

The Committee heard that during the year under review the Company incurred a deficit of Kshs. 64,084 which brought its accumulated deficit to Kshs. 882,245,317 from Kshs. 816,307,788 accumulated in the previous Financial Year.

##### **Management Response**

The Managing Director informed the Committee that this was a recurring concern and the company is operating on the basis of continued financial support from the Government. The poor financial performance is attributed to reduced income and increased expenditure over the years. The Company is in the process of revising toll charges to enhance its revenue.

##### **Committee Observation**

**The Committee observed that the company is heavily reliant on Government funding.**

##### **Committee Recommendation**

**The Committee recommends that the Kenya Ferry Services diversify its revenue base to reduce over reliance on Government support.**

**The Committee recommends that they should provide its services to other waterways**

### **30.3 ADDITION AND ALTERATION OF PELELEZA OFFICE KSHS. 27,823,317.35: FY 2004/2005/ACCOUNTS**

The Committee heard that in 2004/05 financial year the Company contracted local firms to alter partitions and carryout works on plumbing, air conditioning, electrical wiring, firefighting, fitting glass doors and windows at the their new Head Office (Peleleza) at a budgeted cost of Kshs.9,874,317. At the time of completion the total cost had escalated to Kshs. 27,823,317 and no board approval of the variations was provided. Further no records were produced at the time of audit to confirm government procurement regulations were adhered to during the procurement process.

#### **Management Response**

The Managing Director informed that Committee that proposals to alteration and partitioning of the office were approved by the Board of Directors during a meeting held on 28th February, 2003.

#### **Committee Observation**

**The Committee observed that the meeting to approve partitioning of the office was held later and the cost of alteration was well above the 15% allowed by the law after the variations.**

#### **Committee Recommendations**

**The Committee recommends that the then Managing Director be held responsible and accountable for the cost overruns incurred by the services in the alteration of the offices over and above the recommended threshold and without the Board approval.**

**The Committee further recommends that the Managing Director be held responsible for contravening the provisions of the Public Procurement and Disposal Act, 2005.**

### **30.4 KENYA PORTS AUTHORITY ADVANCE: FY 2005/2006 ACCOUNTS**

The Committee heard that as at 30<sup>th</sup> June 2006 an amount of Kshs.325,506,569 was included in the non-current liabilities which is an advance from the Kenya Ports Authority. The advance is at variance with the figure in Kenya Ports Authority's records of Kshs. 441,189,136.44. In the absence of reconciliation between the two figures it is not possible to confirm the propriety of the balance of Kshs.325, 506,569.

#### **Management Response**

The Managing Director informed the Committee that the difference is due to the Kenya Ports Authority's accruing interest on the balance.

### **Committee Observation**

**The Committee observed that the Kenya Ferry Services had not reconciled its figures with those in the accounts of Kenya Ports Authority relating to an advance from Kenya Ports Authority.**

### **Committee Recommendation**

**The Committee recommends that Kenya Ferry Services and the Kenya Ports Authority harmonize and reconcile the advance from Kenya Ports Authority and agree on the modalities of payment.**

### **30.5 PURCHASE OF TWO NEW FERRIES: FY 2008/2009 ACCOUNTS**

The Committee heard that the Company contracted a German firm to design, manufacture, deliver and commission two new ferry vessels and provide backup spares at a contract price of Kshs. 898,573,840. Later the Management varied the specifications of the vessels four months after signing the contract and as a result the contract price increased by approximately 25% to Kshs.1, 250,624,774 which is against the Public Procurement and Disposal Act.

### **Management Response**

The Managing Director informed the Committee that the officers involved in the irregularities were dismissed from service following the recommendations of Inspectorate of State Contractions, Ethics and Anti-Corruption and Commission and an Ad hoc Committee.

### **Committee Observation**

**The Committee observed that the Kenya Ferry Services revised the specifications for the ferries long after it had signed the contract for the supply of the ferries thus leading to escalation of costs.**

### **Committee Recommendation**

**The Committee recommends that EACC investigates the procurement of the two ferries by Kenya Ferries Services and the circumstances under which the specifications were varied after the contract had long been entered into.**

### **30.6 BOARD EXPENSES: FY 2009/2010 ACCOUNTS**

The Committee heard that as at 30<sup>th</sup> June, 2010 the board expenses of Kshs.17, 613,285 includes an unexplained amount of Kshs. 2,377,285. Consequently the propriety of this expenditure could not be ascertained.

The Managing Director informed the Committee that during the period under review top managers and the Board were forced to play an executive role for some time due to challenges experienced by the Company in the period.

### **Committee Observation**

The Committee observed that the propriety of board expenses could not be ascertained.

### **Committee Recommendations**

The Committee recommends that the then Board of Directors Mr. S.M. Mwangunda Gunda, Mr. Warui Gitari, Dr. Cyrus Njiru, Mr. Joseph Kinyua, Mr. Joseph Kahindi Kingi, Mr. Mariam Mahero, Mr. Mwalimu Digore, Mr. Khamis S. Khamis, Mr. Francis Olinga, Mr. Martin Eshiwani and Mr. Mulewa, Managing Director be held accountable for the unexplained amount of Kshs. 2,377,285 under board expenses.

The Committee further recommends that EACC investigates the conduct of the Board Members Mr. S.M. Mwangunda Gunda, Mr. Warui Gitari, Dr. Cyrus Njiru, Mr. Joseph Kinyua, Mr. Joseph Kahindi Kingi, Mr. Mariam Mahero, Mr. Mwalimu Digore, Mr. Khamis S. Khamis, Mr. Francis Olinga, Mr. Martin Eshiwani and Mr. Mulewa, Managing Director and the Inspectorate of State Corporations investigates and recovers the said amount from the then individual Board Members listed above.

### **30.7 BUDGETARY CONTROL: FY 2009/2010 ACCOUNTS**

The Committee heard that during 2009/2010 financial year the Company without the approval of the parent Ministry and the Treasury incurred expenditure totaling Kshs.74,997,879 on nine items against a provision of Kshs. 56,550,000resulting to an over expenditure of Kshs. 18,447,879.

The Managing Director informed the Committee that during the year under review, the Company terminated the services of the Managing Director, the Financial Controller and the Principal Finance Officer who were key officers in financial management. This caused serious challenges in the administration of budget.

### **Committee Observation**

The Committee observed that the company overspent in nine items against the budgeted allocation without seeking treasury and parent Ministry approval as required by Section 12 of the State Corporations Act, Cap 446.

### **Committee Recommendations**

The Committee recommends that the EACC investigates the over expenditure and recommends prosecution by the Director of Public Prosecutions for:

- i) contravention of Section 12 of the State Corporations Act, Cap 446;
- ii) abuse of office contrary to Section 101 of the Penal Code and Section 10 of the Public Officer Ethics Act, 2003; and

The Committee further recommends that the company should at all times ensure that expenditure is within the budgeted provisions.

### **30.8 DEVELOPMENT FUNDS: FY 2009/2010 ACCOUNTS**

The Committee heard that during the year 2009/2010 the Company received Kshs. 158,073,331 from the Treasury for the construction and expansion of the landing ramps. However records indicate that the amount was diverted to recurrent expenditure without the approval of the parent Ministry and Treasury. It has not therefore been possible to confirm the propriety of the expenditure of Kshs. 158,073,331 during the year 2009/2010.

#### **Management Response**

The Managing Director informed the Committee that due to the financial challenges facing the Company at the time, Kshs. 158,073,331 was diverted to recurrent expenditure. The Ministry of Transport took action against the concerned staff.

#### **Committee Observation**

**The Committee observed that the company diverted monies under development to recurrent expenditure without the approval of the Parent Ministry and National Treasury contrary to Section 12 of the State Corporations Act, Cap. 446.**

#### **Committee Recommendation**

**The Committee recommends that the then Ag. Managing Director Mr. Isaac Nduati Kamau be held accountable and responsible for the inter vote borrowing without Treasury approval contrary to Section 12 of the State Corporations.**

### **30.9 EX-STAFF DEBTORS: FY 2011/2012 ACCOUNTS**

The Committee heard that trade and other receivables balance of Kshs. 146,817,388 as at 30<sup>th</sup> June 2012 includes Kshs. 2,955,882 in respect of debts due to staff that have since left the Company and no evidence of any recoveries made was availed for audit review.

#### **Committee Observation**

**The Committee observed that the management failed to recover debts due from its staff that had left the institution and no proof of recovery provided for audit review.**

#### **Committee Recommendation**

**The Committee recommends that the then Managing Director Mr. Musa Hassan Musa be held responsible and accountable for the debts owed by ex-staff due to his failure to recover the debts.**

### **30.10 UNREMITTED STATUTORY: FY 2011/2012 ACCOUNTS**

The Committee heard that the financial statements of the year under review include Kshs. 13,381,501 and Kshs. 4,061, 422 in respect of VAT and withholding tax respectively which has not been remitted to the respective agencies as at 30<sup>th</sup> June 2012. The Company was therefore in breach of the law.

### **Management Response**

The Managing Director informed the Committee that during the year under review the company had financial difficulties and coupled with management challenges the company failed to remit its taxes in time. However with the acquisition of new ferries and enhancement of human resource the Company settled all the statutory fees balances.

### **Committee Observation**

**The Committee observed that the Kenya Ferry Service failed to meet its tax obligations during the year under review leading to tax penalties and interest.**

### **Committee Recommendation**

**The Committee recommends that the Managing Director ensures that all statutory deductions are remitted within stipulated time frame.**

## **31.0 COAST DEVELOPMENT AUTHORITY: FY 2007/2008 TO 2011/2012**

### **REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF COAST DEVELOPMENT AUTHORITY FOR THE FINANCIAL YEARS 2008 TO 2012**

**The Managing Director, Coast Development Authority Mr. James Kahindi Mangi accompanied by Ms. Joyce Ochako Executive Secretary; Ms. Victoria Tuua Personal Assistant; Ms. Angelina Mwashumbe M/PRr Communication; Ms. Beatrice Kanemba ICT Officer; Ms Pamela Ngure S.A/F.A; Mr. William Fondo M/ES; Ms. Florence Chome OA; Mr. Mcharo Mwalugha SAO; Mr. J Wainaina Mburu M/ES; Ms. Violet Indiazi S.O Supplier; Ms Mary Salama Ag. CM/F&A; Ms Elizabeth Iwiya Ag CM/HRS; Ms. Josephine Rondo CM/RP&TS; Edel Fuchaka M/LS; Ms Feritus Mng'ong'o BD&IP appeared before the committee to respond to the audit queries raised by the office of the Auditor General for the FYs 2004/2005-2011/2012**

### **31.1 FINANCIAL POSITION: FY 2004/2005 ACCOUNTS**

The Committee heard that Coast Development Authority reported a deficit of Kshs. 7,484,664 resulting in accumulated deficit of Kshs. 82,605,514. The performance casts doubt on the going concern of the company.

### **Management Response**

The Managing Director Coast, Development Authority informed the Committee that the deficit and negative working capital were mainly due to the Government underfunding them which was carried forward from the previous year's account.

### **Committee Observation**

**The Committee visited Coast Development Authority in their premises in Mombasa**

**The Committee observed that the Authority operated on a deficit/negative working capital due to alleged government underfunding.**

### **Committee Recommendation**

**The Committee recommends that the Authority diversifies its revenue base and reduce over reliance on government funding.**

### **31.2 DEBTORS: FY 2004/2005 ACCOUNTS**

The Committee heard that a provision for bad debts in relation to debts owned by former employees amounting to Kshs. 368,447 and investment to Ukunda showground, Kshs. 1,719,290 that had remained dormant was not incorporated in their financial statements.

### **Management Response**

The Managing Director of Coast Development Authority presented that most of the ex-staff debtors were pensioners and they had consented to be paid their pension less the debt and a total of Kshs. 283,000 has been collected. The Authority is holding the title document as security in lieu of the debts related to the showground.

### **Committee Observation**

**The Committee observed that the management had failed to recover debts from employees and Ukunda Show Ground.**

### **Management Recommendation**

**The Committee recommends that the Managing Director ensures that all debts be incorporated in the financial statements.**

**The Committee further recommends that the Managing Director ensures that all debts are collected within six months of adoption of this report and a report made to the National Assembly.**

### **31.3 PREPAYMENTS: FY 2004/2005 ACCOUNTS**

The Committee heard that the prepayment figure of Kshs. 286,250, included an amount of Kshs. 221,250 advanced for the purchase of a computer which to date has never been supplied nor the prepayment refunded.

### **Management Response**

The Managing Director of Coast Development Authority presented that the Authority was unable to recover the debt as the company wound up. They also hired a private

investigator to find the company directors. The management also sought Board approval to write off the debt in FY 2005/2006.

### **Committee Observation**

**The Committee observed that the Authority paid for goods that were never delivered.**

### **Committee Recommendations**

**The Committee recommends that:-**

- (i) the EACC investigates the procurement of the company that was paid to supply a computer but never delivered the goods.**
- (ii) the then Managing Director Dr. B. A. J. Mwandoto be investigated for his role in the procurement of the company to supply the computer and for having paid the company without having supplied the computer.**
- (iii) the money lost by the Authority be recovered from the then Managing Director Dr. B. A. J. Mwandoto.**
- (iv) the Company should be barred by the Public Procurement and Oversight Authority from any procurement process by the Government of Kenya or any of its agencies.**

### **31.4 TRADE AND OTHER PAYABLES: FYs 2007/2008, 2009/2010 ACCOUNTS**

The Committee heard that CDA had failed to remit Kshs.7, 925,976 as PAYE to KRA, to which it was liable to heavy penalties and interests for which provisions hadn't been made hence understating the loss for the year as well as the revenue reserves by an equivalent amount.

### **Management Response**

The Managing Director of CDA presented that they had made remittances and the matter cleared.

### **Committee Observation**

**The Committee observed that the Authority failed to meet its statutory obligations relating to PAYE remittances.**

### **Committee Recommendation**

**The Committee recommends that the Managing Director ensures that the Authority remits all statutory deductions in a timely manner.**

### **31.5 PAMBAZUKO DEVELOPMENT COMPANY LIMITED: FYS 2004/2005, 2005/2006, 2007/2008, 2008/2009 ACCOUNTS**

The Committee heard that Pambazuko Development Company Limited is an affiliate of the Authority to which an advance of Kshs. 1,018,317 was given. The company had not been operating and the Authority stands to lose the entire amount advanced. Provision in relation to this uncertainty had not been incorporated in the financial statements.

#### **Management Response**

The Managing Director of Coast Development Authority (CDA) presented that the affiliate was formed because the Authority could not trade as itself. The advance was seed money to the company to take care of its statutory obligations.

#### **Committee Observation**

**The Committee observed that the Authority invested in Pambazuko Development Company Limited a company that was operational.**

**The Committee further observed that the investment in Pambazuko was a wrong investment decision.**

#### **Committee Recommendation**

**The Committee recommends that the Authority should not advance or invest additional funds on the company and instead seek avenues of winding up the affiliate company.**

### **31.6 PLANT, PROPERTY AND EQUIPMENT: FYS 2006/2007, 2007/2008, 2008/2009, 2009/2010, 2011/2012 ACCOUNTS**

The Committee heard that the Plant, Property and Equipment figure of Kshs. 46,594,067 is understated due to the non-inclusion of seven parcels of land and buildings located at Mombasa, Malindi, Kilifi and Kwale districts. The value of the land cannot be confirmed.

#### **Management Response**

The Managing Director of Coast Development Authority informed the Committee that they were unable to do valuation of the seven parcels of land due to inadequate funding from the government.

#### **Committee Observation**

**The Committee observed that the Authority failed to include the value of seven parcels of land and buildings located in Mombasa, Malindi, Kilifi and Kwale districts in its accounts.**

#### **Committee Recommendation**

**The Committee recommends that the Authority undertakes regular valuation of all its assets including land.**

### **31.7 TRADE AND RECEIVABLES: FYs 2006/2007, 2006/2007, 2007/2008, 2008/2009, 2009/2010 ACCOUNTS**

The figure of Kshs 7,096,090 includes Kshs 368,448 and Kshs 114,390 which are outstanding imprest and salary advances whose recovery is doubtful. It also included Kshs 1,719,290 invested in Ukunda showground for construction of a stadium whose work stalled due to lack of funds. Though the Authority holds the title document as security, they haven't registered it with the Lands Registry. The 10% provision for bad and doubtful debts is considered inadequate.

#### **Management Response**

The Managing Director of Coast Development Authority presented that they had sent demand letters to the ex-staff which having expired; the authority was in the process of seeking court orders to attach property of ex staff. On the subject of the Ukunda showground, the Authority was compiling evidence of payments for the showground committee as the two of the three trustees were dead and the third ill.

The Committee heard that one of the three trustees was the former CEO of the Coast Development Authority.

#### **Committee Observation**

**The Committee observed that the management failed to recover outstanding imprest and salary advances owed by staff as required by financial regulations.**

#### **Committee Recommendations**

**The Committee recommends that the Authority recovers outstanding imprest and allowances from the ex-staff and the debt owed by Ukunda show ground committee.**

**The Committee further recommends that the then Managing Director Dr. B. A. J. Mwandoto for the period 2006/2007 be held responsible and accountable for the failure to collect imprest and allowances from staff within the stipulated period of surrender.**

### **31.8 INVESTMENTS: FYs 2006/2007, 2008/2009, 2010/2011 ACCOUNTS**

The Committee heard that the Authority invested Kshs.100, 000 in Mariakani Milk Scheme by way of shares in 2003/2004. There was no share certificate and so it is not possible to ascertain the existence of the investment.

#### **Management Response**

The Managing Director of Coast Development Authority presented that the Authority had since obtained a share certificate. The challenge facing the Mariakani Milk scheme was shortage of milk but the Authority was in the process of rolling out milk cooling plants in Wundanyi.

### **Committee Observation**

**The Committee observed that the Authority invested in Mariakani Milk Scheme but it has no share certificate to ascertain existence of the investment.**

### **Committee Recommendations**

**The Committee recommends that the Authority stops advancing more money to Mariakani Milk Scheme a company that is not making profit.**

**The Committee further recommends that the Authority reviews its investment policy.**

### **31.9 DIRECTORS' EXPENSES: FYs 2009/2010-2010/2011 ACCOUNTS**

The Committee heard that the amount Kshs. 8,891,276 represents expenses incurred on the Board but the supporting schedules in respect of the expenditure were not availed for audit review.

### **Management Response**

The Managing Director of Coast Development Authority presented that they provided the schedules for audit verification. They also presented that they were required by law to have four board sittings per quarter even with the deficit from the Government. They had a letter from the Permanent Secretary authorizing them to sponsor the Board expenses from the development vote.

### **Committee Observation**

**The Committee observed that the Authority incurred expenses on the board but the money was from the development vote without National Treasury approval contrary to Section 12 of the State Corporations Act, Cap. 446.**

### **Committee Recommendation**

**The Committee recommends that the then Managing Director Mr. James K. Mangi be held responsible and accountable for incurring recurrent expenditure under the development vote without National Treasury approval contrary to Section 12 of the State Corporations Act and financial regulations.**

### **31.10 COMMUNITY PROJECTS ASSETS: FYs 2010/2011 AND 2011/2012 ACCOUNTS**

The Committee heard that the non-current assets balance included a figure of Kshs 215,939,314 being community projects assets whose financing was not clear nor was the management able to disclose the accounting policy used to recognize them in the financial statements contrary to the International Financial Reporting Standards.

The Managing Director of Coast Development Authority presented that the community projects were funded from grants and were recognized as capital assets though the Authority did not expect direct returns

#### **Committee Observation**

**The Committee observed that non-current assets balance of the Authority included a figure of Kshs 215,939,314 being community projects assets whose financing was not clear nor was the accounting policy used to recognize them.**

#### **Committee Recommendation**

**The Committee recommends that the Authority and the Office of the Auditor-General agree on how to treat the community projects in the financial statements.**

#### **31.11 TRADE AND OTHER RECEIVABLES: FY 2010/2011 ACCOUNTS**

The Committee heard that the outstanding imprest of Kshs 260,256 was due from ex staff to whom demand notices had been sent but recovery of the same remained doubtful. There were also staff advances totaling Kshs 2,605,681 whose supporting schedules were not available for audit verification. There also included Kshs. 2,797,125 being project borrowings which have been outstanding for a long time.

The Managing Director of Coast Development Authority presented that they were expected to commit and spend funds then claim them.

#### **Committee Observation**

**The Committee observed that it was not sound to have inter-project borrowings since each project was budgeted for.**

#### **Committee Recommendation**

**The Committee recommends that the Managing Director ensures that the Authority strictly adheres to budgetary allocations with no inter project borrowing.**

#### **31.12 CASH AND BANK BALANCES: FY 2010/2011 ACCOUNTS**

The Committee heard that un-presented cheques totaling Kshs 2,329,838 which had since gone stale were part of the cash and bank balance. There was also an un-reconciled and un-explained difference of Kshs 477,945 in the petty cash book cash survey. Further the cash and bank balances excluded Kshs 96,130 from sale of seedlings at head office. There was also a variance of Kshs. 650 in the cash analysis of financial position cash and bank balances and cash flow statement balances.

The Management also opened and operated a Barclays Bank Account without Board approval and Kshs 3,000,000 transferred to it for undisclosed purpose. There was Kshs 1,643,690 being cash at bank for coral block which was unbanked collections and an explained shortfall of Kshs 380,000 to the same account.

### **Management Response**

The Managing Director of Coast Development Authority presented that they had provided clarification and schedules for verification during audit.

### **Committee Observation**

**The Committee observed with concern that the Coast Development Authority wrote cheques and failed to dispatch them.**

**The Committee observed that the Management of Coast Development Authority opened and operated a Barclays Bank Account without Board approval.**

### **Committee Recommendations**

**The Committee recommends that the Inspectorate of State Corporations conducts investigations on the circumstances under which the Authority wrote cheques but never dispatched them to the respective payees.**

**The Committee further recommends that EACC investigates circumstances under which the Authority opened and operated an account without the board approval and how the funds in the account were spent.**

### **31.13 TRADE AND OTHER RECEIVABLES: FY 2010/2011 ACCOUNTS**

The Committee heard that Kshs. 123,733 was advanced to other regional Development Authorities but the lending terms were not disclosed. The Committee heard that Kshs 1,880,563 was advanced to the parent ministry. Though the money is said to be refundable, the terms of advancing have not been disclosed and its recovery remains doubtful after remaining outstanding for two years.

### **Management Response**

The Managing Director of Coast Development Authority presented that the advances came about when a project is funded through reimbursable method, however the management ensures that the accounts are cleared.

### **Committee Observation**

**The Committee observed that the Authority advanced money to the parent Ministry.**

### **Committee Recommendations**

**The Committee recommends that the Managing Director, Mr. James K. Mangi who authorized the advance to the Ministry be held responsible and accountable for the advance.**

**The Committee further recommends that the Managing Director ensures that the money advanced to the Ministry is fully recovered and that the authority desists from issuing advances.**

### **31.14 TRADE AND OTHER PAYABLES: FY 2010/2011 ACCOUNTS**

The Committee heard that included in the Trade and other payables was a figure of Kshs. 26,691,757 attributed to creditors which had been outstanding for more than two years. There is also Kshs. 4,500,000 being a balance which remained on purchase of land in Kilifi for ballast crushing. There is also Kshs 1,440,000 excluded being bonus paid to staff. There is Kshs. 17,241,584 being un-remitted VAT and though the management had requested for a Treasury waiver they were yet to receive a response. The trade and other payable balance also included Kshs. 1,326,839 being outstanding claims against projects and advances payable to other projects which had been outstanding for a long time.

#### **Management Response**

The management presented that it will ensure that the accounts are cleared.

#### **Committee observation**

**The Committee observed that the Authority had several accounts in their financial statements that required reconciliation and clearing.**

#### **Committee Recommendation**

**The Committee recommends that the Authority clears the accounts.**

### **31.15 PRIOR YEAR ADJUSTMENTS: FY 2011/2012 ACCOUNTS**

The accumulated deficit balance of Kshs. 177,561,460 is arrived at a prior year adjustment of Kshs 425,095 contrary to the requirements of the International Accounting Standard No. 8.

#### **Management Response**

The Management presented that this figure was done in error for a write off of fixed assets that had fully depreciated.

#### **Committee Observation**

**The Committee observed that the Authority had accumulated deficit balance contrary to the requirements of the International Accounting Standard No. 8.**

#### **Committee Recommendation**

**The Committee recommends that the Authority adheres to the requirements of the International Accounting Standard No. 8.**

## **32.0 COAST WATER SERVICES BOARD: FY 2007/2008 TO 2011/2012**

### **REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF COAST WATER SERVICES BOARD FOR THE FINANCIAL YEARS ENDED 2007/2008 TO 2011/2012**

**The Chief Executive Officer, Coast Water Services Board Mr. James Thubu accompanied by Mr. D. Chihanga, Technical Manager; Mr. Stephen Kivuna, Finance Manager and Mr. Lawrence Simitu, Director of Water Services appeared before the Committee to give evidence.**

#### **32.1 LATE SUBMISSION OF FINANCIAL STATEMENTS FOR AUDIT: FY 2007/2008 ACCOUNTS**

The Committee heard that the Board submitted its financial statements over three months past the statutory deadline and did not provide evidence of the extension approval of the submission of accounts by National Assembly as per the Public Audit Act 2003 for audit verification.

##### **Management Response**

The Chief Executive Officer, Coast Water Services Board(CWSB) presented that the late submission was brought about by the poor work performance of the then Finance Manager who was then suspended in 2008 as well as the CEO in 2010.

##### **Committee Observations**

**The Committee observed that the Board submitted its financial statements late for audit.**

**The Committee further observed that the Coast Water Services Board did not represent regional balance.**

##### **Committee Recommendation**

**The Committee recommends that the Board ensures that financial statements are submitted in timely manner for audit review.**

#### **32.2 OUTSTANDING TRANSFER OF ASSETS AND LIABILITIES: FYs 2007/2008, 2008/2009 ACCOUNTS**

The Committee heard that the Coast Water Services Board inherited assets previously owned by Ministry of Water and Irrigation and National Water Conservation and Pipeline Corporation as per Water Act 2002. However, no asset register or listing was provided for handed over assets and this has become a challenge to the Coast Water Services Board.

The Committee also heard that the Balance Sheet figure excluded undetermined value of assets and liabilities which were to be transferred to the Board as per legal notice 101 of

12<sup>th</sup> August 2005 held for or on behalf of the Director of Water. The Committee heard that the Board did not maintain an asset register and thus a physical verification of the plant, property and equipment could not be carried out.

### **Management Response**

The CEO, CWSB presented that the Board inherited assets from Ministry of Water and Irrigation and National Water Conservation and Pipeline Corporation. There was no asset register to facilitate the process, which was further challenged by the need for proof of ownership of the assets. CWSB and NWPC were negotiating on the transfer of assets but could not agree on all the assets and liabilities.

### **Committee Observation**

**The Committee observed that the Board did not maintain an asset register and thus a physical verification of the plant, property and equipment could not be carried out.**

### **Committee Recommendation**

**The Committee recommends that the Board liaises with the National Water Conservation and Pipeline Corporation to fast track the transfer of assets.**

### **32.3 TRADE AND OTHER RECEIVABLES: FYS 2007/2008, 2008/2009, 2010/2011, 2011/2012 ACCOUNTS**

The Committee heard that the Trade and other receivables balance had an un-reconciled and unexplained difference of Kshs 11,915,018. It also includes an overdue debt of Kshs 84,427,767 owing from Mombasa Water and Sewerage Company and outstanding imprest of Kshs 30,065,305.

### **Management Response**

The CEO, CWSB presented that the un-reconciled amount was between the CWSB and water services companies, which has since been reconciled. The CEO presented that the debt from Mombasa Water and Sewerage Company had since been reconciled to Kshs 407,422,121 and a payment commitment obtained. The CEO further presented that notwithstanding the reconciliation Mombasa Water and Sewerage Company may not be able to pay, due to their financial situation.

The outstanding imprest was because the staff imprest register had not been up to date at the time of the audit but had since been up dated in the subsequent year. The CEO also presented that they had hired an independent consultant at Kshs 4 million to do the reconciliation. The CEO presented that CWSB charged the water companies Kshs 25 per

cubic metre of water while the water companies sold the water to consumers at a rate which was gazetted since water resources were under the national government.

### **Committee Observation**

**The Committee observed that the Board had unreconciled balances and overdue outstanding debts and imprests.**

### **Committee Recommendations**

**The Committee recommends that:-**

- (i) The Board reconciles its accounts;**
- (ii) The CEO ensures that the Board recovers all debts owing from Mombasa Water and Sewerage Company;**
- (iii) The CEO ensures that the Board recovers all imprest and allowances from the staff and adheres to provisions of financial regulations relating to surrender of imprest and allowances.**

### **32.4 LOSS OF REVENUE: FY 2007/2008 ACCOUNTS**

The Committee heard that a burglary took place at Baricho Treatment Plant and Kshs 126,365 of the collected revenue was lost. The Management neither incorporated the loss nor made a disclosure note regarding the contingency loss in line with IAS.

### **Management Response**

The CEO, CWSB presented that the burglary was reported to the police but no arrests made. The cashier who collected the revenue was summarily dismissed but recovery of the loss from his final dues has not taken place because he is yet to claim them. They admitted to not adhering to the IAS on the incorporation of the loss and disclosure note though the CEO presented that they had rectified the mistake in the subsequent years

### **Committee Observation**

**The Committee observed that a burglary took place at Baricho Treatment Plant and Kshs 126,365 of the collected revenue was lost but the Management neither incorporated the loss nor made a disclosure note regarding the contingency loss in line with IAS.**

**The Committee further observed that it was careless of CWSB not to adhere to the IAS and that the matter should not show up in the FY 2012/2013 as an audit issue.**

### **Committee Recommendations**

**The Committee recommends that the Board adheres to International Accounting Standards on the incorporation of the loss and disclosure.**

**The Committee further recommends that the Chief Executive Officer ensures that the Board recovers the loss from the dues of the said cashier.**

### **32.5 UNREMITTED STATUTORY DEDUCTIONS: FYs 2007/2008,2008/2009 ACCOUNTS**

The Committee heard that the Trade and other payable figure included unremitted statutory deductions of Kshs 7,621,471 to the Paymaster General and Kshs 10,505,706 to Ukulima Cooperative Society. The Board was in breach of the law and could suffer penalties and interest on the unremitted amount.

### **Management Response**

The CEO, CWSB presented that the non-remittance was due to inadequate budget support from the parent Ministry, but the amounts were subsequently cleared. They confirmed that they did not incur any penalties or interest even though the same situation arose in 2008/2009.

### **Committee Observation**

**The Committee observed that the Board failed to meet its statutory obligations thus exposing it to penalties and interests.**

### **Committee Recommendations**

**The Committee recommends that the Board ensures that all statutory deductions are remitted on time.**

### **32.6 WORK IN PROGRESS: FYs 2009/2010, 2010/2011 ACCOUNTS**

#### **(i) Kilifi Water Tank**

The Committee heard that the Project to build the tank valued at Kshs 19,216,304.48 commenced on December 2007 but a site visit on February 2011 revealed that the project was incomplete, Kshs 11,591,923.66 had been incurred and no extension of the contract period appeared to be granted.

### **Management Response**

The CEO, CWSB presented that delay to the completion of the project were because of ownership dispute of the land on which the tank was being constructed. The tank had since been completed and a completion certificate on the same issued on December 2010.

### **Committee Observation**

**The Committee observed that the Board contracted the building of a tank but its completion was delayed with no extension of contract provided to the contractor.**

### **Committee Recommendation**

**The Committee recommends that the Authority ensures that all projects are constructed on land belonging to the Authority and that a feasibility study and proper planning be conducted.**

#### **(ii) Godoni Water Tank.**

The Committee heard that the project to build the tank valued at Kshs 30,205,482.24 commenced on September 2007 but at the time of the audit in February 2011, the project was incomplete, no extension of the contract period evident and Kshs 26,572,806.55 incurred on the project.

### **Management Response**

The CEO, CWSB presented that the land on which the tank was to be built was in dispute with the forest department. The tank was later built on another piece of land and a completion certificate issued on March 2014.

### **Committee Observation**

**The Committee observed that the Board contracted the building of a tank but its completion was delayed with no extension of contract provided to the contractor.**

### **Committee Recommendation**

**The Committee recommends that the Authority ensures that all projects are constructed on land belonging to the Authority and that a feasibility study and proper planning be conducted.**

## **(ii) Bamba Water Tank**

The Committee heard that the Work-in -progress figure included Kshs 2,995,776 paid for the construction of Bamba Water tank which was completed, commissioned and fully capitalized in the past financial years. The previously incurred and capitalized costs amounting to Kshs 23,754,927 in respect to the tank could not be identified in the financial statements.

### **Management Response**

The CEO, CWSB presented that capitalization was not done as at June 2011, because they wanted to capitalize the full amount not just the Kshs 2,995,776, even though this was contrary to the IAS. But capitalization was done in the subsequent year after incorporating the last payment of the retention money.

### **Committee Observation**

**The Committee observed that the Board failed to capitalize the water tank project after its completion.**

### **Committee Recommendation**

**The Committee recommends that the Board capitalizes work in progress as per requirements of International Accounting Standards.**

## **32.7 TRADE AND OTHER PAYABLES: FY 2010/2011 ACCOUNTS**

The Committee heard that in the Trade and other Payables figure was Kshs. 249,669,537 in respect to electricity bills payable for various water supply stations under the Board's jurisdiction, but supporting documents availed for audit showed only Kshs 80,587,177 resulting in an unexplained and un-reconciled difference of Kshs. 169,082,539.

### **Management Response**

The CEO, CWSB presented that the figure of Kshs. 249,669,537 was because the water companies were paying directly to KPLC on an Account in the CWSB name under Baricho water supply which required reconciling. Reconciliation has been completed and the Board is up to date with its payments to KPLC. The CEO confirmed that they used the same consultant to do the reconciliations at no extra costs.

### **Committee Observation**

**The Committee observed that the Board failed to reconcile its accounts and did not provide documents for audit verification.**

## **Committee Recommendation**

**The Committee recommends that the Board ensures reconciliation of its accounts.**

### **33.0 KENYA MEDICAL RESEARCH INSTITUTE: FY 2002/2003 TO 2011/2012**

#### **REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF KENYA MEDICAL RESEARCH INSTITUTE FOR THE FINANCIAL YEARS 2002/2003 TO 2011/2012**

**Dr. Solomon Mpoke appeared before the Committee to adduce evidence on the accounts on KEMRI audited accounts for FY 2002/2003 to 2011/2012**

#### **33.1 PROPERTY PLANT AND EQUIPMENT: FYs 2009/2010, 2010/2011, 2011/2012 ACCOUNTS**

The Committee heard that the property, plant and equipment balance of KES. 3,447,945,229 as at 30<sup>th</sup> June 2012 included various parcels of land valued at KES. 227,642,500 situated at KEMRI Headquarter (8.083ha), Kenyatta National Hospital (1.34ha), Kilifi (2.705ha), Kwale (2.023 ha), Mbagathi road (2.4282 ha) and Taita Taveta (4.047 ha) whose respective title documents were not availed for audit verification. In the absence of title documents, it is not possible to confirm the ownership status of the parcels of land.

#### **Management Response**

The Committee was informed that the former Director, Dr. Davy Koech, was suspended from duty by the Permanent Secretary, MOH on 16<sup>th</sup> August 2007. Following a special Audit of the affairs of KEMRI by the State Corporations on request by the Permanent Secretary, Ministry of Health, Dr Koech was summarily dismissed for gross misconduct on 18<sup>th</sup> September, 2008. Efforts to have Dr. Koech officially hand over the office have been fruitless. Some of the documents Dr. Koech was to hand over include the Institute's Title Deeds, whose whereabouts, therefore remains unknown to date.

The Institute brought this matter to the attention of the Land Registrar who advised the Corporation to demand the Titles from Dr. Koech who subsequently failed to release the Titles. The Institute then sought legal advice where the Institute was informed that it is easier and more cost effective to request for replacement Titles than pursuing recovery of original titles from Dr. Koech.

The original titles of KEMRI parcels of land at KEMRI Headquarters (8.083 ha), KEMRI grounds next to Kenyatta National Hospital (1.34 ha), in Kilifi (2.705 ha) and in Kwale (2.03 ha) were not handed over by former KEMRI Director, despite a demand note from KEMRI.

The Corporation has since received legal advice to pursue a cheaper option of applying for replacement titles instead of pursuing the original titles which will not only be more expensive but chances of obtaining them is doubtful.

For the Taita Taveta (4.0470 ha), the Institute has made good progress in obtaining this title, which has since been booked for registration at the Commissioner of Land office.

### **Committee Observation**

**The Committee observed that the Institute failed to avail title documents of the aforementioned parcels of land for audit verification thus making it not possible to confirm the ownership status of the parcels of land in contravention of Section 37 of the Public Audit Act, 2003.**

**The Committee further observed that Dr. Davy Koech failed to handover to the Institute, important documents include Titles Deeds for the Corporation's parcels of land.**

### **Committee Recommendations**

**The Committee recommends that:-**

- (i) The EACC investigates the conduct of Dr. Davy Koech during his tenure at KEMRI and the circumstances surrounding his refusal to surrender ownership documents of a public property with a view to prosecuting him for contravening Section 37 of the Public Audit Act, 2003.**
- (ii) The Institute pursues the replacement of title documents from the National Land Commission and Ministry of Land, Housing and Urban Development.**

### **33.2 RESIDENTIAL STAFF HOUSING: FYs 2003/2004, 2004/2005, 2005/2006, 2006/2007, 2007/2008, 2008/2009, 2009/2010 ACCOUNTS**

The Committee heard that the property, plant and equipment balance of Kshs. 3, 447,945,229 as at 30<sup>th</sup> June 2012 also includes staff housing project valued at Kshs. 335,141,518 located on a 2.4282 ha along Mbagathi Road Nairobi and against which a developer has used the title document as collateral to borrow funds from the National Bank of Kenya. In an effort to have the documents discharged and as similarly reported in 2010/2011, the government spent a sum of Kshs 280 million in the year 1993 and a further Kshs 142 million in 2000 towards settling the developers account with the bank. However and in spite of payments totaling Kshs 442 million having been made thus settling the debt in full, the documents had not been discharged by the Bank as at 30<sup>th</sup> June 2012.

In circumstances, it has not been possible to ascertain the ownership status of the parcels of land and the property, plants and equipment balance of KES. 3,447,945,229 as at 30<sup>th</sup> June 2012 as fairly stated.

The Committee was further informed that significant progress has been achieved in regard to transfer of title documents for the housing property on Mbagathi way. Parliamentary Departmental Committee on Health during a meeting In December 2011 attended by officials from National Bank, State law office, Treasury and KEMRI, recommended that the property be transferred immediately since Government had settled the debt owing to National Bank of Kenya(NBK). NBK has since surrendered the property title to Treasury. On further follow up by KEMRI on transfer of title, we noted that the said title had attracted rates and penalties to the tune of Kshs. 92 million as at 30<sup>th</sup> November 2013. The Institute benefited from the 90% waiver on penalties on land rates that was extended by the Nairobi City Council in October/November 2013, and in consultation with the office of the Attorney General and Treasury. KEMRI paid the outstanding rates (about KES 14 million) in October 2013. The Institute has since obtained a clearance certificate from Nairobi City Council for the period up to December 2013 and the process of transfer is underway.

#### **Committee Observation**

**The Committee observed that that KEMRI had obtained a clearance certificate from Nairobi City Council (now Nairobi County Government)**

#### **Committee Recommendation**

**The Committee recommends that the Institute ensures that it does not accumulate land rates and all land rates payments are up to date.**

**The Committee further recommends that the property reverts to KEMRI.**

### **33.3 TRADE AND OTHER RECEIVABLES: FYs 2005/2006, 2006/2007, 2008/2009, 2009/2010, 2010/2011 ACCOUNTS**

#### **33.3.1 FY 2010/2011 ACCOUNTS**

The Committee heard the trade and other receivables balance of Kshs 154, 330,074 as at 30 June 2011 is net of an amount Kshs 120,000,000 in respect of deposit placed with the institute's lawyers in the year 2000 while the institute was following up with issues related with the stalled Mbagathi residential staff housing project. Although according to information available, the lawyer has since refunded Kshs 119,871, 608 and retained as fees a sum of Kshs128,392, the amount Kshs 120,000,000 is still reflected and fully provided for bad and doubtful debts. A further review of the statements indicates that the interest accumulated over time on the amount of Kshs 120,000,000 may have been taken into account during the year.

Further, the trade and receivables balance of Kshs 154,330,074 as at 30 June 2011 also included fees for graduate school amounting to Kshs. 49,941,985 and which has been

outstanding for a considerably long period. The management however explained that reconciliations would be carried out between KEMRI and Jomo Kenyatta University of Agriculture and Technology (JKUAT) records to harmonize the outstanding fees.

### **33.3.2 FY 2011/2012 ACCOUNTS**

The trade and other receivables balance of Kshs. 149,287,596 as at 30<sup>th</sup> June 2012 also included graduate school fees, staff salary advance, salary in advance and temporary imprests amounting to Kshs. 62,870,360, Kshs. 534,165, Kshs 95,718 and Kshs 328,256 respectively which have been outstanding for over one year.

The Committee was further informed that the Institute has established that the said amount of KES. 119,871,608 has not been received by KEMRI and thus the amounts are still in the books. However, the former Managing Director is still under investigation by the Kenya Anti-Corruption and Ethics Commission and the Office of the Attorney General.

The said debt is now doubtful and thus the Institute could not accrue any interest receivable.

#### **Management Response**

The management informed the Committee that the outstanding fee for the graduate school was occasioned by the following:

- The academic year begins in May of each year and most of the fees are not collected by end of June.
- The school fees for the whole year are accrued on registration.
- Some of the students have discontinued and are still treated as debtors.

The Institute, in a meeting held on 30<sup>th</sup> January 2014 requested JKUAT to compile a list of all the students who have deregistered so that amounts accrued on such students can be removed from KEMRI books of accounts. Reconciliations between KEMRI and JKUAT to establish the students who have since been left.

To ensure that no more debts are accumulated, the Institute has ensured that quarterly reports are made, no sitting exams and presentation of the thesis and no students will be cleared to graduate if they have not completed their fees.

It is true that some of the imprests have been outstanding in our books for more than one financial year. Some of them are traceable to officers that have left the services of the institute either voluntarily or through natural attrition.

A provision for bad and doubtful debts will be created for imprest holders who have left the institute in the year 2013/2014. For those who are still in service, recoveries are ongoing for those who are still in the institute.

The unremitted over statutory deductions was a result of a contra entry with the liabilities having an under-remitted statutory deduction of Kshs 6,058,622 giving a net effect of Kshs 191,330. This was an error in the ledger that was corrected in the 2012/2013 financial year. Analysis of the over deduction and under remittances are ongoing.

### **Committee Observations**

**The Committee observed that reconciliations between KEMRI and JKUAT had taken too long and KEMRI Management should fast track the matter.**

**The Committee observed that imprests are recoverable within a set period which should be part of the organization's International Accounting Standards.**

**The Committee observed that unremitted over-statutory deductions were as a result of a contra entry.**

### **Committee Recommendations**

**The Committee recommends that the reconciliations between KEMRI and JKUAT should be expedited and completed within three months of the adoption of this Report.**

**The Committee further recommends that the Corporation should adhere to International Financial Reporting Standards and IAS.**

### **33.4 CASH AND CASH EQUIVALENT: FYs 2008/2009, 2009/2010 AND 2011/2012 ACCOUNTS**

The Committee heard that institute bank reconciliation statements as at 30<sup>th</sup> June 2012 produced for audit review included cheque payments in cash book not in the bank statements and which are stale amounting to Kshs. 317,803,708, payments of KES. 273,030,353 in the bank statements not in the cash books, receipts of KES 35,118,159 in the cash books not recorded in the bank statements and receipts of Kshs 188,931,533 in the bank statements not recorded in the cash book. These balances have not been adjusted in the cashbooks. The management has not provided reasons for failure to update and revise the cash books and bank reconciliations statements respectively as appropriate.

Further, included in the cash and cash equivalents balance of Kshs 1,384,169,553 as at 30<sup>th</sup> June 2012 is cash in hand balance of Kshs1,097,639 which is at variance with cash survey certificate figure of Kshs1,182 resulting in an unexplained and un reconciled difference of Kshs 1,096,457.

In the circumstances, it was not been possible to confirm the validity and accuracy of the cash and cash equivalents balance of Kshs 1,384,169,553 as at 30<sup>th</sup> June 2012.

### **Management Response**

The Management informed the Committee that a special team was been appointed to look at the previous reconciliations and other adjustments. It is only in the current year that fresh bank reconciliations and adjustments to cashbook have been done. The adjustments will be reflected in the year ending 30<sup>th</sup> June 2014.

The figure of Kshs 1,096,457 includes an amount of un-surrendered imprests owing from two members of staff. The institute has written Pay Change Advise for recovery of the same as per the attached pay charge advices.

### **Committee Observation**

**The Committee observed that the Management of the Institute is taking an inordinately long time to address reconciliations without any reasonable explanation.**

### **Committee Recommendation**

**The Committee recommends that the Management finalizes the reconciliations and reports to the Committee within three months on adoption of this Report.**

## **34.0 NATIONAL HOSPITAL INSURANCE FUND: FY 2007/2008 TO 2011/2012**

### **REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF NATIONAL HOSPITAL INSURANCE FUND FOR THE FINANCIAL YEARS ENDED 2007/2008 TO 2011/2012**

**The Chief Executive Officer, National Hospital Insurance Fund, Mr. Simon Ole Kirgotty, accompanied by Dr. Peter Cheruiyot, Alternate, Principal Secretary of Ministry of Health, Mr. Joseph Mbuki, Manager of Finance, Mr. L. N. Ondari, Executive General Manager, and Mr. Geoffrey Mwangi, M/MA appeared before the Committee and gave evidence on the accounts of the Board for the FY 2007/08 to 2011/2012.**

### **34.1 CONSTRUCTION OF MULTI STOREY CAR PARK: FY 2007/2008 TO 2011/2012 ACCOUNTS**

The Committee heard that the National Hospital Insurance Fund entered into an agreement with a local construction company in May 2002 for construction and completion of a multi storey car park at a contract sum of Kshs. 909,709,305.00. It was pointed out that as at 30<sup>th</sup> June 2011 the total expenditure of the project rose to Kshs. 3,973,462,758.00. The Auditor observed that the escalation of costs of the park by

337% over and above the original cost of completion by August 2003 had not been justified and the Final Completion certificate had not issued.

The reasons given for price variations indicated:-

- (i) The introduction of vehicular lifts that were not part of the tendered designs and bills of quantities. The increase of the service area of the project led to design changes to the structure and foundation works;
- (ii) An additional basement floor was created to cater for the displaced area arising because of vehicular lifts, ramps and design overhaul at additional cost of Kshs. 673,465,787.10;
- (iii) The variation from Kshs. 1,179,611,756.00 to Kshs. 3,342,120,239.00 was due to price escalations as per contract provisions and mostly occasioned by delays in completion period.

Though the multi-storey car park was completed in July 2008, it has not been issued with a Final Completion certificate.

### **Management Response**

The CEO of NHIF informed the Committee that the car park is a seven-storey building with basement floors, which is designed to accommodate 780 cars. The project was awarded to NK brothers with Tectural International as the project manager. The project commenced in May 2002 and was scheduled for completion in August 2003.

The completion period was revised from August 2003 due to suspension of all projects by the Government vide Treasury circular no. 10 dated 22<sup>nd</sup> May 2003 as well as the fund giving preference to core strategic activities resulting to reduce cash flow.

The management introduced vehicular lifts that were not part of the tendered designs and bills of quantities. The cost could not be retained at the original cost of Kshs. 909,709,305 since the contract had already increased the service area of the project. This led to design changes to the structure and foundation of works. An additional basement floor was created to cater for the displaced area arising because of vehicular lifts, ramps and design overhaul. This led to an increase in service area and an additional cost of Kshs. 67,465,787.10. the vehicular lifts were later found not to be viable leading to downward variation to Kshs. 1,179,611,756 .

The variation from Kshs. 1,179,611,756.00 to Kshs. 3,342,120,239.00 was due to price escalations as per contract provisions and mostly occasioned by delays in completion period.

The multi storey car park was completed in July 2008. Payments totaling to Kshs. 626,635,988 incurred in 2009/10 and Kshs. 4,706,521 incurred in 2010/11 are related

to pending claims which were payable to the contractor after completion of the multi storey car park.

The final certificate for the project has not been availed for audit review since the Fund has not been issued with the same. However the building is complete and is in full use for rental as well as public parking.

### **Committee Observations**

**The Committee observed with concern that the project had taken inordinately long to complete and that there was a very high variation of 337% over and above the original cost in contravention of Section 39(8) (b) (i) of the Public Procurement and Disposal Act, 2005 and Regulation 28(2) (a) of the Public Procurement and Disposal Regulations, 2006 which provides that the preferred margin of preference shall be fifteen percent of the evaluated price of the tender.**

**The Committee further observed that the project was not planned properly or was conceived with little planning and design with the sole intention of misappropriating public funds.**

**The Committee also noted that the matter was discussed in its 13<sup>th</sup> and 16<sup>th</sup> Report wherein the Committee observed the unprofessional manner in which the project was executed.**

### **Committee Recommendations**

**The Committee therefore recommends that in view of the unprofessional manner in which the whole process of conceiving and implementing the Car Park Project was conducted, the Director Ethics and Anti- Corruption Commission should institute investigations on the project with a view of preferring charges against all those who would be found culpable.**

### **34.2 PROPERTY PLANT AND EQUIPMENT: FY 2009/2010 ACCOUNTS**

The Committee heard that the Property, Plant and Equipment included the balance of Kshs. 11,883,376,783 as at 30<sup>th</sup> June 2012 the land valued at Kshs. 298,589,665 which include an amount of Kshs. 93,712,675 in respect of land Ref No. LR24968/2 measuring 10 hectares situated in Karen. However the ownership of this particular parcel of land is in dispute and the matter is pending in a court of law.

### **Management Response**

The CEO of NHIF informed the Committee that the board of management of NHIF purchased the land from KAZKAZI TRADERS LTD, title L.R NO. 24968/2 KAREN. The transfer was registered to NHIF. It came to their attention in September 2004 that a contractor had been commissioned by a third party (Crown line Freighters Ltd) to

develop the said plot claiming ownership. NHIF instructed M/s Rachier and Amollo Advocates to protect the interests of the Fund by pursuing appropriate action to restrain the third party from interfering with the property. The Fund is pursuing the matter and has already taken the necessary steps to ensure the matter is determined in its favor.

#### **Committee Observation**

**The Committee observed that there was a need for further investigation into the parcels of land that are in dispute and whose case is pending in court.**

#### **Committee Recommendation**

**The Committee recommends that the National Land Commission conducts further investigations on the issue of the land within six months after adoption of this Report.**

#### **34.3 INVESTMENT IN SECURITIES: FY 2009/2010 ACCOUNTS**

The Committee was informed that in June 2001 NHIF placed a deposit with Consolidated Bank of Kshs. 600 million. In August 2001 the then Chief Executive of NHIF made a guarantee on behalf of Euro bank who was a tenant of Consolidated Bank to use the Fixed Deposit as security. When Euro bank defaulted in payment, Consolidated Bank was unable to recover payment and therefore offset Kshs. 49,500,000 from the total of Kshs. 600 million.

#### **Management Response**

The CEO of NHIF informed the Committee that a provision of 100% has been made in the accounts for the entire investment of Kshs. 1,309,236,859.00

#### **Committee Observation**

**The Committee observed that the then Chief Executive made investments on behalf of the Fund contrary to Treasury circulars and prudent commercial practices.**

#### **Committee Recommendation**

**The Committee recommends that the Chief Executive should ensure that any future investments of the Fund are made in accordance with Treasury circulars and are based on prudent commercial practices.**

#### **34.4 TRADE AND OTHER RECEIVABLES: FYS 2009/2010 AND 2011/2012 ACCOUNTS**

The Committee was informed that the audit report on trade and other receivables had a balance of Kshs. 597,828,290 which includes balances of hospital receivables, outstanding contribution, RD (Refer to Drawer) cheques, staff receivables, supplier advances and interest from non performing institutions. These balances have been outstanding for a long time.

##### **Management Response**

The CEO of NHIF informed the Committee that the following actions have been taken; staff receivables of Kshs. 1,166,623 include an amount of Kshs. 444,598 relating to medical expenses. Out of this amount Kshs. 95,815.50 has been recovered as at 30<sup>th</sup> April 2013 and recovery effort is ongoing. Out of the balance of RD cheques outstanding as at 30<sup>th</sup> June 2012, an amount of Kshs. 1,340,770 was made good in the financial year 2012/2013. That management is in the process of establishing the existence and general status of the surcharged Hospitals in order to be able to ask for write off from the board on the report after the exercise.

##### **Committee Observation**

**The Committee observed that the debt collection mechanisms of the Fund had gaps and ill-suited to collect debts promptly.**

##### **Committee Recommendation**

**The Committee recommends that the Chief Executive Officer puts in place financial controls and debt collection mechanisms, to ensure collection of debts immediately they fall due.**

#### **34.5 TRADE AND OTHER PAYABLES: FY 2011/2012 ACCOUNTS**

The Committee was informed that un-reconciled difference of Kshs. 312,343,848.00 reflected on the Financial Statement of Kenyatta National Hospital as at 30<sup>th</sup> June 2012. NHIF stands by its amount of Kshs. 19,188,420.00 as claims payable to K.N.H as at 30<sup>th</sup> June 2012.

##### **Management Response**

The CEO of NHIF informed the Committee that NHIF has contacted Kenyatta National Hospital on the matter vide letter HF/C/806 Vol. V/51 dated 30<sup>th</sup> April 2012. It requested the hospital to provide detailed listing of claims composing of the figure of

Kshs. 331,532,268 to enable NHIF reconcile what is in their records vis a vis in the Funds'. As of the date of response the hospital had not come forth with the information.

#### **Committee Observation**

**The Committee observed that the un-reconciled differences between the accounts of Kenyatta National Hospital and the National Hospital Insurance Fund (NHIF) need to be addressed promptly and conclusively.**

#### **Committee Recommendation**

**The Committee recommends that the Ministry of Health intervenes and ensures that Kenyatta National Hospital and the National Hospital Insurance Fund (NHIF) reconcile the differences in claims in their books of accounts within three months and report to Parliament.**

#### **34.6 PROVISIONS UNDER CURRENT LIABILITIES: FY 2011/2012 ACCOUNTS**

The audit report noted that the provision for lost revenue was insured with the Prime Movers Insurance Ltd and Indo Africa Insurance Ltd. The financial statements reflects a provision balance out of which Kshs. 11,970,607 and Kshs. 879,401,565 are provision for lost revenue and provision for civil servant scheme respectively.

The Committee was informed that the officers responsible for the loss in revenue have since been terminated from employment and personal files of the individual's concerned can be accessed from NHIF offices.

#### **Committee Observation**

**The Committee observed that the termination from employment of staff responsible for loss of revenue was not adequate and that money lost should still be recovered.**

#### **Committee Recommendations**

**The Committee recommends that the EACC investigates the circumstances under which money was lost and recommends prosecution by the Director of Public Prosecution of the then Chief Executive Officer Mr. Richard L. Kerich and the officers responsible for the loss of revenue for:**

- (i) Contravention of Article 226(5) of the Constitution;**
- (ii) Abuse of office contrary to Section 101 of the Penal Code and Section 12 of the Public Officer Ethics Act;**

**The Committee further recommends that the then CEO and the officers responsible for the loss of revenue should be surcharged or money recovered from them.**

#### **34.7 CIVIL SERVANT MEDICAL SCHEME: FY 2011/2012 ACCOUNTS**

**(i) NHIF's Mandate** - The Committee was informed that prior to signing the contract on civil servant medical scheme, the Ministry of State for Public Service had advertised in the newspaper a tender for provision of medical services. However the fund did not bid for the contract as their Act did not mandate them to cover certain risks included in the bid document. However after further deliberation the Ministry communicated to the fund on the government's decision to contract NHIF to offer medical services to civil servants and disciplined forces. The Fund has however not explained how the scheme was to be administered as the Act does not give mandate to undertake some of the products contained in the document.

#### **Management Response**

The Chief Executive Officer, NHIF informed that Committee that NHIF board initially had reservations on the participation of the NHIF in the tender for medical cover for civil servants given some risk areas in the tender. Further it is true that the NHIF Act was not sufficient in providing the policy directed in line with the Employment Act, 2007 and as far as Group Life and Last Expense is concerned. In this regard, the fund administered the scheme through the negotiation contract signed between the Ministry of Public Service and NHIF as a government policy.

#### **Committee Observation**

**The Committee observed that NHIF participated in the roll-out of the scheme alongside private sector players yet the NHIF Act was not sufficient in providing the policy directive in line with the Employment Act, 2007.**

**(ii) Number of Contributors and Payments** - The Committee was informed that the contract signed between NHIF and the Ministry of State for Public Service was 219,789 civil servants while payments made was for 211,215 civil servants leading to a difference of 5,570 civil servants.

#### **Management Response**

The Chief Executive Officer, NHIF informed that Committee that the contract signed between the Ministry of State for Public Service and NHIF was for 216,789 and not

219,789. The contract allows entry and exit any time during the year and hence the numbers of civil servants do not remain static.

### **Committee Observation**

**The Committee observed that the audit report pointed out that the contract signed between NHIF and Ministry of State for Public Service was for 219,789 civil servants while payments made was for 211,215 civil servants leading to a difference of 5,570 civil servants.**

**(iii) Cancellation of Contract-** the Committee was informed that the board meeting held on 16<sup>th</sup> May suspended the two health providers from offering medical insurance cover to public servants. Following the board decision, the fund wrote to the two providers, letters of termination. The fund has not explained the exact position in regard to this issue.

### **Management Response**

The Chief Executive Officer, NHIF informed that Committee that it is true the caretaker board in a meeting on 16<sup>th</sup> May 2012 suspended two healthcare providers from offering medical insurance to civil servants and management terminated the contract vide Ref. HF/C/989 Volume II/(20).

### **Committee Observation**

**The Committee required an explanation as to why the Caretaker Board in a meeting on 16<sup>th</sup> May 2012 suspended two healthcare providers from offering medical insurance to civil servants and Management terminated the contracts vide Ref. HF/C/989 Volume II/ (20).**

### **Committee Recommendation**

**The Committee recommends that the Ethics and Anti-Corruption Commission investigates the NHIF Civil Servant Medical Scheme and those found culpable be prosecuted.**

## **35.0 NATIONAL WATER CONSERVATION AND PIPELINE CORPORATION: FY 2008/2009 TO 2012/2013**

### **REPORTS OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF NATIONAL WATER CONSERVATION AND PIPELINE CORPORATION FOR FINANCIAL YEARS 2008/2009 TO 2012/2013**

**The Managing Director, National Water Conservation and Pipeline Corporation, Eng. Petronila A. Ogut, accompanied by Eng. Kandie, Senior Engineer; Margaret Kithunzi, Acting General Manager, - Finance; Wilfred Munyiri SCO; Gachiri E.K. - Principal Accountant; J.M. Musyoka - CPO; Ngibuini E. - CIA; Solomon A. Assana - General Manager Human Resource; and Geoffrey Ikobe - Senior Engineer appeared before the Committee to give evidence on the Accounts of the Board for the 2008/2009 to 2011/2012.**

#### **35.1 FINANCIAL POSITION: FY 2008/2009 ACCOUNTS:**

Although the Corporation realized a surplus of Kshs.358,740,013(2008-Kshs.60,452,535) during the year, the current liabilities of Kshs.614,025,012 exceeded the current assets of Kshs.437,917,179 by a figure of Kshs.176,107,833(2008-Kshs. 611,422,789). Accordingly, and as in the previous year, the Corporation is technically insolvent and the financial statements have been prepared on a going concern basis on the assumption that the Corporation will continue to receive financial support from the Government, creditors and banks.

#### **Management Response**

The Managing Director informed the Committee that during the year under review the Corporation's current liabilities exceeded the current assets by Kshs. 187,277,798. This was due to the high trade payables maintained by the Corporation and the low cash volumes.

The Managing Director NWCPC further informed the Committee that the financial statements were prepared on the basis of going concern on consideration of:-

- (i) Government financial regulations and procedures that require that any unpaid bills in the preceding year form first charge of the next year; and
- (ii) The indication that the Government would continue financing the operations of the Corporation whereby the budget had been approved and the Corporation was earmarked to receive Government grants.

#### **Committee Observation**

**The Committee observed that NWCPC's financial performance was hampered by its reliance on government grants for its operations.**

### **Committee Recommendation**

**The Committee recommends that the Corporation diversifies its sources of revenue and reduce reliance on Government grants for its operations.**

### **35.2 TRANSFER OF ASSETS AND LIABILITIES: FYs 2008/2009 TO 2011/2012 ACCOUNTS**

The receivables and prepayments balance of Kshs.367,077,994 as at June 2011 excludes current assets relating to water debtors of Kshs.1,377,265,026 and prepayments of Kshs.754,400 apparently transferred to a number of Water Services Boards through various agreements between the corporation and the Water Service Boards in the financial year 2005/2006. However, these agreements had not been signed as at 30<sup>th</sup> June 2011.

In the circumstances, the accuracy of the receivables and prepayments of Kshs.367,077,994 as at 30<sup>th</sup> June 2011 could not be confirmed.

### **Management Response**

The Managing Director, NWPC informed the Committee that the property, plant and equipment balance excluded various assets valued at Kshs. 16,781,771,832 earmarked for transfer to a number of Water Services Boards through various agreements between the National Water Conservation and Pipeline Corporation and the Water Services Boards.

The verification of the assets by the Water Services Board took place in 2009 with the support of GIZ (Formerly GTZ) and liabilities were also transferred as instructed by the Gazette notice, legal notice No. 101 of the Water Act No. 8 of 202, the Water Plan of transfer of Water Services Rules 2005 of 12<sup>th</sup> August 2005.

### **Committee Observation**

**The Committee observed that the verification and transfer of assets had taken inordinately long to be completed due to a lack of willingness on the part of NWPC management. The parent Ministry had also failed to provide direction and lead role in the verification and transfer of assets process in line with the spirit of devolution.**

### **Committee Recommendation**

**The Committee recommends that the National Water Conservation and Pipeline Corporation fast tracks the verification and transfer of assets to Water Service Boards.**

### **35.3 CASH AND CASH EQUIVALENT: FY 2008/2009 ACCOUNTS**

The Committee heard that the cash and equivalent balance of Kshs. 116,829,043 as at 30<sup>th</sup> June 2009 included cash at bank totalling Kshs. 115,408,118 supported by various bank reconciliation statements. The statements however reflect long outstanding

reconciling items in form of payments in the bank not in the cashbook and receipts in the cashbook not in the bank amounting to Kshs. 21,309,391 and Kshs. 12, 967,625 respectively. Further, and according to other supporting schedules, the unrepresented cheques as at 30<sup>th</sup> June 2009 included stale cheques totalling Kshs. 4,960,867. No reasons have however been provided for failure to clear the long outstanding items or have the cheques replaced.

#### **Management Response**

The management responded that since the fire destroyed their records in 2009, they have written to KCB to assist them reconstruct their records so be able to physically verify and reconcile the long outstanding items. This process has taken too long since they are relying on KCB's assistance to get the items out of their archives. The management also informed the Committee that they have appropriately reversed all stale cheques leaving a balance of Kshs. 2,000 as of 30<sup>th</sup> June 2013.

#### **Committee Observation**

**The Committee observed that the reconciling process was taking too long following a mysterious fire that gutted down the Headquarters.**

#### **Committee Recommendation**

**The Committee recommends that the Managing Director ensures that the Corporation undertakes reconstruction of its records, reconciles its accounts in three months after the adoption of this report and report to the Committee.**

#### **35.4 PAYABLES AND ACCRUED EXPENSES: FY 2010/2011 ACCOUNTS**

The Committee heard that there was a difference of Kshs. 2,108,800 between the accounts payable in the NCWPC and the Athi Water Service Board, which also included staff creditors of Kshs. 71,748 which had no supporting documents for verification.

#### **Management Response**

The Management responded that they had made a payment of Kshs.3, 409,516 to Athi Water service board to reduce the amount. The staff creditors have paid through imprest recovery from salary, while still reconciling was on-going for some.

#### **Committee Observation**

**The Committee observed that the payables and accrued expenses of the Corporation varied and had no supporting documents.**

#### **Committee Recommendations**

**The Committee recommends that the management ensures reconciliation in the accounts payables and recovery of imprest from staff.**

**The Committee further recommends that the EACC investigates the conduct of the then Managing Director for failure to recover imprest from staff within the time frame stipulated in the financial regulations and policy guiding imprest.**

**In addition, the Committee recommends that the then Managing Director be prosecuted by the Director of Public Prosecutions for abuse of office contrary to Section 101 of the Penal Code and the Public Officer Ethics Act, 2003.**

**The Committee also recommends that the former Managing Director be surcharged and be barred from holding public office.**

### **35.5 PROPERTY, PLANT AND EQUIPMENT: FYs 2010/2011 TO 2011/2011 ACCOUNTS**

The Committee heard that Property, Plant and Equipment balance of Kshs. 608,797,681 as at 30 June 2013 excludes various assets valued at Kshs 16,781,771,832 earmarked for transfer to various Water Services Boards through various agreements between the Corporation and the Water Services Boards. These agreements, although drafted more than six years ago, had not been signed as at 30 June 2013 by the respective parties. Consequently, it is not possible to confirm whether the carrying values of the property, plant and equipment as stated in the financial statements reflect the fair values as at 30 June 2013.

#### **Management Response**

The Managing Director, NWCPC informed the Committee that that Legal Notice No. 101 of the Plan of Transfer of Water Services provides that asset verification process be done before transfer. Asset verification required both financial and technical capacity which the Water Service Boards did not readily have. The verification of assets took place in 2009 after the Water Services Boards received support from GIZ. The Corporation had prepared the transfer agreements and written to the Water Services Boards to have the agreements signed by 1<sup>st</sup> March, 2013 but this was not possible due to moratorium on transfer of assets by the Transition Authority. The Transition Authority vide a letter dated 14<sup>th</sup> October 2013, authorized the Corporation to sign the agreements and the Corporation has since prepared the transfer agreement with Lake Victoria South Water Services Board. Further to the Circular from Chief of Staff and Head of Public Service on Parastatal Reforms Ref. No. OP/CAB 9/1/5 dated 16<sup>th</sup> December, 2013.

#### **Committee Observations**

**The Committee observed that;**

- i). There was an undue delay in the transfer of assets to the Water Service Boards.**

- ii). **The delay is hampering the provision of safe, adequate water supply and sanitation services by Water Service Boards.**

### **Committee Recommendations**

**The Committee recommends that:-**

- i). **The Corporation should fast track the Signing of the Transfer Agreements to avoid any further delay in the transfer of assets and services to the Water Service Boards.**
- ii). **There should be no disposal of assets by the Corporation until the transfer process is complete.**

### **35.6 CAPITAL WORKS IN PROGRESS-HEADQUARTERS BUILDING: FYs 2011/2012 TO 2012/2013 ACCOUNTS**

The Committee heard that in March 2008 the Corporation awarded a contract for construction of its Headquarters Building to a firm at a contract sum of Kshs. 485,400,820. However, the contractor abandoned the project after being paid a total of Kshs.80, 660,480. The Corporation thereafter instituted a claim of Kshs. 24,270,401 for damages against the contractor through an insurance firm in respect of the performance bond as provided for in terms of the contract. The insurance firm, however, declined to honour the claim and matter was still pending in a court of law as at 30<sup>th</sup> June, 2013. The construction contract was subsequently awarded to another firm on 8<sup>th</sup> December, 2011 at a contract sum of Kshs. 707,909,101 bringing the estimated total cost of the project to Kshs. 788,569,581 against the initial contract sum of Kshs 485,400.820 resulting to cost overrun of public resources of Kshs. 303,168,761. The project was still behind schedule and had not been completed as at 30<sup>th</sup> June, 2013.

### **Management Response**

The Managing Director informed the Committee that;

- i) The Contract of Kshs. 485,400,820 was terminated because the Contractor had abandoned works thereby frustrating of the Contract. At the time of terminating the contract the executed progress of works was only 5% against a time lapse of 14 months; translating to 47% of the original contract period.
- ii) The construction of the Headquarters building was granted to another contractor on 8<sup>th</sup> December, 2011 at a contract sum of Kshs. 707,909,101 over and above the already paid amount on the project of Kshs. 80,660,480.
- iii) Works on the second contract commenced on 20<sup>th</sup> January, 2012 and the progress of works is at 58%. The construction works have progressed well and it's expected that the works will be completed by December, 2013 within the contract sum of Kshs. 707,909,101.

The Corporation informed the Committee that there was no cost overrun of public resources of Kshs. 303,168,761. There were 2 distinct contracts procured at different times with two different budgets. The scope of work had been enhanced.

The Corporation in the FY 2006/2007 procured a contractor, M/s Capital Construction Ltd and the contract was dully executed 19<sup>th</sup> March 2008 at contract sum of Kshs. 485,400,820.00 for contract duration of thirty (30) months. However, the contract was subsequently terminated due to non-performance in April 2008 and final measurements & accounts done in June 2008 confirming actual executed works being at Kshs. 26,800,746.00.

The Committee queried how the second contract was sourced and observed that 303 Million was the amount that the management would have saved if the first contract had been completed at the Kshs. 485,400,820.

#### **Committee Observations**

**The Committee queried how the second contract was sourced and observed that 303 Million was the amount that the management would have saved if the first contract had been completed at the Kshs. 485,400,820.**

**The Committee observed that the Corporation paid advance payment to a contractor who later abandoned the project which was awarded to a new contractor resulting in variation of Kshs. 303, 168,781.**

**The Committee further observed that in spite assurances that the project would be complete, the contract period had been varied again.**

#### **Committee Recommendation**

**The Committee recommends that the then Managing Director (name) and the Board members (names) be held responsible for the possible cost overruns amounting to Kshs. 303 million incurred by NWPC in the construction of the Headquarters.**

**The Committee further recommends that the EACC investigates circumstances under which the M/s Capital Construction Ltd was awarded the contract and abandoned the project midway. The EACC should also investigate the award of contract to the second Contractor M/s NK Brothers Ltd.**

**The Committee further recommends that M/s Capital Construction Ltd, its owners and related companies be barred from transacting in any business with NWPC and other government agencies for their failure to complete the project resulting to NWPC incurring additional expenditure over and above what had been initially budgeted for.**

**The Committee recommends that it be furnished with information on the measures that the corporation has taken to recover the monies already paid from**

**the original contractor and reasons for the performance bond not having been used to pay the amount already paid to the contractor**

**35.7 SPECIAL REPORT OF THE AUDITOR GENERAL ON CONSTRUCTION OF FIVE WATER DAMS: MARUBA DAM, KISERIAN DAM, UMAA DAM, BADASA DAM AND CHEMUSUSU DAM**

An examination of records relating to key water supply projects in Eastern and Rift Valley regions, notably Machakos, Kajiado, Kitui, Marsabit and Koibatek revealed the following:

**(a) UMAA DAM**

(ii) The Committee heard that the payment certificate for two Yamaha bikes was Kshs 2,000,000 which according to a market survey by the Office of the Auditor General represents inflation on actual cost by 300%. Though management had said that they would reverse the payments in subsequent interim payment certificate evidence of this is not available for audit review.

**Management Response**

The Ag. Managing Director, NWCPD submitted that the Kshs 2,000,000 was provision for the Yamahas that was in the Contractor's BoQ rate in his bid and since it is a signed contract rate they could not change it.

**Committee Observation**

**The Committee noted with concern that the Corporation did not check the contract price before signing the agreement.**

**Committee Recommendation**

**The Committee recommends that the then Managing Director (name) be held accountable for the inflated prices of goods in the contract signed by the organization.**

**(b) Maruba Dam**

(i) Included in the Bills of Quantities was a provision of Kshs.9, 000,000 for purchase of three 4WD vehicles for use in the project. However, and according to information available, no vehicle was purchased and no indication has been provided as to how the amount of Kshs. 9,000,000 was utilized and eventually accounted for.

(ii) Records relating to procurements of consultancy services show that the Corporation used direct procurement method to identify and appoint a local consultant to supervise the works at a fee of Kshs. 17,500,000 as indicated in the Bills of Quantities. No reason was however provided for failure to use open tender in sourcing for the consultant. Further no information has been provided indicating how the consultant fee of Kshs. 17, 500, 000 was arrived at.

### Committee Observation

- (i) The Committee observed that the Corporation did not provide the documents to Auditor to show that the Corporation utilized the Kshs. 9,000,000 provisions to purchase the vehicles as was required. However, the Corporation while making its submissions provided the Committee with a payment voucher to show that the vehicles were purchased.
- (ii) The Committee also observed that the Corporation utilized Kshs. 17,500,000 to single source consultancy services in total disregard to the provisions of the PPDA, 2005 and the Public Procurement Regulations 2006. The Corporation argued that it was not restricted to use open tender and this was because quality assurance for dams is specialized with no reasonable alternative of substitute and there was urgency of procurement of the services and that the circumstances leading the urgency was unforeseeable.

### Committee Recommendations

- (i) The Committee recommends that the then Management should in future provide to the Auditor the necessary documents to support any purchase as required by law
- (ii) The Committee recommends that future consultancy services by the Corporations should be undertaken through open tendering system in line with the procurement laws.

#### **(c) KISERIAN DAM**

It was noted that payments vouchers and other related records in respect of expenditure totaling Kshs. 8,993,000 as shown, were not submitted for audit review:

<b>Date</b>	<b>Payee</b>	<b>Amount in Kshs.</b>
26 <sup>th</sup> January 2009	Gregory Mugambi	165,000
30 June 2009	Zablon Isaboke	300,000
03 December 2008	Zablon Isaboke	300,000
18 <sup>th</sup> December 2006	B.M Musyoki and Co. Adovactes	8,288,000
<b>Total</b>		<b>8,993,000</b>

### Committee Observation

The Committee observed that there was reluctance by the Management to submit the requested documents for verification and review. This is contrary to the Public Audit Act 2003. The documents were submitted to the Committee and the cases cleared.

### **Committee Recommendations**

**The Committee recommends that the Management of the Corporation should in future submit to the Auditor the requisite documents for review in line with the law.**

### **35.8 CONSTRUCTION OF DAMS: FYS 2009/2010 TO 2011/2012 ACCOUNTS:**

The Committee heard that;

- i) Works on Kiserian and Maruba dams were substantially completed in 2012 and the dams are now in use.
- ii) Works on Umaa and Badasa dams – works have stagnated and the contractors have taken the Corporation to Court. Chemususu Dam was substantially completed in February 2014.
- iii) Phase 2 works of Chemususu Dam which involves upgrade of water treatment plant and reticulation/distribution network is yet to be undertaken. Currently, the parent Ministry has availed Kshs. 400 million in the financial year 2014/15 to be used in the implementation of upgrade of water treatment plant from current 5,000m<sup>3</sup>/day to 35,000m<sup>3</sup>/day. The project will be undertaken by Rift Valley Water Services Board, in line with Water Act 2002.

### **Committee Observation**

The Committee observed that;

- i) The Corporation had not exercised proper controls on projects budgets and as a result, expenditure on construction work had exceeded the respective budgetary provisions; and
- ii) The evidence provided by the Corporation is based on the Audit Report of 2011/2012 financial year report.

### **Committee Recommendation**

**The Committee recommends that the Auditor General undertakes an up to date performance audit on all the major dams undertaken by the corporation with a view to determine whether there was value for money, adherence to procurement laws, adherence to provisions of the public finance management act and other related laws on application of public resources.**

## **36.0 TEA BOARD OF KENYA: FY 2001/2002 TO 211/2012**

### **REPORTS OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF TEA BOARD OF KENYA LIMITED FOR THE FINANCIAL YEARS ENDED 2001/2002 TO 2011/2012**

**Ms. Elizabeth W. Kimenyi, Ag. Managing Director, Tea Board of Kenya appeared before the Committee to give evidence on the accounts of the Authority for financial years 2001/2002 to 2011/2012.**

#### **36.1 UNQUALIFIED ACCOUNTS: FYS 2001/2002 TO 2007/2008 AND 2011/2012**

The Committee was informed by the Auditor General that the accounts of the Tea Board of Kenya for the Financial Years 2001/2002 – 2007/2008 and 2011/2012 were unqualified.

##### **Committee Observation**

**The Committee observed that Tea Board of Kenya was given a clean report by the Auditor General for the FYS 2001-2008 and 2011 -2012.**

##### **Committee Recommendation**

**The Committee commended the Tea Board of Kenya for having unqualified accounts for the FY 2001-2008 and 2011-2012**

#### **36.2 FINANCIAL POSITION: FYS 2008/2009 TO 2010/2011 ACCOUNTS**

##### **36.2.1 FY 2008/2009 ACCOUNTS**

During the year under review, the Board realized a deficit of Kshs. 19,578,158 (2007/2008 –deficit Kshs. 21,580,564) thereby reducing the capital promotion items to Kshs. 88,567,179 respectively. It has however not been explained by management why the deficit of Kshs. 19,518,158 was not adjusted against the general item instead of the capital and promotion items. Further, and as may be observed in the past four years, the Board has not recorded negative results and its ability to carry out its mandate in the long run is therefore in doubt.

##### **Management Response**

The Ag. Managing Director informed the Committee that the Board relied on manufacturing cess levied at 0.46 cents per kilogram on made tea. The income was subject to vagaries of weather and if unfavorable, the Board would not raise adequate funds to meet its needs. Out of the above cess 50% was shared with the tea research foundation of Kenya. During the year, the government had promised a grant of Kshs. 60 million but only released Kshs 21.5 million leaving a deficit of Kshs. 38.5 million. The Board charged general instead of capital and promotion reserves had arisen from that budgetary item.

### **Committee Observation**

**The Committee observed that the Board relied on cess from tea and Government grants to support their budget.**

### **Committee Recommendation**

**The Committee recommends that the Tea Board diversifies its sources of revenue to reduce heavy reliance of levies from tea and Government grants.**

### **36.2.2 FY 2009/2010 ACCOUNTS**

The Board recorded a deficit of Kshs. 33,478,720 (2008/2009 –deficit Kshs.19,578,158 during the year under review thereby reducing the capital and promotion items to Kshs. 52,313,155 and Kshs. 67,780,485 respectively. Although the management explained that it made proposals through the Tea (Amendment) Bill, 2010 to raise additional revenue through a change in revenue source policy, the financial performance of the Board nevertheless remained precarious as at 30<sup>th</sup> June 2010.

### **36.2.3 FY 2010/2011 ACCOUNTS**

The Board recorded a deficit of Kshs. 33,478,720 (2009/2010 – deficit 33,478,720) during the year under review, thereby reducing the capital and promotion items to Kshs. 52,313,155 and Kshs. 67,780,485 respectively. Although the management explained that it made proposals through the Tea (Amendment) Bill, 2010 to raise additional revenue through a change in revenue source policy, the financial performance of the Board nevertheless remained precarious as at 30<sup>th</sup> June 2011.

### **Management Response**

The Ag. Managing Director informed the Committee that the Board of Tea Board of Kenya proposed raising additional revenue by introducing the ‘Tea Ad Valorem Levy’ on exports and imports through the Tea Amendment Bill, 2010.

The collection of the ‘Tea Ad Valorem Levy’ started in March, 2012 and has seen the Board’s revenue rise and consequently the Board cleared the deficit as indicated in the 2011/2012 accounts.

### **Committee Observation**

**The Committee observed that the Board relied on cess from tea and Government grants to support their budget.**

### **Committee Recommendation**

**The Committee recommends that the Tea Board diversifies its sources of revenue to reduce heavy reliance of levies from tea and Government grants.**

## **37.0 NATIONAL AUTHORITY FOR THE CAMPAIGN AGAINST ALCOHOL AND DRUG ABUSE (NACADA): FY 2007/2008 TO 2012**

### **REPORTS OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF NATIONAL AUTHORITY FOR THE CAMPAIGN AGAINST ALCOHOL AND DRUG ABUSE (NACADA) FOR THE FINANCIAL YEARS 2007/2008 TO 2012/2013**

**The Chief Executive Officer, National Authority for the Campaign against Alcohol and Drug Abuse (NACADA), Dr. William Okedi, HSC, accompanied by Samuel Makini, Financial Officer; Zeka Wekesa, Manager Communications and DOC; and Alice Njagi, Personal Assistant appeared before the Committee to give evidence on the accounts of the Authority for the 2007/2008 to 2011/2012.**

#### **37.1 IRREGULAR PAYMENT OF SITTING ALLOWANCE: FY 2007/2008 ACCOUNTS**

During the year under review, the Authority paid sitting allowance totaling Kshs. 210,000 to the national coordinator who is already earning a salary and top up allowance for services rendered in contravention of the circular Ref OP/CAB 9/21/2a/LII of 5<sup>th</sup> March 2005.

##### **Management Response**

The management informed the Committee that the sitting allowance was recovered fully.

##### **Committee Observation**

**The Committee observed that the Authority paid sitting allowance to the National Coordinator in spite earning a salary and top up allowance for services rendered in contravention of the circular Ref. OP/CAB 9/21/2a/LII of 5<sup>th</sup> March, 2005.**

##### **Committee Recommendation**

**The Committee recommends that the Authority should ensure adherence to financial regulations issued by the National Treasury from time to time.**

#### **37.2 PROCUREMENT OF GOODS AND SERVICES: FY 2008/2009 ACCOUNTS**

The Authority procured goods and services totaling Kshs. 2,501,440 including publicity packages, logo development and service charter design from various firms through single sourcing. The Corporation was denied the opportunity of competitive bidding and possible savings.

##### **Management Response**

The management informed the Committee that this was because the Authority did not have enough staff capacity and competent procurement staff. The Authority had just been established and in order to start off it single sourced the goods and services.

### **Committee Observation**

**The Committee observed that the Authority contravened the Public Procurement & Disposal Act 2003 and Public Procurement and Disposal Regulations 2006.**

### **Committee Recommendation**

**The Committee recommends that the Ethics and Anti-Corruption Commission investigates the procurement process for packages, logo development and service charter design and those responsible be held accountable.**

**The then Chief Executive Officer Mrs. Jennifer Kimani be held accountable for contravention of the provisions of Public Procurement and Disposal Act, 2005 by single sourcing for goods and services that could be procured using open procurement methods that could guarantee value for money, transparency and accountability.**

### **37.3 SUSPENSE ACCOUNT: FY 2008/2009 ACCOUNTS**

The Committee heard that included in the current assets figure of Kshs. 17,737,402 as at 30<sup>th</sup> June 2009 is an amount of Kshs. 1, 038, 602 which represented cash that could not be immediately accounted for.

### **Management Response**

The Committee was informed that investigations were done and Kshs. 1,038, 602 that was part of the current assets was unaccountable and the officers responsible were surcharged.

### **Committee Observation**

**The Committee observed that the Authority failed to account for Kshs. 1,038,602.**

### **Committee Recommendation**

**The Committee recommends that the Authority puts in place measures to mitigate against fraud in the institution.**

### **37.4 REIMBURSABLE INCOME: FY 2008/2009 ACCOUNTS:**

During the year under review the authority received a total of Kshs. 12,303,968 in form of reimbursable income. By the end of 30<sup>th</sup> June 2009 the Authority had not spent Kshs. 1,388,362. This unspent balance does not however appear as part of the bank balance and no clarification had been given.

### **Management Response**

The management informed the Committee that balances for all unspent funds were disclosed as a note in the financial statements representing the ending cash and cash equivalent as was indicated in the cash flow statement.

### **Committee Observation**

**The Committee observed that the Authority failed to capture its unspent balance as a footnote as a disclosure in its bank balance.**

### **Committee Recommendation**

**The Committee recommends that the Authority ensures that all the unspent funds are fully disclosed and captured in its financial statements**

### **37.5 PROPERTY PLANT AND EQUIPMENT: FYS 2007/2008 TO 2011/2012 ACCOUNTS**

The property, plant and equipment balance of Kshs. 26,441,227 excludes undetermined value of eight motor vehicles whose ownership has not been confirmed since the logbooks are still held under the name of the parent ministry. Transfer and valuation of the vehicles for inclusion in the books of accounts of the authority have not been done making it not possible to confirm the accuracy and completeness of the property plant and equipment figure of Kshs. 26, 441,227.

### **Management Response**

The management informed the Committee that the motor vehicles that were excluded from the property, plant and equipment were inherited from the parent Ministry and because the authority did not have the logbooks for the vehicles it was difficult to determine the carrying value. The logbooks have since been secured and the vehicles are now registered in the authority's name.

### **Committee Observation**

**The Committee observed that the Authority excluded an undetermined value of eight motor vehicles whose ownership has not been confirmed since the log books are still held under the name of the parent Ministry and further the transfer and valuation of the vehicles for inclusion in the books of accounts of the authority have not been done making it not possible to confirm the accuracy and completeness of the property plant and equipment figures.**

### **Committee Recommendation**

**The Committee recommends that the management ensures that all the properties and assets of the Authority are fully recorded valued and ownership documents obtained.**

### **37.6 UNSUPPORTED EXPENDITURE: FY 2012/2013 ACCOUNTS**

The Committee heard that an amount of Kshs.253, 791,416 was disbursed to District Alcoholic Drinks Regulation Committee. Expenditure amounting to Kshs 59,824,100.48 was not supported and cannot be verified.

The National Coordinator informed the Committee that NACADA finances the operations of District Alcoholic Drinks Regulation Committee. In the Financial Year under review some districts had not submitted Expenditure and Revenue returns as at the time of preparing Financial Reports. The Authority later received expenditure returns worth Kshs. 36,007,307 and is still pursuing the remaining balance of Kshs.23, 816,793.

### **Committee Observation**

**The Committee observed that the Authority disbursed monies to the District Alcoholic Drinks Regulation Committee but expenditure amounting to Kshs 59,824,100.48 was not supported and cannot be verified.**

### **Committee Recommendation**

**The Committee recommends that the Authority ensures full recovery of the unaccounted for funds and audit verification done within three months of the adoption of this report**

### **37.7 PAYMENT OF GRATUITY: FYs 2010/11 TO 2012/2013 ACCOUNTS**

The Committee heard that the former National Coordinator was paid a gratuity totaling Kshs.4, 186,488 based on a basic salary of Kshs.3, 201,143 and a house allowance of Kshs 985,056 following the expiry of a three year contract. The contract agreement provided for gratuity to be calculated on the basis of 31% of the basic salary only, which amounted to Kshs 3,201,432. There was therefore an overpayment of Kshs. 985,056. The former National Coordinator was also paid a top up allowance of Kshs. 920,520 contrary to the contract agreement. No satisfactory reason has been provided for the ineligible payments totaling Kshs.1, 905,576.

### **Management Response**

The National Coordinator informed the Committee that the Authority had initiated the recovery process but the former Coordinator filed two Court Cases against the Authority. The two cases were concluded on 28<sup>th</sup> June, 2012 and on 18<sup>th</sup> September respectively and were dismissed. NACADA instructed its lawyers to institute a recovery suit for the sum of Kshs. 1,905,576 from the former National Coordinator.

### **Committee Observation**

**The Committee observed that the Authority over paid the former National Coordinator by Kshs. 985,056 as gratuity and house allowance following the expiry of a three year contract in addition to a top up allowance of Kshs. 920,520 contrary to the contract agreement.**

### **Committee Recommendations**

**The Committee recommends that the Ethics and Anti-Corruption Commission investigates the circumstances under which the former National Coordinator was overpaid and to surcharge and prosecute for abuse of office and those found to have contravened the law be prosecuted and monies lost be recovered.**

**The Committee further recommended that recovery of the monies be instituted following the conclusion of the court case and report to the Committee within three months of the adoption of the report.**

## **38.0 NORTHERN WATER SERVICES BOARD: FY 2004/2005 TO 2011/2012**

### **REPORTS OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF NORTHERN WATER SERVICES BOARD FOR THE FINANCIAL YEARS 2004/2005 TO 2011/2012**

**The Chief Executive Officer, Northern Water Services Board, Mr. Abdikadir N. Osman accompanied by R. K. Mutai, Finance and Administration Manager, NWSB; Mr. I. G. Kimanai, Assistant Director, Water Services – Ministry of Environment, Water and Natural Resources appeared before the Committee and gave evidence on the accounts of the council for the Financial Years 2004/2005 to 2011/2012.**

### **38.1 PROPERTY PLANT AND EQUIPMENT/NON CURRENT ASSETS: FYs 2004/2005 TO 2008/2009 AND 2010/2011 TO 2011/2012 ACCOUNTS:**

The Committee heard that Motor vehicles registration GK A 999J valued at Kshs. 3,505,000, GK A 741 L valued at Kshs. 3,404,000 and GK Y 495 valued at Kshs. 6,509,000 were procured by the Ministry of Water and Irrigation on behalf of the Board. No evidence has been shown to confirm transfer or ownership of the vehicle by the Board.

#### **Management Response**

The Chief Executive Officer, Northern Water Services Board (NWSB) informed the Committee that the vehicle was purchased by the Ministry of Water and Irrigation as part of capacity building of the board to facilitate its operations. The Board is awaiting the transfer of the motor vehicle to the Board in due course. The vehicle GK A 999J has since been transferred to Laisamis in Marsabit County for use by the District Water Officer. Vehicle GK Y 495 was sold by the Board in 2006/2007

#### **Committee Observations**

**The Committee observed that the Board has no logbooks for the vehicles but disposed of a vehicle that did not belong to them.**

**The Committee observed that the authority transferred and disposed of vehicles that belonged to the Ministry of Water and Irrigation but which were under their custody.**

#### **Committee Recommendations**

**The Committee recommends that the EACC investigates the conduct of the then Chief Executive Officer in relation to the disposal of the motor vehicles that did not belong to the Authority contrary to Sections 126, 127, 128 and 129 of the Public Procurement and Disposal Act, 2005.**

**The Committee further recommends that the Director of Public Prosecutions institutes criminal proceedings against the then Chief Executive Officer (name)**

**for abuse of office contrary to Section 101 of the Penal Code and the Public Officer Ethics Act, 2003 and that the officer be surcharged or money recovered.**

### **38.2 TRADE AND OTHER RECEIVABLES: FYs 2008/2009 TO 2009/2010 ACCOUNTS**

The Committee heard that the accuracy of trade and other receivables could not be confirmed since no reconciliation or explanation for the differences had been availed.

#### **Management Response**

The CEO informed the Committee that the difference was due to timing as the company had made payments and posted their cheques via mail which had not yet been received at the board by the time the accounts were being prepared hence the difference in the figures. The differences have since been reconciled with the management of the various companies.

#### **Committee Observation**

**The Committee observed that mailing cheques should not be an excuse not to reconcile the trade and other receivables on time.**

#### **Committee Recommendation**

**The Committee recommends that the Chief Executive Officer ensures that proper reconciliation of accounts is undertaken by the Corporation on a regular basis as provided for by financial regulations and as per requirements of IAS.**

### **38.3 STATEMENT OF CHANGES IN EQUITY: FY 2009/2010 ACCOUNTS**

The Committee was informed that the Revenue Reserve balance of Kshs. 306,335, 143 in the statement of changes in equity includes a figure of Kshs. 2,897,799 described as accumulated depreciation on disposal. The inclusion of this particular figure in the statement is inappropriate, as an equivalent amount has been accounted for under profit on disposal of property, plant and equipment.

#### **Management Response**

The Chief Executive Officer informed the Committee that journal entries to adjust the error have been made in the 2012/2013 Financial Year appropriately.

#### **Committee Observation**

**The Committee observed that the Corporation made inappropriate posting in its accounts.**

#### **Committee Recommendations**

**The Committee recommends that the Chief Executive Officer ensures proper adjustments in the FY 2012/2013 are undertaken.**

### **38.4 STATEMENT OF CASH FLOWS: FY 2009/2010 ACCOUNTS**

The Committee heard that capital amounting to Kshs. 2,368,867 invested in the Board has not been accounted for in the statement of cash flow, although it is included in the statement of changes in equity. There were other irregularities in the financial statements.

#### **Management Response**

The Chief Executive Officer informed the Committee that the amount appeared as a resultant effect of the accumulated depreciation on disposal anomaly stated in statement of changes in equity. Adjustments have been made in the 2012/2013 financial year to correct the error. Due to the error it looked like it was capital investment in the financial statements.

#### **Committee Observation**

**The Committee observed that proper adjustments were not done in the financial statements.**

#### **Committee Recommendation**

**The Committee recommends that the Chief Executive Officer ensures that proper adjustments are done in the 2012/2013 Financial Year.**

### **38.5 NON-COMPLIANCE WITH INTERNATIONAL FINANCIAL REPORTING STANDARDS: FY 2010/2011 ACCOUNTS**

The Committee heard that the Boards Financial Statements did not comply with international financial reporting standards-International Accounting Standards No. 20 and the accuracy of the revenue reserve balance as at 30 June 2011 could not be confirmed.

#### **Management Response**

The Chief Executive Officer informed the Committee that the board had captured the costs as per respective expenditure items and treated the unutilized funds as surplus for the period. The Board has complied with the requirement in the 2011/2012 Financial Year.

#### **Committee Observation**

**The Committee observed that the board did not comply with the requirements of IAS No. 20.**

#### **Committee Recommendation**

**The Committee recommends that the Chief Executive Officer ensures that the Corporation complies with International Financial Reporting Standards-International Accounting Standards.**

### **38.6 FINANCIAL PERFORMANCE: FY 2011/2012 ACCOUNTS**

The Committee heard that the Board during the year under review recorded a loss of Kshs. 56,396,426 thereby reducing the revenue reserves to Kshs. 88,802,580 as at 30 June 2012 from Kshs. 145,199,006 in the previous year. Although the Board reflects a net asset position of Kshs. 600,076,742 as at 30 June 2012 its financial position is precarious and future operations may have to rely upon continued support of the Government and creditors.

#### **Management Response**

The Chief Executive Officer informed the Committee that the deficit in the financial statement was as a result of our revision of the financial statements in compliance with intentional financial reporting standards and international accounting standards (IAS) No. 20 as per the Auditors recommendations. The revision was done by recognition of separate project and institutional expenditure, deferred income and unexplained grants in the Board's financial statements. The realignment of the expenditures therefore has had an effect on the revenue reserve but just for the first period of the implementation of international financial reporting standards and international accounting standards (IAS) No. 20 on the accounting of Government grants.

The Committee was also informed that the Board gets Kshs. 259 million from the Government, Kshs. 556 million as grants from donors and its own revenue totals Kshs. 58 million.

#### **Committee Observation**

**The Committee observed that the Board is technically insolvent and that it is reliant on GoK and donors due to limited revenue sources which cannot sustain the operations of the Board.**

#### **Committee Recommendation**

**The Committee recommends that the Board diversifies its revenue base within the provided mandate so as to reduce heavy reliance on Government grants.**

### **39.0 KENYA REINSURANCE CORPORATION: FY 2001/2012 TO 2011/2012**

#### **REPORTS OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF KENYA REINSURANCE CORPORATION LTD FOR FINANCIAL YEARS 2001/2002 TO 2011/2012**

**The Managing Director, Kenya Re, Mr. Jadhah Mwarania, accompanied by by Mr. Rodgers Kinoti- General Manger- Finance, Mr. Charles Kariuki- Manager- Legal, Mr. Sammy M Kaaria- Manager- Internal Audit, Mr. Benson Millimo- External Lawyer and Mr. Victor Marege- Manager- Procurement appeared before the Committee and gave evidence on the accounts of the Corporation for the 2001/2002 to 2011/2012.**

#### **38.1 SALE OF UNITED INSURANCE COMPANY: FYs 2011/2012 TO 2012/2013 ACCOUNTS**

The Managing Director briefed the Committee on the sale of United Insurance Company's (UIC) assets as follows, that;

- (i) Kenya Re was appointed the Statutory Manager of UIC on 15<sup>th</sup> July, 2005 with a mandate. Upon appointment the Statutory Manager engaged in an exercise of tracing and preservation of assets, collection of debt and verification of claims.
- (ii) The assets of UIC comprised mainly of parcels of land in Kajiado, Kwale, Nairobi, Nanyuki and Syokimau while the liabilities comprised of insurance claims, overdraft facilities, loans, statutory deductions, unremitted pensions, salary arrears and payments due service providers. On assessment the Statutory Manager therefore recommended that the company be liquidated.
- (iii) On 28<sup>th</sup> March, 2012, the High Court directed the Statutory Manager to proceed with disposal of assets of the company to improve the company's liquidity with a view to settle the claims. Kenya Re sold the properties in 4 rounds.
- (iv) In the first round advertised in June 2012, 29 parcels of land were advertised and a total of 98 bids were received out of which 28 were successful. In the second round, 112 parcels of land were advertised in July, 2012 and a total of 98 bids were received out of which 73 were successful. However the disposal process faced various challenges which included; unavailability of Green cards, non-completion on the part of the successful tenderers, court injunction and land court cases.
- (v) In the third round of the disposal that was advertised on 18<sup>th</sup> September, 2012 and 1<sup>st</sup> October 2012, a group of creditors challenged the sale in court which was stopped through an order issued on 28<sup>th</sup> September, 2012. However, on 25<sup>th</sup> February, 2013, the High Court refused to extend the orders of stay for sale of properties giving way to the fourth round of property disposal.
- (vi) In the fourth round, the property disposal exercise was advertised on 15<sup>th</sup> August, 2013 and re-advertised on 23<sup>rd</sup> August, 2013 in two daily newspapers.

Tenders were opened on 5<sup>th</sup> September, 2013 and it was expected that the sale would raise Kshs. 2,230,650,000 if all the properties were bought. The process of the tender was ongoing.

- (vii) The High Court on 25<sup>th</sup> September, 2013 extended the term of the statutory manager for one year. The statutory manager will continue with the sale of properties to improve the company's solvency and liquidity through open, transparent and fair tender process.
- (viii) The UIC shareholders included; Mr. George Ngunjiri, Mr. John K. Mburu and Mr. Peter Mwangi.
- (ix) Kenya Re had notified the Commissioner of Lands about some parcels of lands that had parallel title documents and others having secured loans.
- (x) Kenya Re has been going to court after every 3 months to give progress report of the disposal process.

### **Committee Observation**

**The Committee observed that there was insufficient notice and publications to attract bidders for the properties and that bidders who fail to pay up within 90 days as per the conditions of sale were likely to lose their money.**

### **Committee Recommendation**

**The Committee recommends that the management ensures that the Corporation adheres to the Section 78 of the Public Procurement and Disposal Act, 2005 and Regulation 55(2) of the Public Procurement and Disposal Regulations, 2006 and other related provisions in all its procurement and disposal processes.**

### **39.2 UNQUALIFIED ACCOUNTS: FYS 2001/2002 TO 2003/2004 ACCOUNTS**

The Committee was informed that the financial statements for the Corporation for the year ended 2001/2002 - 2003/2004 were audited by Ernest & Young, a private audit firm who issued a clean audit report. However, an issue raised under land LR. No. 12236 which was a subject of a court case with third party and which the court gave a ruling that the land remains under the Corporation's name but the Corporation cannot sell it.

### **Management Response**

The management informed the Committee that the property of 100 acres bought in Kiambu had a dispute between the sellers which was still pending in Court. The sellers were; Mr. Joe Kibe and Mr. Ngengi.

### **Committee Observation**

**The Committee observed that the Corporation had unqualified accounts for the financial years 2001/2002 TO 2003/2004.**

**The Committee further observed that the Corporation was in court over a disputed land measuring 100 acres.**

### **Committee Recommendation**

**The Committee commended the Committee for having unqualified accounts for the FYs 2001/2002 to 2003/2004**

**The Committee recommends that the Corporation finalizes the pending court case expeditiously and acquires ownership documents for the land.**

### **39.3 PUBLICATION OF FINANCIAL STATEMENTS: FY 2004/2005 ACCOUNTS**

The Committee heard that the Corporation's appointed private auditor issued an audit report to the members of the Corporation contrary to their terms of appointment and provisions of Section (39)(3)-(6) of the Public Audit Act, 2003. Further, the Corporation published the accounts purporting to have been audited and issued with an unqualified opinion, while the accounts were still in their draft form pending the issuance of the Auditor General's opinion according to law.

### **Management Response**

The management informed the Committee that the Corporation was still in the transition period from the private auditors to the Auditor General. The Corporation has however been consistent in submitting to the Auditor General since 2005.

### **Committee Observation**

**The Committee observed that the Corporation published accounts which were still in their draft form purporting to have been audited and issued with a clean audit report while the accounts had not been reviewed by the Auditor-General according to Article 229 of the Constitution.**

### **Committee Recommendation**

**The Committee recommends that the management and the Board of Directors ensures that all accounts are audited by the Auditor-General pursuant to Article 229 of the Constitution of Kenya.**

### **39.4 LOSS ON SALE OF HOUSES – Kshs. 87,983,164: FY 2004/2005 ACCOUNTS**

The Committee was informed that the Corporation had sold some of its houses at a loss of Kshs. 32,409,997. A further loss of Kshs. 6,141,698 was reflected in the financial statement following a professional valuation of the properties in January, 2005. The Management indicated that the losses were as a result of political pressure and manipulations.

### **Management Response**

The management informed the Committee that the Corporation had built houses in Meru for sale. However, the houses took long to sell. The cost of construction was high and the Corporation was making losses due to theft. Consequently, the houses were sold at a loss to avoid further losses.

### **Committee Observation**

**The Committee observed that the houses were sold at a loss.**

### **Committee Recommendations**

**The Committee recommends that EACC investigates the sale of house belonging to the Corporation at a loss in Meru with a view to determining if the Corporation got value for money.**

**The Committee recommends that the Director of Public Prosecutions institutes criminal proceedings against the former CEO of the Corporation Mr. Johnson Githaka and others who colluded to sell the properties at a loss for abuse of office contrary to Section 101 of the Penal Code and Public Officer Ethics Act.**

**The Committee further recommends that the former Management of the Authority, led by the CEO, Mr. Githaka, who conducted the sale be surcharged or money recovered from them to make for the loss incurred.**

### **39.5 COMPLIANCE WITH INSURANCE ACT**

The Committee was informed that the Corporation had not complied with Section 50(2) of the Insurance Act in relation to General business class, since investment in Government securities and prescribed organizations are less than the required minimum of 10% of the admitted assets. Further, the Corporation had not complied with Section 32 of the Insurance Act since government securities under lien are less than the required minimum of 5% of the admitted assets.

### **Committee Observation**

**The Committee observed that the Corporation failed to comply with provisions of the Insurance Act with regard to Government securities.**

### **Committee Recommendation**

**The Committee recommends that the then Managing Director (name) be held responsible under Section 178 of the Insurance Act for flouting Sections 32 and 50(2) of the Insurance Act relating to investment in Government securities.**

### **FRAUD AND IRREGULARITIES: FYS 2002/2003 AND FY 2005/2006 ACCOUNTS**

The Committee was informed that the Corporation had allegations of fraud covering the years 2003 and 2006, which were investigated by the Inspectorate of State Corporations, Kenya Anti-Corruption Commission and Forensic Investigators and confirmed a loss of Kshs. 36,000,000. The loss had not been accounted for as the matter was in before the Court.

The management informed the Committee that there was fraud involving some properties. However, recoveries had been made, money had been frozen and investigations were ongoing and further the matter was before the court.

### **Committee Observations**

The Committee was concerned that the matter had taken long in court without being concluded. The Committee directed that the Corporation applies for an injunction and be enjoined in the case.

The Committee observed with concern that despite the Inspectorate of State Corporations having concluded the investigations and enjoining Kenya Anti-Corruption Commission in the case, no further follow up had been made.

The Committee further noted with concern that the actual losses of the houses had not been established.

### **Committee Recommendations**

The Committee further recommends that the Corporation ascertains the actual loss by getting the value of the houses and the amounts recovered from the forensic audit that was done.

The Committee also recommends that the management ensures full recovery of the assets and funds involved and that those found culpable be prosecuted.

The Committee also recommends that EACC expedites investigations and concludes any pending investigations, recovery of properties and seeks prosecution of those found culpable.

### **39.7 UNQUALIFIED ACCOUNTS: FYs 2006/2007 TO 2011/2012 ACCOUNTS**

The Committee was informed that the Corporation had clean reports for the years 2006/2007 to 2011/2012.

### **Committee Observation**

The Committee observed that Kenya Re was given clean reports by the Auditor General for the FYs 2006/2007 to 2011/2012.

The Committee observed that the auditor had issued the corporation with a clean report yet there are pending issues from the previous years, but without evidence this could be rejected by the Committee and fault the auditor in charge.

### **Committee Recommendation**

The Committee commended Kenya Re for receiving unqualified accounts for 2007-2012.

The Committee recommended Kenya Re to clear the previous year's audit queries.

#### **40.0 MOI TEACHING AND REFERRAL HOSPITAL: FY 2000/2001 TO 2011/2012**

##### **REPORTS OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF MOI TEACHING AND REFERRAL HOSPITAL FINANCIAL YEARS 2001/2002 TO 2011/2012**

The Director, Moi Teaching & Referral Hospital (MTRH) Dr. John Kibosia accompanied by Deputy Director, Clinical Services, Dr. Wilson Aruasa; Legal Officer, Ms Sylvia Nyariki; Hospital Engineer, Mr. Odhiambo Atogo and Mr. Francis Kiprop appeared before the Committee to adduce evidence on Accounts of the Hospital and Report on the Modernization of the Hospital Project.

##### **40.1 PROPERTY PLANT AND EQUIPMENT /FIXED ASSETS OF UASIN GISHU MEMORIAL HOSPITAL: FYs 2001/2002 TO 2011/2012 ACCOUNTS**

The Committee heard that the Property, Plant and Equipment balance of Kshs. 1,096,071,729 as at 30<sup>th</sup> June 2012 includes assets of Uasin Gishu Memorial Hospital(UGMH) includes land valued at Kshs. 71,037,687 whose title documents was not produced for audit verification. Ownership of the Hospital has been subject of a court case between the Hospital and the former directors of Uasin Gishu Memorial Hospital.

Although the management has explained that a constitutional court to which the matter was referred dismissed the case in favour of MTRH on 10<sup>th</sup> March, 2010, the former directors have since appealed against the judgment. Consequently, until the appeal is heard and determined, ownership of the land valued at Kshs. 71,037,687 included property, plant and equipment balance of Kshs. 1,096,071,729 as at 30<sup>th</sup> June 2012 could not be confirmed.

##### **Management Response**

The Director informed the Committee that MTRH was established vide Legal Notice 78 of 1998 of the State Corporations Act and was vested with three parcels of land namely, Block 129 where the main hospital is situated, Block 125 that has the students' hostels senior staff houses and Block 126 that has memorial wing of the hospital (formerly UGMH).

The Legal Notice vested the assets of the former Uasin Gishu Memorial Hospital to MTRH. The Hospital however waited until 2005 to take physical possession and running of the Hospital. In 2005, civil suit No. 78/2005 was filed in which 14 persons took the hospital to court over the land. However six of the persons have since indicated they are not interested in the case, two of whom are doctors (staff) have since written withdrawing from the case.

Nairobi High Court Miscellaneous Case No.12 of 2006 and Appeal 109 of 2010 are still pending in court. Mr. Joseph Katwa Kigen, Partner in Katwa & Kemboy Advocates Hospital's Board Member also represents the Board on the matter.

### **Committee Observation**

The Committee observed as follows:-

- (i) That the lawsuit on the Corporation's land had taken inordinately long to conclude.
- (ii) That there was an apparent conflict of interest in the representation by Mr. Katwa Kigen as the Hospital's lawyer in Misc. Civil Application 12A of 2006 while he sits on the Hospital's Board.
- (iii) The Committee observed that despite several invitations to appear before the Committee, MTRH did not come or were not forthcoming.

### **Committee Recommendation**

The Committee recommends that:-

- (i) Mr. Katwa Kigen's law firm ceases to represent the Hospital in Misc. Civil Application 12A of 2006 and that Hospital fast tracks the conclusion of the court cases.
- (ii) The Hospital should ensure that its register of assets includes land, property, plant and equipment in its own name to protect them from possible grabbing.

### **40.2 PROCUREMENT OF HOSPITAL CT SCAN: FYs 2009/2010 TO 2011/2012 ACCOUNTS**

The Committee heard that the Hospital acquired a CT scan at a cost of Kshs. 24, 031,350 through direct procurement due to replace one commissioned in May 2006. The equipment was supposed to have a lifespan of 5 years as per the comprehensive maintenance contract signed with the equipment suppliers. The equipment broke down in May 2009 after serving the hospital for only 3 years and the supplier was unable to repair it. The hospital filed a case against the supplier for breach of contract but which had not been determined as at 30<sup>th</sup> June, 2012.

### **Committee Observation**

The Committee observed that the Corporation, contrary to justifications under Section 74 of the Public Procurement and Disposal Act, 2005 and Regulation 62 of the Public Procurement and Disposal Regulations, single sourced the purchase of the CT scan through direct procurement and further that the supplier breached the contract agreement by failing to repair the equipment.

### **Committee Recommendations**

The Committee recommends as follows:-

- 1) That the EACC investigates the procurement of the CT Scan and the acts of the then Chief Executive Officer, Prof. Harun Mengech, for:-

(i) Breaching Section 74 of the Public Procurement and Disposal Act, 2005; and Regulation 62 of the Public Procurement and Disposal Regulations, 2006.

- 2) That the Director of Public Prosecutions prosecutes the CEO for abuse of office contrary to Section 101 of the Penal Code and Section 10 of the Public Officer Ethics Act, 2003;
- 3) That the Hospital management fast tracks the conclusion of the case and recovery of the money lost;
- 4) That the supplier be barred from participating in any procurement involving the Government of Kenya or any of its agencies.

#### **40.3 PROCUREMENT OF OXYGEN GENERATING PLANT: FYs 2006/2007 ACCOUNTS**

In 2006, the Hospital entered into a contract agreement with a foreign firm to procure an oxygen generating plant at a cost of US\$ 452,000 (Kshs. 32,770,000). As per the contract terms, 50% of the cost was to be paid in advance however the hospital paid 60% of the cost upfront resulting in an overpayment of Kshs. 3,277, 000. Further the management paid the balance of Kshs. 13,108, 000 thus paying the entire contact sum of Kshs. 32,770,000 before delivery of the plant.

#### **Management Response**

The Director informed the Committee that the payment was due to the contract agreement with the supplier regarding dates of delivery. The delay to complete construction of the installation premises was because the overall construction work was varied by the sponsor (Indiana University) resulting into extension of completion time of the construction. The Oxygen Plant supplier demanded payment as per dates on the contract. The Hospital ensured that the plant was delivered, tested and commissioned and its performance has been satisfactory.

#### **Committee Observation**

**The Committee observed that the hospital paid 100% upfront for the oxygen plant before delivery in contravention of Government procurement requirements and contrary to the contract agreement with the supplier. The supplier used government money to procure the equipment and profited without using his/her resources.**

#### **Committee Recommendations**

**The Committee recommends that the EACC investigates the conduct of the then Chief Executive Officer, Prof. Harun Mengech and recommend their prosecution by the Director of Public Prosecutions for breach of the Public Procurement and Disposal Act, 2005 by paying for goods in advance, abuse of office contrary to Section 101 of the Penal Code and Section 10 of Public Officer Ethics Act, 2003.**

**The Committee further recommends that Prof. Mengech be surcharged or money recovered from them for paying for goods that had not been supplied thus exposing the Government to loss.**

#### **40.4 CONSTRUCTION OF SUPPLIES STORES: FYs 2009/2010 TO 2011/2012 ACCOUNTS**

The Committee heard that the Hospital, on 23<sup>rd</sup> February 2009, entered into a contract with a construction firm for the construction of a supplies store at the contract sum of Kshs 12,807,835. At the end of the works, a total of Kshs. 29,902,202 was paid to the contractor resulting in a variation of Kshs. 17,094,367 (133% of the original contract sum). Although the Hospital explained that part of the variation cost of Kshs. 15,173,192 was to be met by a donor and therefore was not subject to procurement regulation under Section 7(i) of the Public procurement and Disposal Act 2005, other projects funded by the same donor had been subjected to the procurement law.

#### **Management Response**

The Chief Executive Officer informed the Committee that the Hospital subjects donor funded projects to the Public Procurement Regulations since these projects are domiciled in the Hospital which is a public entity. In the case of addendum works to the construction of the supplies store, the Donors (Indiana University) undertook to finance the works 100% and requiring the same to be fast tracked through engagement of the contractor on site to carry out the works.

#### **Committee Observations**

**The Committee observed that there was a variation of 133% and that the tender committee did not authorize the variation. The Committee further observed that there was no proper planning and variation exceeded the legal limit thus the hospital contravened Section 85 of the Public Procurement and Disposal Act, 2005.**

**The Committee also observed that the management was in breach of the Public Procurement and Disposal Act, 2005 as regards procurement of goods and services and more so procurement of major projects.**

#### **Committee Recommendations**

**The Committee recommends that the EACC investigates the conduct of the Chief Executive Officer in relation to supplies stores and recommends prosecution by the Director of Public Prosecutions for failure to adhere to the provisions of Public Procurement and Disposal Act, 2005, abuse of office contrary to Section 101 of the Penal Code and Section 10 of Public Officer Ethics Act, 2003.**

**The Committee further recommends that the management ensures that proper planning and costing is undertaken before any project commences to avoid unnecessary variations.**

#### **40.5 MODERNISATION PROGRAM/ ONGOING PROJECTS**

The Committee on its field visit observed that the Hospital was involved in major modernization projects.

The Committee observed that despite several invitations to appear before the Committee, the Management of MTRH failed to honor the invites and when they did they were unprepared to respond to the audit queries.

The Committee recommends that the Auditor-General undertakes an in depth performance audit of all the major projects undertaken by the Hospital and report to the Committee within two months of the adoption of this Report.

#### **41.0 KENYA NATIONAL EXAMINATION COUNCIL: FY 2001/2002 TO 2011/2012**

##### **REPORTS OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF KENYA NATIONAL EXAMINATION COUNCIL FOR THE FINANCIAL YEARS 2001/2002 TO 2011/2012**

The Chief Executive Officer, Kenya National Examination Council, Mr. Paul Wesonga, accompanied by Isaac Mwangangi, Florence Wanyonga, Agnes Munyiri, Abraham Oloo, Joel Mukumu, Manuel Mbogo, Collins Maubi and Moses Wakiongora appeared before the Committee to give evidence on the accounts of the Council for the FYS 2006/2007 to 2011/2012.

##### **41.1 UNQUALIFIED REPORTS: FYS 2006/2007 TO 2008/2009 ACCOUNTS**

The Committee heard that the Kenya National Examination Council had clean reports for the period 2006/2007 to 2008/2009.

##### **Committee Observation**

The Committee observed that the Auditor General had given Kenya National Examination Council clean reports of their accounts for the FYS 2006/2007 to 2008/2009.

##### **Committee Recommendation**

The Committee commended the Kenya National Examination Council for the unqualified reports for the FYS 2006/2007 to 2008/2009.

##### **41.2 NEW MITIHANI HOUSE PROJECT: FYS 2009/2010 TO 2011/2012 ACCOUNTS**

The Committee heard that an amount of Kshs. 61,979,845 in respect of work in progress for Mitihani house project has remained static since June 1999. This amount relates to expenditure of Mitihani House which stalled in December 1989. No progress

has been made in regard to the dormant project in spite recommendations by PIC that the project be completed to avoid further escalation of building costs.

### **Management Response**

The Management informed the Committee that the project is a government of Kenya project initiated in 1986 to benefit KNEC. The project stalled in 1989 due to lack of funding. To avoid escalation of costs the project was mutually wound up in 1998. There has been delay in completing the project for 11 years. The Council has also come up with recommendations to complete the project.

The Project has since been re-designed to be completed in six (6) phases owing to shortage of funding.

Works on Phases I to IV are yet to commence while Phase V is ongoing, having commenced on 21<sup>st</sup> October 2008. Phase V consists completion of three towers, A,B and C from 1<sup>st</sup> floor up to the 6<sup>th</sup> floor.

Phase VI commenced in May 2013 and comprises works meant to address Phase V deficits and deliver the project to habitable status. Phase VI is nearly complete.

KNEC was expected to start relocating from its rented offices in Nairobi CBD from 1<sup>st</sup> March 2015 and to have completed relocation by 30<sup>th</sup> June, 2015.

### **Committee Observation**

**The Committee observed that work in progress for Mitihani House Project remained static since June 1999. However, the Council has revived the completion of the project and that funds need to be availed by the Government to fully complete the project. Completion of the project will reduce the operational cost of the Council renting offices.**

### **Committee Recommendation**

**The Committee recommended that adequate funds be allocated to KNEC to complete the project.**

### **41.3 INVESTMENTS: FYs 2002/2003 AND 2003/2004 TO 2005/2006 ACCOUNTS:**

The Committee was informed that the investment in shares in Consolidated Bank amounting to Kshs. 64,300,000 had not earned the Council dividend since its inception in 1991. Further, the Council has been unable to dispose off the investment because the bank shares are not quoted in Nairobi Stock Exchange. It has not been possible to express an opinion on the viability of the investment.

### **Management Response**

**The CEO informed the Committee that:-**

- (i) The investment of Kshs. 64,300,000 relates to the Council's deposits of both principal and interest accrued held in Jimba Credit Corporation, which was taken over by Government between December 1989 and March 1991.**
- (ii) The disposal of shares is difficult, as Consolidated Bank of Kenya is not listed in the Nairobi Stock Exchange.**

**The Committee further heard that the current status is that the National Treasury has earmarked the divesture from the Consolidated Bank.**

#### **Committee Observation**

**The Committee observed that: -**

- (i) The Council invested Kshs. 64,300,000 in Jimba Credit Corporation, which was subsequently taken over by Government between December 1989 and March 1991.**
- (ii) The disposal of shares held in Consolidated Bank of Kenya has not been possible because the Bank is not listed in the Nairobi Stock Exchange.**

#### **Committee Recommendation**

**The Committee recommends that the National Treasury fast-tracks divesture of the Council's shares held in the Consolidated Bank.**

#### **41.4 NET RECEIVABLES: FYs 2003/2004 TO 2005/2006 ACCOUNTS:**

The Committee heard that un-surrendered Imprest of Kshs. 3, 388,295 in respect to marking centers and assessors most of which have been outstanding for a period of 8 years.

The Council has been unable to recover this imprest through TSC while only Kshs.332, 168 has been provided for as doubtful in respect of temporary imprest. In view of the period the imprest has been outstanding, recoverability is doubtful.

#### **Management Response**

The CEO informed the Committee as follows:

- (i) That the Council had outstanding imprest totaling Kshs. 3,309,440 as at 30<sup>th</sup> June 2004. This figure is in respect of the Assessors for work done in 1997, 1998 and 1999. In January 2001, the Council through Teachers Service Commission(TSC) wrote to all the assessors demanding a surrender of the same.**
- (ii) Due to deaths, retirements, change of addressing inaccurate information, submitted at the time the imprest was granted was poor.**

The Committee further heard that the authority to write off the imprest was given on 14<sup>th</sup> August, 2008 and the outstanding amounts written off in the financial year 2008/2009.

#### **Committee Observation**

**The Committee observed that the Council had outstanding imprest totaling Kshs. 3,309,440 as at 30<sup>th</sup> June 2004 in respect of the Assessors for work done in 1997, 1998 and 1999. The Committee further observed that the authority to write off the imprest was given on 14<sup>th</sup> August, 2008 and the outstanding amounts written off in the financial year 2008/09.**

#### **Committee Recommendations**

**The Committee recommends that the Council should ensure that all imprest are surrendered within the stipulated period.**

#### **41.5 LAND: FY 2005/2006 ACCOUNTS**

The Committee heard that the leasehold land on which the printing press stands had not been valued and incorporated in the financial statements.

#### **Management Response**

The Committee was informed by the management that the land is currently being revalued every three years and the last revaluation was done in FY 2011/2012.

#### **Committee Observation**

**The Committee observed the leasehold land on which the printing press stands had not been valued and incorporated in the financial statements during the year under review.**

#### **Committee Recommendation**

**The Committee recommended that the management ensures that all its properties and assets are valued on a regular basis.**

#### **41.6 FINANCIAL PERFORMANCE: FY 2011/2012 ACCOUNTS**

The Committee heard that the Council incurred a deficit of Kshs. 470,642,054 compared to a deficit of Kshs. 386, 119, 179 the previous year.

#### **Management Response**

The management informed the Committee that the deficit was attributable to increased costs from Kshs. 3, 322, 599, 854 to Kshs. 3, 816, 292, 339 due to increased number of candidates which led to increased cost of management of examinations without corresponding increases in government capitation. The rates for contracted professionals were also increased as well as compulsory conversion of pension fund from defined benefit scheme to defined contribution. The management has re-

engineered and have re-casted budget 2013/2014 to reflect a surplus of Kshs. 200 million.

#### **Committee Observation**

The Committee observed that the council incurred a deficit of Kshs. 470,642,054 compared to a deficit of Kshs. 386, 119, 179 the previous year.

#### **Committee Recommendation**

The Committee recommends that the management ensures that the Corporation diversifies its revenue base and avoids situations where its costs exceed revenues collected.

### **42.0 KENYA ELECTRICITY TRANSMISSION COMPANY LIMITED: FY 2009/2010 TO 2011/2012**

#### **REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF KENYA ELECTRICITY GENERATING COMPANY LIMITED FOR THE FINANCIAL YEARS 2009/2010 TO 2011/2012**

The Managing Director, Kenya Electricity Transmission Company Limited, Mr. Joe Kiilu accompanied by Agnes Ongadi- Human Resource and Administration; Fernandez Barasa - Head Finance; John Mativo- Head of Transmission Services; and Julius Mwathani - Alternate Director, Ministry of Energy and Petroleum appeared before the Committee to give evidence on the accounts of the Board for the 2009/2010 to 2011/2012.

#### **42.1 ADMINISTRATION AND OTHER OPERATING EXPENSES: FY 2009/2010 ACCOUNTS**

The Committee heard that the administration and other operating expenses balance of Kshs. 12,952,000 incurred by KPLC on behalf of KETRACO. However, the relevant documents in support of this particular amount were not availed for audit verification.

#### **Management Response**

The Committee was informed by the Managing Director that KETRACO in consultation with KPLC and KETRACO was able to provide supporting documents for Kshs. 12,952,000. A clearance certificate dated 23<sup>rd</sup> March, 2012 was issued by KENAO after review of documentation.

#### **Committee Observation**

The Committee observed that primary documents were not availed for audit review contrary to Sec 37(b) of the Public Audit Act 2003.

#### **Committee Recommendation**

The Committee recommended that KETRACO should in future ensure that they

**liaise with the Auditor-General and submit all documents necessary and required during the audit to avoid situations where administrative matters such as provision of documents for audit verification are raised as audit queries in accordance with Sec 37(b) of the Public Audit Act, 2003.**

#### **42.2 EMPHASIS OF MATTER: FY 2010/2011 ACCOUNTS**

The Committee heard that there was emphasis of matter in the property by KENAO in note (3) which describes uncertainty relating to recognized income on wheeling charges billed to KPLC amounting to Kshs. 280,280,000 (2010 – Kshs. 262,154,000). The charges were based on the Energy Regulatory Commission (ERC) approved transmission tariff which KPLC disputes.

#### **Management Response**

The Managing Director informed the Committee that as per note 3 in the financial statements, the difference in the amount owed by KPLC in respect of wheeling charges arose as a result of the entities using different approaches in the recognition of the wheeling. KETRACO demanded payment of outstanding wheeling income, but KPLC disputed the invoices. KPLC only paid Kshs. 135,627,710 in October, 2011 and Kshs. 406,806,290 relating to 2009/2010 and 2010/2011 is still outstanding. This matter was escalated to the Permanent Secretary Ministry of Energy and Petroleum vide letter dated 23<sup>rd</sup> September, 2011.

#### **Committee Observation**

**The Committee observed that there were differences in the wheeling charges that were brought about by different approaches used by the organizations.**

#### **Committee Recommendation**

**The Committee recommends that the Ministry of Energy and Petroleum should mediate between KETRACO and KPLC to resolve the issue of wheeling charges and agree on a common formula for calculating wheeling charges in future.**

#### **42.3 UN-QUALIFIED ACCOUNTS: FY 2011/2012 ACCOUNTS:**

The Committee was informed that the Accounts of the Corporation for the FY 2011/2012 were unqualified.

#### **Committee Observation**

**The Committee observed that the Auditor General gave KETRACO a clean report of their accounts for the FY 2011/2012.**

#### **Committee Recommendation**

**The Committee commended the Corporation for the clean report.**

### 43.0 KENYA MEDICAL SUPPLIES AUTHORITY: FY 2009/2010 TO 2011/2-012

#### REPORTS OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF KENYA MEDICAL SUPPLIES AUTHORITY (KEMSA) FOR THE FINANCIAL YEARS 2009/2010 TO 2011/2012

The Chief Executive Officer, Kenya Medical Supplies Authority (KEMSA) Dr. John Munyao accompanied by Mr. Philip Omondi, Mr. Dominic Kabiru, Mr. Fred Wanyonyi, Mr. Joshua Obell, Mr. Charles Juma appeared before the Committee to adduce evidence on the audited accounts of the Authority for the period 2009/2010 to 2011/2012.

#### 43.1 PROPERTY, PLANT AND EQUIPMENT: FYs 2009/2010 TO 2012/2013 ACCOUNTS:

The Committee heard that the Property, Plant and Equipment balance of Kshs. 383,555,319 includes parcels of land valued at Kshs. 30,000,000 situated in Mombasa, Kisumu, Nakuru and Garissa for which the Agency does not possess ownership documents. The balance of Kshs. 383,555,319 excludes unspecified value of parcels of land in Embakasi- Nairobi and Kakamega. It is not possible to confirm the Property, Plant and Equipment balance of Kshs. 383,555,319.

#### Management Response

The Chief Executive Officer informed the Committee that:-

- (i) KEMSA had no titles Deeds to prove ownership of the land valued at Kshs. 151,528,000. At the time of gazettelement of KEMSA in February 2000, KEMSA was a department of the Ministryof Health and all land on which KEMSA depots were located were owned by the Ministryof Health. The process of acquiring documents of ownership has been ongoing up to the current financial year with good progress. The details of the progress made is as detailed below:-

S/N	ASSET	STATUS
1	Embakasi Nairobi L.R Nos. 28464 & 28465	<ul style="list-style-type: none"><li>• Title deeds obtained</li></ul>
2	Commercial Street Nairobi LR No. 209/1387	<ul style="list-style-type: none"><li>• Title deed obtained</li></ul>
3	Kakamega Depot Block IV/168	<ul style="list-style-type: none"><li>• Lease issued on 4<sup>th</sup> January 2010. Processing of certificate of title ongoing</li></ul>
4	Eldoret Depot Block 10/155 & 10/156	<ul style="list-style-type: none"><li>• Lease issued on 4<sup>th</sup> January 2010. Processing of certificate of title ongoing</li></ul>

S/N	ASSET	STATUS
5	Nyeri Depot Block 3/173 & 3/174	<ul style="list-style-type: none"> <li>Lease issued on 4<sup>th</sup> January 2010. Processing of certificate of title ongoing</li> </ul>
6	Kisumu Depot PDP N9/74/7	<ul style="list-style-type: none"> <li>Letter of allotment issued and survey plan under preparation to facilitate issuance of certificate of title.</li> </ul>
7	Meru Depot Ntima/Igoki 1/173	<ul style="list-style-type: none"> <li>Letter of allotment issued. Survey work carried out and survey plan under preparation.</li> </ul>
8	Nakuru Depot PDP R7/2006/06	<ul style="list-style-type: none"> <li>Lease issued on 20<sup>th</sup> October 2010. Processing of certificate of title ongoing.</li> </ul>
9	Mombasa Depot PDP No. 12/3/CT/2/99	<ul style="list-style-type: none"> <li>Letter of allotment issued on 17<sup>th</sup> August 2010. Conveyance ongoing.</li> </ul>

(ii) The Property, Plant and Equipment balance of Kshs. 383,555,319 in the financial statements excluded unspecified values of other pieces of land in Embakasi- Nairobi and Kakamega. By the close of the financial year 2009/2010, KEMSA had not carried out the valuation of its parcels of land across the country. However, in the financial year 2012/2013, KEMSA engaged registered valuers, estate and managing agents who carried out the valuation of Land and Buildings and submitted their report dated 14<sup>th</sup> February 2013.

(iii) Based on the valuation report, KEMSA engaged a law firm to carry out conveyance and ensure registration of titles for all the parcels of land across the country. The values for the properties obtained from the valuation exercise have been included in the financial statements for the year 2012/2013.

The process of title acquisition is on-going and hopefully by 30<sup>th</sup> June 2014, the titles will be in our possession. The title documents for the parcels of land in question had been obtained by 30<sup>th</sup> June 2012.

(iv) In the Financial Year 2012/2013, KEMSA valued its land and buildings. KEMSA has engaged a law firm to carry out conveyance and ensure registration of titles for all parcels of land across the country.

The Managing Director further informed the Committee that Kenya Medical Supplies Authority is engaging all counties and even planning to take their services to the 290 constituencies in the country.

### **Committee Observations**

The Committee expressed concern over the methods used to procure the external legal services on the follow up of the title deeds since the Authority could easily have liaised with the National Land Commission without incurring additional costs.

The Committee also expressed concern as to whether the leasing of properties in Nakuru and Kakamega by the Authority could realize Value for money as opposed to buying and owning the property.

### **Committee Recommendations**

The Committee recommends that the Authority fast tracks the acquisition of ownership documents for all its land and other properties.

The Committee further recommends that the Authority should review its policy of leasing properties Vis a vi ownership.

#### **44.0 NATIONAL AIDS CONTROL COUNCIL: FY 2007/2008 TO 2011/2012**

#### **REPORTS OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF NATIONAL AIDS CONTROL COUNCIL (NACC) FOR THE FINANCIAL YEARS 2007/2008 TO 2011/2012**

The Director, National Aids Control Council (NACC), Dr. Nduku Kilonzo accompanied by Deputy Director, D.K Kamieru, Head finance Mr. Norman Mwangi, Legal Officer Ms. Njeri Kimuri and Head internal audit Mr. Patrick Obura appeared before the committee to respond to the audit queries raised in the last meeting.

#### **44.1 RECEIVABLES: FYS 2008/2009 TO 2011/2012 ACCOUNTS**

The Committee heard that receivables of Kshs. 605,592,880 as at 30<sup>th</sup> June 2009 comprise of advances to District Commissioners in 2000/2001 in respect of the World AIDS day, Financial Management Agency (FMA) and the Provincial AIDS Control Coordinators (PACC) amounting to Kshs. 56,725,583 and Kshs. 871,000 respectively had not been accounted for as at the same date.

### **Management Response**

The Director National AIDS Control Council informed the Committee that monies issued to District Development Officers (DDOs) in the financial year 2000/2001 to facilitate commemoration of World AIDS Day in the year 2000 accountabilities for the same were never forwarded to the NACC. The NACC's efforts to have the same recovered from the

respective officers' salaries have been hampered by difficulties in tracing the then office holders because of transfers, retirements and death of some of these officers.

The FMA was contracted by the NACC as per the financing agreement to disburse funds and receive accountability from implementers on behalf of the NACC. The FMA has continued to receive additional funds for subsequent disbursements and has also been continuously submitting accountabilities for previous advances. The Kshs.871, 000 outstanding from PACC (Provincial AIDS Control Coordinators) Central Province was also fully accounted.

### **Committee Observation**

**The Committee noted with concern that the process of recovering the monies from the DDO's was taking too long and that there was laxity from the management in recovering the lost sums of money.**

### **Committee Recommendations**

**The Committee recommends that:-**

- (i) EACC investigates the circumstances under which the loss of money occurred and recommends prosecution by the Director of Public Prosecution of officers responsible for the loss for:
  - (a) Section 12 of the Public Officer Ethics Act, 2003**
  - (b) Abuse of office contrary to Section 101 of the Penal Code and****
- (ii) The Inspector General of Inspectorate of State Corporations liaises with the National Aids Control Council to identify the officers responsible and surcharge them.**
- (iii) The Director NACC puts in place measures for release of funds and recovery of debts or any monies not properly accounted for.**

## **44.2 TRADE AND OTHER RECEIVABLES: FYs 2004/2005; 2008/2009 TO 2011/2012 ACCOUNTS**

The Committee was informed that, the Trade and other Receivables balance of Kshs. 1,451,211,196 as at 30<sup>th</sup> June 2011 comprises advances to various committee and organizations which had been outstanding for a long time. Further included are staff imprest and staff advances of Kshs. 2,962,555 and Kshs. 626,579 respectively held by former staff of the council and which have been outstanding for a considerably long time. Consequently it has not been possible to confirm the recoverability of the trade and other receivables balance totaling Kshs. 32,340,793

### **Management Response**

The Director NACC informed the Committee that they were in correspondence with the various organizations and committees to assist them recover the monies owned. The

monies owed by staff will be cleared from their final dues while others will be deducted from their salaries.

#### **Committee Observation**

**The Committee observed that either the Council does not have a policy for recovery of debts or there is lack of will to recover debts on the part of the management of the Council.**

#### **Committee Recommendations**

**The Committee recommends that:-**

- (i) The Director should follow up on all the recoverable debts and puts in place a debt recovery mechanism. The Director should seek authority from the Board to write off the outstanding amounts owed by the deceased ex-staff.**
  
- (ii) The Council adheres to financial regulations on the issuance, surrender and recovery of imprest and allowances.**

#### **44.3 COMMUNITY INITIATIVE EXPENSES: FYS 2004/2005, 2009/2010 TO 2011/2012**

The Committee heard that the organizations funded under TOWA (Total War Against Aids) amounting to Kshs. 983,222,126 had not submitted audited financial records in breach of the TOWA financing agreement.

#### **Management Response**

The Director NACC agreed with the Auditor General's qualification on the matter, and added that they had asked and received the go ahead for World Bank to do a sample audit of 30% of total and had advertised and engaged auditors.

#### **Committee Observation**

**The Committee noted with concern that organizations funded by NACC under the TOWA(Total War Against AIDS) agreement failed to submit audited financial records in breach of the TOWA (Total War Against AIDS) financing agreement and that the recovery process for the unaccounted for funds was taking long.**

#### **Committee Recommendations**

**The Committee recommends that:-**

- (i) The Director ensures recovery of the unaccounted funds from the relevant organizations.**

- (ii) The Council ensures that no funds are released to the organizations that breached the TOWA financing agreement by failing to submit their audited financial records.**

#### **44.4 TRADE AND OTHER RECEIVABLES: FYs 2009/2010 TO 2011/2012 ACCOUNTS**

The Committee heard that advances to various committee organizations, notable among them District Aids Coordinating Committee (DACC), Worlds Aids Day and Aids Control Unit (ACU) had been outstanding for a long time. Similarly, advances to Kenya Long Distance Truck Drivers Association (KLDTD), Kenya Consortium to Fight Aids, Tuberculosis and Malaria (KECOFATUMA) and Ministry of Health –Turkana had not been accounted for as well as staff imprest and staff advances held by former staff of the Council. Consequently it has not been possible to confirm the validity and recoverability of the Trade and other Receivables totaling Kshs. 29,957,120.

##### **Management Response**

The Director, NACC responded that advances in respect of World Aids Day celebrations were disbursed to various District Commissioners (DCs) in the financial year 2000/2001. Most of these DCs have since either been transferred to other offices or retired from the Civil Service. The NACC is working with the Permanent Secretary (now Principal Secretary) of the relevant Ministries to recover the outstanding advances from their salaries or from their retirement benefits as appropriate.

##### **Management Response**

The Director NACC informed the Committee that NACC management has continuously engaged the KLDTDA and NEPHAK to have the balances cleared. NEPHAK refunded the full amount on July 22, 2012 and the outstanding balance of Kshs. 43,397 from KLDTDA was refunded on January 18, 2013.

The outstanding staff imprest balances outstanding as at the end of the financial year balance were advances given during the month of June to facilitate Population Services International (PSI) trainings and other programmatic activities that were ongoing as at the end of the year. These were either accounted for or recovered from salary in the month of July 2012.

##### **Committee Observations**

**The Committee observed that:-**

- (i) From the correspondence between the NACC and F.N Kimani & Associates and Advocates, it appears that the NACC in error, demanded and received a payment from Nicholas Mbugua, the Sec. Gen of Kenya Long Distance Truck**

Drivers and Allied Workers Union of Kshs. 566,575 which they were now being asked to refund.

(ii) The process of recovering the monies from the District Commissioners and DDOs has taken inordinately long.

### Committee Recommendations

The Committee recommends that:-

(i) The Inspector General of State Corporations liaises with the National Aids Control Council to identify the officers and surcharge them.

(ii) The Ministry of Interior and Coordination of National Government and the National Treasury assists the National Aids Control Council in recovering the money from the concerned District Commissioners and the District Development Officers.

(iii) The Director NACC puts in place measures for release and recovery of debts or any monies not properly accounted for.

## **45.0 KENYA MEDICAL TRAINING COLLEGE: FY 2007/2008 TO 2011/2012**

### **REPORTS OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF KENYA MEDICAL TRAINING COLLEGE(KMTC) FOR THE FINANCIAL YEARS 2007/2008 TO 2011/2012**

The Managing Deputy Director Administration and Finance, Kenya Medical Training College (KMTC), Dr. Joseph Karanja, accompanied by Deputy Director Academic Franklin Okonji, Chief Finance Officer J.O Ombayo, Administration Manager, S.E Njeru Procurement Manager David appeared before the committee to adduce evidence on the of the College accounts for the 2011/2012 Financial Year.

#### **45.1 DEBTS OWED TO KENYA MEDICAL TRAINING COLLEGE BY UNIVERSITY OF NAIROBI: FYS 2005/2006 TO 2008/2009; 2010/2011 TO 2011/2012 ACCOUNTS**

The Committee heard that the University of Nairobi owes Kenya Medical Training College debt of Kshs. 2,300,000 arising from rent arrears of KMTC Hostels by University of Nairobi that was in dispute.

#### **Management Response**

The Managing Deputy Director Administration and Finance informed the Committee that a mutual agreement was reached between KMTC and University of Nairobi for

KMTC to write off the debts and University of Nairobi to cede the ownership of the hostels to KMTC.

### **Committee Observations**

**The Committee observed the mutual agreement between KMTC and University of Nairobi is taking too long to be implemented.**

### **Committee Recommendation**

**The Committee recommends that:-**

- (i) The Director KMTC and Vice Chancellor, University of Nairobi finalize the agreement and KMTC takes full ownership of the hostels.**
- (ii) The Managing Deputy Director ensures that the College acquires ownership documents for all its land within six months of adoption of this Report**

## **45.2 FINANCIAL POSITION: FY 2011/2012 ACCOUNTS**

The College recorded a deficit of Kshs. 24,939,831 for the year ended 30<sup>th</sup> June, 2012 compared to a surplus of Kshs. 56,721,504 in the year 2010/2011. Further, the current liabilities of Kshs. 291,202,512 as at 30<sup>th</sup> June 2012 exceeded the current assets of Kshs. 272,503,477 as at the same date resulting to a negative working capital of Kshs. 18,699,035.

### **Management Response**

The College is facing financial difficulties and may encounter challenges in settling mature obligations as and when they fall due. The College's continued operations will therefore depend on the continued financial support from the Government, creditors and bankers.

### **Committee Observation**

**The Committee observed that the College's revenue base is narrow and that reliance on financial support from the Government, creditors and bankers is untenable.**

### **Committee Recommendation**

**The Committee recommends that the College diversifies its revenue base to reduce dependence on Government financial support.**

## **45.3 TRADE AND OTHER RECEIVABLES: FYs 2003-2004 TO 2011/2012 ACCOUNTS**

The Trade and other Receivables balance of Kshs. 181,855,665 as at 30<sup>th</sup> June, 2012 includes brought forward amounts of Kshs. 21,831,115 and Kshs. 19,812,181 due from Kenyatta National Hospital and the Ministry of Medical Services and which although

according to information available the Board has recommended for a write off, approval in this respect had not been obtained from the Parent Ministry as at 30<sup>th</sup> June, 2012.

Further the Trade and other Receivables balance of Kshs. 181,855,665 also includes an amount of Kshs. 50,640,649 in respect of accumulated rent arrears due from the University of Nairobi for 96 rooms occupied by University's medical students. Records available show the rent has been accumulated at the rate of Kshs. 2,803,200 per annum over the last 18 years. However, a lease agreement between the College and the University was not produced for audit verification, consequently upon which it has not been possible to establish the basis upon which the arrears have accumulated to stand at Kshs. 50,640,640 as at 30<sup>th</sup> June 2012.

Further and as noted in 2010/2011 financial year, the receivable amounts of Kshs. 14,145,599 (2010/2011 – Kshs. 19,290,489) in respect of fees arrears from both government sponsored and local/foreign students remained outstanding for more than one year. The general provision of Kshs. 17,812,548 made in the financial statements appears inadequate. In the circumstances, it has not been possible to confirm that the Trade and other Receivables balance of Kshs. 181,855,665 as at June 2012 is fairly stated.

#### **Committee Observation**

**The Committee observed that the outstanding rent arrears that the College owes the University of Nairobi should be recovered.**

#### **Committee Recommendation**

**The Committee recommends that the Director ensures that the College recovers all arrears owed by the University of Nairobi within six months of the adoption of this report.**

#### **45.4 PROPERTY, PLANT AND EQUIPMENT: FYs 2006/2007 TO 2011/2012 ACCOUNTS:**

The Committee was informed that the Property, Plant and Equipment of Kshs. 5,005,452,807 includes 22 parcels of land at KMTC Headquarters and the KMTC Constituent Colleges valued at Kshs. 502,485,000 and whose title documents were not availed for audit review.

Consequently it has not been possible to confirm the ownership status of the 22 parcels of land and that the property, plant and equipment balance Kshs. 5,005,452,807 as at 30<sup>th</sup> June, 2012 is fairly stated.

#### **Management Response**

The Managing Deputy Director, KMTC informed the Committee that of the 22 parcels of land, 6 of the parcels ( Nairobi campus and Head Quarters ;Kisii MTC; Nyeri MTC; Part of

South Hill mess- Upper Hill; Thika MTC and Machakos MTC) have title deeds available for audit verification. The M.D informed the Committee that the Corporation was still pursuing the title documents of the remaining 16 parcels of land.

#### **Committee Observation**

**The Committee observed that KMTC did not produce title documents for 22 parcels of land at their Headquarters and the Constituent Colleges valued at Kshs. 502,485,000 for audit review contrary to Section 37(b) of the Public Audit Act, 2003.**

#### **Committee Recommendations**

**The Committee recommends that:-**

- (i) The Managing Director ensures that the College acquires titles for all its land within six months of the adoption of this Report.**
- (ii) The National Land Commission fast tracks the issuance of title documents to Kenya Medical Training College.**

#### **45.5 CASH AND CASH EQUIVALENT: FY 2011/2012 ACCOUNTS**

The Committee was informed that the cash and cash equivalent balance of Kshs. 69,927,111 as at 30<sup>th</sup> June, 2012 include receipts in the cash book not recorded in the bank statement of Kshs. 5,840,635 for the central collection account which have remained outstanding for over six months. The management has not explained why the receipts were not subsequently banked. In the circumstances, the accuracy and validity of cash and cash equivalents balance of Kshs. 69,927,111 could not be confirmed as at 30<sup>th</sup> June, 2012.

#### **Management Response**

The Managing Deputy Director, KMTC informed the Committee that the College's Internal Audit Department was tasked to investigate the cause of Kshs 5,840,635 being receipts in the cashbook not in the bank statement reflected in the reconciliation statement for the Central Collection Account. The Audit revealed various erroneous entries/omissions in the reconciliation and the figure reduced to Kshs. 1,440,280. The Management has instituted measures both disciplinary and recovery against those who presented fake bank deposit receipts.

#### **Committee Observation**

**The Committee observed that the College has lapses in banking revenue collection bank slips occasioning failure or delays in their banking.**

## **Committee Recommendations**

**The Committee recommends that:-**

- (i) The Management ensures prompt banking of revenue collection bank slips.**
- (ii) The College enhances its internal financial controls.**

### **46.0 KENYA DAIRY BOARD: FY 2008/2009 TO 2011/2012**

#### **REPORTS OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF KENYA DAIRY BOARD (KDB) FOR THE FINANCIAL YEARS 2008/2009 TO 2011/ 2012.**

**The Managing Director Kenya Dairy Board (KDB) Mr. Machira Gichohi accompanied by Finance Manager Mr. Humphrey Maina; Accountant, Mr. Edward Nyoike; Technical Services Manager, Dr. Philip Cheron and Senior Internal Auditor, Mr. Erastus Mutiso appeared before the Committee to adduce evidence on accounts of the Kenya Dairy Board for 2008/2009 to 2011/2012 Financial Years.**

#### **46.1 PLANT, PROPERTY AND EQUIPMENT: FYs 2008/2009 TO 2011/2012 ACCOUNTS:**

The Committee heard that Property, Plant and Equipment balances of Kshs. 27,732,942 excludes an undetermined value of a plot in Narok town allocated for office development which though included in the subsequent years but was not valued. In the circumstances, therefore, it has not been possible to confirm that the Property, Plant and Equipment balance of Kshs. 27,732,942 is fairly stated in the Balance Sheet.

#### **Management Response**

The Managing Director, KDB informed the Committee that the plot had not been valued and the title deed for the plot has not yet been received from the Commissioner of Lands therefore it was not prudent for the Board to include the plot in the accounts. Acquisition of the Title Deed is underway and will be completed in two to three months.

#### **Committee Observation**

**The Committee observed that though the Corporation did not have ownership documents for a plot in Narok and it was in the process of acquiring the title deed.**

#### **Committee Recommendation**

**The Committee recommends that the Managing Director ensures the acquisition of the title deed within three months of the adoption of this Report and reports back to the Committee.**

#### **46.2 TRADE AND OTHER RECEIVABLES: FY 2008/2009 ACCOUNTS:**

The Committee heard that Trade and Other Receivables figure of Kshs. 12,448,403 includes an amount of Kshs. 3,435,272 in respect of Trade Debtors and a further balance of Kshs.1,951,726 relating to Other Receivables, which have been outstanding for over two years. The Trade and Other Receivables figure of Kshs.12,448,403 also includes an Ex-staff Debtor's balance of Kshs. 400,782, which has been outstanding for a considerably long period of time.

#### **Management Response**

The Managing Director, KDB informed the Committee that the debtors are milk processors and producers who failed to meet the contractual obligations and ex-staff involved in misappropriation.

#### **Committee Observation**

**The Committee observed that:-**

- (i) The Board has debts that have been outstanding for a considerably long period of time with little effort on the part of the management to recover them.**
- (ii) The debtors are milk processors and producers who had failed to meet the contractual obligations.**

#### **Committee Recommendations**

**The Committee recommends that:-**

- (i) The Director ensures the recovery of the debts including staff imprest within three months of adoption of this Report and report back to the committee on the status.**
- (ii) The Managing Director ensures recovery of the debts from the milk processors and producers.**

#### **46.3 GRANTS FROM THE GOVERNMENT: FYs 2009/2010 TO 2010/2011 ACCOUNTS**

The Financial Statements reflect grants from the Government totaling Kshs. 340,320,950 while records maintained by the Ministry of Livestock Development as at the same date indicated a balance of Kshs. 352,014,362.50 against the item. The resultant difference of Kshs. 11,693,412.50 between the two sets of records has not been reconciled or explained.

The Managing Director, KDB informed the Committee that reconciliation has since been carried out between the two sets of records and the error traced to the records of the Ministry. The Ministry has since corrected its records.

### **Committee Observation**

**The Committee observed that there was a variance of Kshs. 11,693,412.50 between the Ministry of Livestock Development and Kenya Dairy Board figures on Government grants.**

### **Committee Recommendation**

**The Committee recommends that the Board ensures that its records are reconciled with the Parent Ministry as relates Government grants.**

### **46.4 DEVELOPMENT GRANT OF KSHS. 90,000,000: FY 2011/2012 ACCOUNTS**

The Committee heard that the Board received from the Government grants of Kshs.90million for development expenditure. However, only Kshs. 11,302,565 was utilized for the intended development expenditure while the balance of Kshs. 78,697,435 was utilized for recurrent expenditure contrary to the Government Financial Regulations and Procedures which do not allow for inter vote transfer.

### **Management Response**

The Managing Director, KDB informed the Committee that the entire amount of Kshs. 90 million was utilized for the intended development expenditure under respective expenditure items, duly approved at the time of the audit, the Auditor-General was not properly briefed of the fact that the Board had an approved list of these development expenditure items as listed above.

### **Committee Observation**

**The Committee observed that the Corporation had captured its development expenditure as recurrent.**

### **Committee Recommendation**

**The Committee recommends that the Corporation adheres to Government Financial Regulations and Procedures as relates expenditure.**

### **46.5 FINANCIAL PERFORMANCE: FY 2011/2012 ACCOUNTS**

The Committee heard that the Comprehensive Income for the year ended 30 June 2012 reflects a deficit of Kshs. 4,881,145 compared to a surplus of Kshs. 4,806,122 for the year ended 30 June 2011, thereby reducing revenue reserves to Kshs. 49,499,849. The Board has not explained the measures it intends to take to reverse this state of affairs.

### **Management Response**

The Managing Director, KDB informed the Committee that the deficit of Kshs. 4,881,145 was occasioned by an increase in the Board's core regulatory activities which had been budgeted for and approved by the National Treasury in the Printed Estimates for the year under review. However, adequate funding for activities was not received from the

Parent Ministry in time. The deficit in funding therefore reduced the accumulated reserves in the year under review.

### **Committee Observation**

**The Committee observed that despite budgetary provision, adequate funding was not received from the Parent Ministry in time thus leading to reduced revenue reserves for the Board.**

### **Committee Recommendations**

**The Committee recommends that:-**

- (i) The Ministry ensures that budgeted revenues are sent to the Corporation in time.**
- (ii) The Board diversifies its revenue base to avoid over reliance on Government support.**

## **47.0 NATIONAL IRRIGATION BOARD: FY 2008/2009 TO 2011/2012**

### **REPORTS OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF NATIONAL IRRIGATION BOARD (NIB) FOR THE FINANCIAL YEARS 2008/2009 TO FY 2011/2012 AND PENDING ISSUES**

**The General Manager National Irrigation Board(NIB) Eng. Daniel K. Barasa accompanied by Eng. A.M Samatar; Mr. Gichiri Ndua; Ms. Catherine Wairi; Ms. Muthoni Gatere and Mr. Boaz Akello, Procurement & Supplies Officer appeared before the Committee to adduce evidence on accounts of National Irrigation Board for 2008/2009 to 2011/2012 Financial Years and pending evidence.**

### **47.1 PROPERTY, PLANT AND EQUIPMENT: FYs 2008/2009 TO 2011/2012 ACCOUNTS:**

The Committee was informed that the Property, Plant and Equipment balance of Kshs. 1,076,998,331 as at 30<sup>th</sup> June 2009 excludes the value of parcels of trust land in nine (9) schemes. Although according to information available, efforts to acquire ownership documents have been continuing, no title deeds had been obtained as at 30<sup>th</sup> June 2009. In the circumstances, it has not been possible to confirm the accuracy of the Property, Plant and Equipment figure of Kshs. 1,076,998,331 as at 30<sup>th</sup> June 2009.

The General Manager National Irrigation Board informed the Committee that the Board holds in Trust the existing farmland in the six National Irrigation schemes namely Mwea, Bura, Hola, Ahero, West Kano and Perkerra. Tenant farmers allocated holdings within these schemes have cultivated the farms for more than 40 years. The pursuit for title deeds for the trust land has faced complex and sensitive issues which include:-

- The legal need to de-gazette the land before embarking on processing and issuance of title deeds,

- The technical and social need to segregate communal e.g. infrastructure way leave and Government/Board parcels of land hosting offices and other facilities from intended farming/private land,
- The legal and technical need to define the type of title deeds to be issued ,that is freehold versus conditional,
- The social need to determine the person to whom the title shall be given as historically; there have been evictions; confidential nomination of successors in case of the demise of the tenant; the holding has been considered to belong to the family rather than the tenant; the families have grown and expanded over the years; some farmers are viewed as natives while others are perceived as aliens etc,
- The high cost of surveying and valuing the entire land parcels,
- With amalgamation of the new constitution and the direction that all matters pertaining to public land be processed through the newly formed land commission.

Informed by the above, the board in 2010/2011 commissioned Syagga & Associates to conduct a Study of the Land Tenure Systems in NIB Schemes. The output of this study has served to inform and guide NIB in the valuation, acquisition of title deeds for all its national land and properties.

Through this study, the Board' has managed to identity the parcels of land where the facilities are located within the schemes as well as their respective acreage. These include

- ❖ Model,
- ❖ Office premises,
- ❖ Reception centers and staff quarters,
- ❖ Irrigation infrastructure, such as intake works, pump stations, canals, roads, drains and associated infrastructure.
- ❖ Subsidiaries of NIB such as MRM (Mwea Rice Mills) Ltd and WKRM (Western Kenya Rice Mills) Ltd.

<b>NIB FACILITIES AND THEIR LOCATIONS</b>			
<b>Property</b>	<b>Location</b>	<b>Area in Ha</b>	<b>Areas in Acres</b>
Wamumu Center	Mwea	2.017	4.98393872
Karaba Reception Center	Mwea	5.276	13.0368174
Thiba Rice Center	Mwea	4.44	10.9710897
Nguka/Mwea Rice Center	Mwea	8.2117	20.29083272
Tebere Rice Center	Mwea	7.854	19.40696812
Miad	Mwea	153.213	378.5890783
Weather Station	Bunyala	0.0162	0.040029652

<b>NIB FACILITIES AND THEIR LOCATIONS</b>			
<b>Property</b>	<b>Location</b>	<b>Area in Ha</b>	<b>Areas in Acres</b>
Yard	Bunyala	0.7757	1.916728441
Staff Houses	Bunyala	1.2907	3.189276007
Senior Staff Quarters	Perkerra	0.7794	1.925871016
Model Farm B	Perkerra	6.5269	16.12774895
Model Farm A	Perkerra	10.4132	25.73066469
Members Club	Perkerra	0.2145	0.530022239
Junior Staff Quarters	Perkerra	0.0671	0.165801829
Junior Staff Quarters	Perkerra	0.2779	0.686681492
Senior Staff Quarters	Perkerra	0.4833	1.194217939
Yard & Parking	Perkerra	1.251	3.091178651
Offices	Perkerra	0.3208	0.79268594
Junior Staff Quarters	Perkerra	0.1897	0.468742278
Senior Staff	Perkerra	2.1301	5.263404991
Maize Drying Yard	Perkerra	1.8565	4.587348653
Junior Staff Quarters	Perkerra	7.0446	17.40696812
Western Kenya Rice Mills Limited	Ahero	1.8963	4.685693106
Trials	Ahero	1.295	3.199901161
Gardens	Ahero	1.5536	3.838893007
Drying Yard	Ahero	0.8437	2.084754139
Workshop	Ahero	0.6497	1.605386706
Drying Yard	Ahero	1.0346	2.556461576
Offices	Ahero	1.1384	2.812947863
Senior Staff Quarters	Ahero	3.3749	8.339263652
West Kano	West Kano	19.239	47.53891772

The consultant has surveyed these facilities with a view to secure the title deeds. However the Ministry of Lands has advised the Surveyor to attach the District/Provincial Development Plan to the application form to enable the processing of titles. In this regard, the consultant has written to the District Physical Planner Kisumu as well as Kirinyaga requesting for the existing plans for National Irrigation Board property and is awaiting the response in order to proceed with processing of the title deeds.

### **Management Response**

The General Manager National Irrigation Board told the Committee that the current status as to the farmland was that, the Board is reviewing the consultant's recommendation on the appropriate land tenure system for public irrigation schemes

with a view to giving a recommendation to the Land commission on how the same could be handled.

Some titles for facilities in MIAD-Mwea have been secured. However we are still awaiting response from the County Land Registrar, Kirinyaga County and the County Physical Planning Officer Kisumu.

### **Committee Observations**

**The Committee further observed that the process of acquiring title deeds was taking long.**

**The Committee observed that it was important that the Board secures title deeds for its parcels of land.**

### **Committee Recommendations**

**The Committee recommends that the Board expedites the process of acquisition of titles and should report to the Committee within six months of adoption of this report.**

## **47.2 TRADE & OTHER RECEIVABLES: FYs 2008/2009 TO 2011/2012 ACCOUNTS**

The Committee heard that:-

- (i) The Trade and Other Receivables balance of Kshs. 772,998,587 are amounts of Kshs. 24,003,733 and Kshs. 15,345,125 due from Mwea Price Mills Ltd (MRM) and Western Kenya Rice Mills Ltd (WKRM) respectively, and which are not reflected as creditors in the respective companies' financial statements. Instead, the Financial Statements of MRM and WKRM reflect debit balances of Kshs. 68,637,901 and Kshs. 23,052,555 respectively as due from National Irrigation Board, which clearly is inconsistent with Generally Accepted Accounting Principles.
- (ii) The Trade and Other Receivables figure of Kshs. 772,998,587 also includes a head office debtor's balance of Kshs. 73,020,569, out of which an amount of Kshs. 58,589,831 has not been supported with the relevant schedules.
- (iii) A sundry debtor's figure of Kshs. 429,274 and a staff salary advances and imprest of Kshs. 14,001,463, both included in the head office debtors differ with the balances of Kshs. 675, 384 and Kshs 13,059,057 respectively, shown in the supporting schedules. Similarly not supported under the Trade and Other Receivables figure of Kshs. 772,998,587, are schemes' farmers accounts balance of Kshs. 539,326,617 and stock differences amounting to Kshs. 31,243,199.

In the absence of reconciliations and supporting documents for the above balances, it has not been possible to confirm; the validity and accuracy of the Trade and Other Receivables figure of Kshs. 772,998,587 as at 30<sup>th</sup> June 2009.

## **Management Response**

The General Manager, NIB informed the Committee that

- i. National Irrigation Board (NIB) concurs with the Auditor's opinion that the amounts reflected under Trade and Other Receivables of Kshs.24, 003,733 and Kshs. 15,345,125 due from Mwea Rice Mills Ltd (MRM) and Western Kenya Rice Mills Ltd (WKRM) respectively are not the same in the subsidiaries. The inconsistencies arise from historical figures (opening balances) which affect the Trade and Other Receivables once these are incorporated in the accounts. Reconciliation of these accounts have been further compounded by the past manual record keeping as well as lack of handing over notes from retrenched staff to retained staff.
- ii. The sub schedule for Head Office debtors could not be prepared due to the challenges brought on by tracing historical figures dating beyond the year 2002.
- iii. The Sundry Debtors figure of Kshs. 429,274 and staff salary advances and the imprest of Kshs. 14,001,463 which were included in the Head Office debtors differed with the balances of Kshs. 675,384 and Kshs. 13,059,057 respectively, shown in the supporting schedules. This was attributable to lack of opening balances in each of the Sundry Debtors and Staff Salary Advances & Imprest Accounts. Attempts to reconcile the differences have been hampered by historical variances which cannot be supported. The same case applies for Scheme Farmers' Accounts balance of Kshs. 539,326,617 and Stock Differences balance of Kshs. 31,243,199.

The General Manager NIB gave the current status the Farmers Accounts were reconciled during the Financial Year 2011/2012. Supporting schedules have been attached to the response for that year i.e. the Financial Year ended 30th June 2012.

More so management has acquired an accounting package which is being customized to suit application in NIB accounting system. The system contains certain safeguards which were lacking in the previous manual system. This will assist in capturing the data correctly.

Further it has been resolved that in order to incorporate accurate Trade and Other Receivables including Sundry Debtors in the ERP an Independent audit firm will be appointed from the firms invited for prequalification with a view to verifying from the existing records the appropriate actions to be taken to reconcile these accounts. The prequalification exercise is still in progress.

## **Committee Observation**

**Committee recommends that the Board ensures verification of its records and reconciliation of the accounts.**

## **Committee Recommendations**

**The Committee recommends that:-**

**(i) The then General Manager be held responsible for the delay in collection of the imprest contrary to financial regulations governing surrender of imprest.**

**(ii) The Board recovers all the outstanding debts including the advances and imprest in time as required by the financial regulations.**

#### **47.3 UNEXPLAINED INTER-SCHEME ACCOUNTS: FYS 2008/2009 TO 2011/2012 ACCOUNTS**

The Committee heard that the current assets balance of Kshs.1,199,901,506 as at 30<sup>th</sup> June 2009 included a debit balance of Kshs. 26,783,083 (2008- Kshs. 28,151,119) referred to as Inter-Scheme Accounts. However no details or analysis in support of this balance were provided for audit verification. In the circumstances, it has not been possible to confirm the validity and accuracy of the figure of Kshs. 26,783,083 reflected in the Balance Sheet as at 30<sup>th</sup> June 2009.

#### **Management Response**

The General Manager NIB concurred with the Auditor that no details or analysis was provided for audit verification. The Inter Scheme Accounts relate to transactions between one station and another within the Board. Differences occur if transactions are captured in one station and fail to be captured in the other station. However once opening balances (which are a block figure) are factored in the accounts they cause distortions.

The General Manager NIB further informed the Committee that in order to resolve the issue, the Board will appoint an independent audit firm from the firms invited for prequalification. The consultant will be expected among a number of things to verify from the existing records causes of disparities. Thereafter the consultant will make recommendations for appropriate actions to be taken to reconcile these accounts. The prequalification exercise is still in progress.

#### **Committee Observations**

**The Committee observed that:-**

- (i) The disparities in the accounts of the Board need to be promptly resolved.**
- (ii) The Consultant to be hired for the verification exercise should expedite the process.**

#### **Committee Recommendations**

**The Committee recommends that:-**

- (i) The Board ensures verification of its records and reconciliation of the accounts.**
- (ii) The Board recovers all the outstanding debts including the advances within three months of the adoption of this Report.**

#### **47.4 TRADE AND OTHER PAYABLES: FYS 2008/2009 TO 2011/2012 ACCOUNTS:**

The Committee heard that:-

- (i) The Trade and Other Payables balance of Kshs. 521,838,594 are schemes' and head office trade and other creditors' balance of Kshs. 293,775,852 which has been outstanding for a considerably long period of time and whose supporting schedules have also not been availed for audit verification.
- (ii) Further, and included in the figure of Kshs. 521,838,594 are amounts of Kshs. 268,609,381 and Kshs. 20,111,396 under Perkerra and MIAD Irrigation Schemes respectively, which are at variance with balances of Kshs. 269,896,433 and Kshs. 20,132,460 respectively availed for audit verification. In addition, audit fees totaling Kshs. 3,821,040 which have been in arrears for over 9 years, are also included in the payables balance.

In the absence of reconciliations and supporting schedules for the above amounts, it has not been possible to confirm the validity and accuracy of the Trade and Other Payables figure of Kshs. 521,838,594 as at 30<sup>th</sup> June 2009.

#### **Management Response**

The General Manager, NIB presented that:

- (i) NIB is in agreement that the Trade and Other Payables balance of Kshs. 521,838,594 are schemes' and Head Office Trade and Other Creditors' balance of Kshs. 293,775,852. As they appear in the books, they have been outstanding for a considerably long period of time. Further it is true that supporting schedules were not availed for audit verification. The amount includes old balances relating to creditors' accounts which remained un-reconciled over successive years thereby occasioning the Auditor's reservations. This is a result of challenges faced in retrieving supporting documents reconciliation has continually hit a snag.
- (ii) Further, and included in the figure of Kshs. 521,838,594 are amounts of Kshs. 268,609,381 and Kshs. 20,111,396 under Perkerra and MIAD Irrigation Schemes respectively, which are at variance with balances of Kshs. 269,896,433 and Kshs. 20,132,460 respectively availed for audit verification.

The General Manager NIB added in order to resolve this, Management of NIB had opted to appoint a consultant from a list of prequalified firms. This was with a view to verifying from the existing records the appropriate actions to be taken to reconcile these accounts

The NIB Management reported that it had made concerted efforts and settled the amount owed to the Controller and Auditor General. An amount of Kshs. 500,000 was paid vide cheque No. 094968 of 30<sup>th</sup> October 2009. Further payments amounting to Kshs.6, 049,000.00 have since been made to clear the arrears and subsequent invoices.

### **Committee observation**

**The Committee observed that the Board erred in delaying payment of audit fees.**

### **Committee Recommendations**

**The Committee recommends that:-**

- (i) The General Manager ensures that the Board promptly pays audit fees.**
- (ii) The Board ensures verification of its records and reconciliation of the accounts.**
- (iii) The Board recovers all the outstanding debts within six months of the adoption of this report.**

### **47.5 CASH AND CASH EQUIVALENTS: FYs 2008/2009 TO 2011/2012 ACCOUNTS**

The Committee was informed that the cash and Cash Equivalents balance of Kshs. 295,404,983 as at 30<sup>th</sup> June 2009 includes cash book balances of Kshs. 239,428,830 for various Irrigation Schemes and Cash on Hand balance of Kshs. 14,672.75 for Mwea Irrigation Scheme, both of which differ with the respective Bank reconciliation Statements and Cash Certificates Balances as at 30<sup>th</sup> June 2009. Further, no bank reconciliation statement and other related records for Ahero Irrigation Scheme were availed for audit review.

In the circumstances it has not been possible to confirm the validity and accuracy of the Cash and Cash Equivalents balance of Kshs. 295,404,983 as at 30<sup>th</sup> June 2009.

The General Manager NIB said that it is true that there were differences in the Cash Book Balances and Bank Reconciliation Statements for Mwea Irrigation Scheme and Cash Certificate balances as at 30<sup>th</sup> June 2009 and no bank reconciliation statement and other related records for Ahero Irrigation Scheme were availed for audit review.

The G.M, NIB said that the current status of the Cash and Cash Equivalents balance of Kshs. 295,404,983 and Cash Book balances of Kshs. 239,428,830 for various Irrigation Schemes have since been reconciled. The reconciliation was carried out during the audit of 2012/2013 and now they agree with the cashbook.

The Cash Book Balances and Bank Reconciliation Statements for Mwea Irrigation Scheme and Cash Certificate as well as for Ahero Irrigation Scheme were reconciled in the year 2012/2013 when the cashbook and the ledger balances were fully reconciled in anticipation of incorporating correct balances in the ERP system.

### **Committee Observations**

**The Committee observed that:-**

- (i) Reconciliation of accounts for the Board took long to be successfully done, however the bank reconciliations have since been done.**
- (ii) The Board failed to provide records to the auditors for verification.**

## **Committee Recommendations**

**The Committee recommends that:-**

- (i) The General Manager of the Board should ensure that bank reconciliations are promptly done in future.**
- (ii) The General Manager of the Board should ensure that all records are availed to the auditors for verification as required by the Public Audit Act, 2003.**

### **48.0 AGRICULTURAL FINANCE CORPORATION: FY 2003/2004 TO 2011/2012**

#### **REPORTS OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF AGRICULTURAL FINANCE CORPORATION (AFC) FOR THE FINANCIAL YEARS 2003/2004 TO 2011/2012**

**The Managing Director, AFC, Mr. Lucas Meso accompanied by General Manager Finance, Mr. Ismail Guyo; Chief Accountant Mr. Akeno Tom; Accountant Mr. Michael Kibathi; Personal Assistant to the Managing Director Mr. Bonano Bulla and Assistant Director of Agriculture Mr. Eliud Kamau representing the Ministry of Agriculture, Livestock and Fisheries appeared before the Committee to adduce evidence on accounts of the Corporation for 2003/2004 to 2011/2012 Financial Years.**

#### **48.1 CONSULTANCY SERVICES: FY 2003/2004 ACCOUNTS**

The Committee heard that in October 2003, the former Managing Director (Mr. George Omari Nyamweya) without Board's approval hired an ex-employee of the Corporation as a consultant to carry out a recruitment exercise at a cost of Kshs 1,546,000.00 to the Board. It is not clear how the consultant was identified and the fee determined without competitive tendering. Though the Corporation indicated that they had asked the Office of the President to assist in the recovery of the money, no evidence of the request was seen.

#### **Management Response**

The Managing Director, Agricultural Finance Corporation (AFC) informed the Committee that the Corporation has requested the Office of the President vide letter ref. AFC/MD/9.1.1 dated 13<sup>th</sup> June 2005 to assist in the recovery of Kshs 1,546,000.00 from the former Managing Director.

#### **Committee Observation**

**The Committee observed that the recovery of the money paid to the consultant had taken too long.**

### **Committee Recommendation**

**The Committee recommends that the Managing Director pursues the recoverability of the debt and report status of recovery to Parliament within six months after adoption of this Report.**

### **48.2 OVERPAYMENT OF THE FORMER CHIEF EXECUTIVE: FY 2003/2004 ACCOUNTS**

The Committee heard that the former Managing Director (Mr. George Omari Nyamweya) received a salary of Kshs 1,166,120 per month instead of the approved gross of Kshs. 347,720.00 resulting to an overpayment of Kshs 3,273,600.00 in 2003/2004 under review and no recovery so far has been made.

### **Management Response**

The Managing Director, AFC informed the Committee that the Corporation sought the assistance of the Inspectorate of State Corporations to surcharge the irregular payments to the former Managing Director Mr. George Omari Nyamweya.

### **Committee Observation**

**The Committee observed that:-**

- (i) The Corporation and Inspectorate of State Corporations had taken too long to recover the money.**
- (ii) There was no evidence of any effort by the management to recover the money.**

### **Committee Recommendation**

**The Committee recommends that the Corporation and the Inspectorate of State Corporations pursues the recoverability of the debt and report status of recovery to Parliament in six months after adoption of this Report.**

### **48.3 LOAN TO FARMERS: FYs 2004/2005 TO 2005/2006 & 2009/2010 TO 2011/2012 ACCOUNTS:**

The Committee heard that recovery of large and small-scale loans has not significantly improved. The non-recovery of the loans has resulted in a very high bad and doubtful debts provision of Kshs 4,536,086,000.00.

The Managing Director, AFC informed the Committee that old loans that were advanced to farmers prior to January 2003 were waived by the Government. In order to recover the outstanding arrears, the Corporation established a Debt recovery unit to specifically follow up the non performing portfolio.

### **Committee Observation**

**The Committee observed that in spite the establishment of the Debt Recovery Unit little progress had been realized in the recovery of debts leading to a high bad and doubtful debts provision.**

### **Committee Recommendations**

**The Committee recommends that:-**

- (i) The Corporation puts in place measures to recover the debts and report status of recovery to Parliament in six months after adoption of this Report.**
- (ii) Debt recovery should be a target in the Performance Contract of the Managing Director for the Corporation so as to reduce the high debt portfolio and improve the performance of the Corporation.**

### **48.4 RECEIVABLES AND REPAYMENTS: FY 2004/2005 ACCOUNTS**

The Committee heard that included in the receivables and prepayments balance of Kshs 101,224,000.00 is an amount of Kshs 51,150,596.00 in respect of auctioneers fees and advertisement charges which has remained outstanding for a long time. Also, included is rent accrual of Kshs 40,018,000.00 in respect of Development House out of which Kshs 21,882,000.00 relate to the year 1999 and earlier. It's not clear why management has not taken adequate measures to recover.

### **Management Response**

The Managing Director, AFC informed the Committee that the Corporation made a provision in respect to the outstanding auctioneer's fees and advertising charges given that the recoverability was doubtful. The rent arrears for Development House amounting to Kshs 40 million consisted of arrears which related to the period prior to the 1998 bomb blast when most of the tenants vacated the building without clearing their debts. The Committee was further informed that the rent collector M/s Lustman & Company Ltd owned by Esther Mathenge and Natalie Njanja Mathenge defaulted in remitting rent to the Corporation to the tune of Kshs.6 million as at the time of termination of contract. The Corporation sued the agent for recovery of the unremitted rent. The Corporation has since engaged the firm of Nyaencha & Company Advocates to take over the matter to its logical conclusion. A new property manager has since been employed.

### **Committee Observation**

**The Committee observed that the unremitted rent by Ms. Esther Mathenge and Ms. Natalie Nyanja Mathenge is still outstanding and that the matter is currently in Court.**

### **Committee Recommendations**

**The Committee recommends that:-**

- (i) The Corporation should recover fully the unremitted rent from Ms. Esther Mathenge and Ms. Natalie Njanja Mathenge including identifying their properties/estate for attachment in the clearance of the debt.**
- (ii) Ms. Esther Mathenge and Ms. Natalie Njanja Mathenge and their associated companies be barred from transacting any business with any State Corporation as a result of their conduct in the management of AFC Development House Property.**
- (iii) The Chief Executive Officer of the Board should give the status report of the Court case to the Committee within three months of adoption of this Report.**

### **48.5 LAND AND BUILDINGS: FYS 2008/2009 TO 2011/2012 ACCOUNTS**

The Committee heard that the land and buildings includes 20 developed plots all of which the respective title deeds were not availed for audit review. It was further noted that 5 other undeveloped and unvalued plots had been re-allocated to third parties. In the absence of ownership documents for the land as indicated above, it has not been possible to confirm the accuracy of the land and buildings balances of Kshs 356,129,000.00

The Managing Director, AFC informed the Committee that the Corporation has with the support of the Board intensified its efforts in pursuing the ownership documents, and currently the title deeds have been obtained for land in Bungoma, Garsen, Iten, Meru and Bomet. The Corporation has written letters to respective counties and the National Land Commission to follow up on the land irregularly re-allocated to third parties.

### **Committee Observation**

**The Committee observed that the Corporation did not have ownership documents for some of its properties (land) and that some of the pieces of land had been irregularly allocated to private developers.**

### **Committee Recommendations**

**The Committee recommends that:-**

- (i) The Corporation liaises with the National Land Commission for the expeditious issuance of title documents and the revocation of titles irregularly allocated to third parties.**
- (ii) The Ethics and Anti-Corruption Commission investigates the circumstances surrounding the irregular allocation of Public Land belonging to the Corporation to third parties.**

#### **48.6 BUDGETARY CONTROL: FYs 2008/2009 TO 2010/2011 ACCOUNTS**

The Committee heard that during the year under review, the Corporation incurred an expenditure of Kshs.32,127,000.00 over and above the budgetary provisions for the year in nine expenditure items. Although the Management has explained that the over-expenditure was subsequently considered and approved by the Ministry of Agriculture, Livestock and Fisheries and the Treasury together with the 2009/2010 FY estimates, no evidence supporting this was produced for audit verification.

#### **Management Response**

The Managing Director admitted that the payment was un-procedurally done and that Treasury and Parent Ministry approval should have been sought.

#### **Committee Observation**

**The Committee observed that the Corporation incurred an over-expenditure of Kshs.32,127,000.00 without Parent Ministry and National Treasury approval contrary to Section 12 of the State Corporations Act, Cap. 446**

#### **Committee Recommendations**

**The Committee recommends that:**

- (i) The EACC investigates the circumstances surrounding the over-expenditure of Kshs.32,127,000.00 by the Corporation without Parent Ministry and National Treasury approval contrary to Section 12 of the State Corporations Act, Cap. 446.**
- (ii) The Director of Public Prosecutions institutes criminal proceedings against the then Managing Director, Mr. Omurende Iyadi and the General Manager Finance, Mr. Lawrence Bokoro who authorized the over-expenditure for:**
  - i) Over-expenditure of Kshs. 32,127,000.00 without Parent Ministry and Treasury approval contrary to Section 12 of the State Corporations Act, Cap. 446;**
  - ii) Abuse of office contrary to Section 101 of the Penal Code and Section 12 of the Public Officer Ethics Act, 2003**

#### **48.7 CASH AND BRANCH COLLECTION ACCOUNTS: FYs 2009/2010 TO 2011/2012 ACCOUNTS**

The Committee heard that branch collection account balance includes long outstanding un-reconciled items relating to remittances and receipts which have been outstanding since 2003. Thika, Narok and Kisumu collection accounts contained an un-reconciled figure of Kshs 234,000.00, Kshs 1,860,000.00 and Kshs 672,000.00 respectively, recorded as fraud committed by employees. A banker's order of Kshs 410,600.00 during

the year (2008/2009) was also fraudulently channeled to an ineligible account in Kisumu.

The Managing Director, AFC informed the Committee that the long outstanding un-reconciled items relating to remittances and receipts have since been identified and cleared.

The un-receipted credits in Thika, Kisumu and Narok branches have since been receipted to clients' accounts. The ex-staff who was responsible for the fraudulent transaction was reported to the police and after investigations were completed criminal proceedings commenced.

The case was determined and the accused acquitted. The Corporation also managed to recover Kshs 213,500.00 from the client.

#### **Committee Observation**

**The Committee observed that the Corporation did not have in-house fraud prevention, detection and handling mechanisms thereby resulting in loss of public funds.**

#### **Committee Recommendations**

**The Committee recommends that:**

- (i) The Corporation puts in place stringent mechanisms to prevent, detect and handle fraud.**
- (ii) The EACC investigates the circumstances surrounding the fraud and the conduct of the then Managing Director, Mr. Omurende Iyadi, and General Manager –Finance, Mr. Lawrence Bokoro, that resulted in the loss of public funds in the accounts department and recommend prosecution for those found culpable.**

#### **48.8 LOAN TO STAFF: FYS 2009/2010 TO 2011/2012 ACCOUNT**

The Committee heard that Kshs. 40,241,000.00 owed by ex-staff, is in respect of house loans, car loans and staff advances. The Corporation has not however clarified why the amount could not be offset against the final dues of the affected staff.

The Managing Director, AFC informed the Committee that the Corporation has instituted various recovery measures including repossessing and disposal of motor vehicles, tracing staff and involving their current employers to recover the money and as a last resort taking legal action where other recovery measures have failed.

#### **Committee Observation**

**The Committee observed that the recovery of loans to staff had taken long and little effort had been undertaken by the management to recover the loans as indicated by the low level of recovery.**

### **Committee Recommendation**

**The Committee recommends that the management recovers the loans to staff within six months of the adoption of this report failure to which the then Ag. Managing Director, Mr. Lawrence Bokoro and the Chief Accountant, Mr. Francis K. Maritim are held accountable for the debt.**

### **48.9 LOANS TO FARMERS: SHORT TERM LOANS TO 13 FARMERS: FYS 2009/2010 TO 2011/2012 ACCOUNTS:**

The Committee heard that the balance of short term loans to customers' of Kshs.2,980,347.00 includes an amount of Kshs.22,661,000.00 advanced to 13 farmers in Kapsabet. The Corporation advanced the amount against various collaterals in form of title deeds which appeared to be fraudulent.

### **Management Response**

The Managing Director, AFC informed the Committee that the Corporation disbursed loans to the farmers in Kapsabet in accordance with the AFC policies. Farmers provided title deeds which were, on the face of it genuine and confirmed through official searches in the land registry. The Corporation later learnt that the titles given as security were fraudulent. The fraud was perpetuated with the connivance of the officials at the local land registry at Kapsabet. This matter was reported to the CID office at Kapsabet for investigation.

### **Committee Observations**

**The Committee observed that:-**

- (i) The Corporation failed to undertake proper due diligence and did not put in place measures to ensure loans advanced were properly secured.**
- (ii) There was probable collusion between the farmers, employees of AFC and the land registry to defraud the Corporation.**

### **Committee Recommendations**

**The Committee recommends that:-**

- (i) The EACC investigates the circumstances and the process of loan issuance to the farmers including the role of the officers of the Corporation and the Land Ministry with a view to recommending prosecution of those found culpable.**
- (ii) The officers of the Corporation and Kapsabet Land Registry implicated in the fraud should be surcharged or money recovered from them and barred from holding public office.**

#### **48.10 PAYABLES AND ACCRUALS: FYS 2009/2010 TO 2011/2012 ACCOUNTS:**

The Committee heard that Payables and Accruals balance of Kshs.599,431,000.00 includes loan drafts outstanding balance and a Sundry Creditors' General balance which have not been supported with the relevant documents.

#### **Management Response**

The Managing Director, AFC informed the Committee that the balances were carried forward during conversion from the Loan Accounting System to the new Equinox Banking system in 2007. These balances have since been identified and cleared.

#### **Committee Observations**

**The Committee observed that:-**

- (i) The Corporation's outstanding balances were as a result of the conversion of the Loan Accounting System to the new Equinox Banking system.**
- (ii) The Corporation did not appreciate the effects nor provide for safeguards for the conversion.**

#### **Committee Recommendation**

**The Committee recommends that the Corporation should carry out due diligence while carrying out changes in its system and to provide for safeguards for the conversion.**

#### **48.11 UNQUALIFIED ACCOUNTS: FYS 2006/2007 AND 2007/2008 ACCOUNTS**

The Committee heard that Agricultural Finance Corporation received unqualified accounts for the FYS 2006/2007 and 2007/2008

#### **Committee Observation**

**The Committee observed that Agricultural Finance Corporation received unqualified report from the Auditor General for the FYS 2006/2007 and 2007/2008.**

#### **Committee Recommendation**

**The Committee commended Agricultural Finance Corporation for receiving unqualified accounts in the FYS 2006/2007 and 2007/2008.**

## **49.0 SUGAR DEVELOPMENT FUND: FY 2003/2004 TO 2011/2012**

### **REPORTS OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF SUGAR DEVELOPMENT FUND (SDF) FOR THE FINANCIAL YEARS 2003/2004 TO 2011/2012**

**The Interim Director, Directorate of Sugar at the Agriculture, Fisheries and Food Authority (AFFA) (Former Managing Director, Kenya Sugar Board)-Ms. Rosemary Mkok accompanied by Acting Finance Manager, Mr. Silas Nyaga; Legal Officer, Mr. Jude Chesire; Credit Officer, Mr. Daniel Onyango; Head of Pyrethrum Directorate, Mr. Samson Dera and Accountant Mr. James Njue appeared before the Committee to adduce evidence on accounts of the Fund for 2003/2004-2011/2012 Financial Years.**

#### **49.1 LOANS TO SUGAR COMPANIES: FYs 2002/2003 & 2004/2005 TO 2011/2012 ACCOUNTS**

The Committee heard that the Fund gave short term loans amounting to Kshs. 5,899,961,981 to various sugar companies which accrued interest of Kshs. 1,070,484,577 as at 30<sup>th</sup> June 2012. The Management has however not indicated how it intends to recover the outstanding loans and accrued interest from the sugar companies particularly those which have been underperforming.

#### **Management Response**

The CEO, Sugar Development Fund (SDF) informed the Committee that Management has made efforts to institute measures to ensure the loans are recovered. Among the considerations are a freeze of loan disbursements to defaulting companies, preparing Memorandum on the Revitalization of the industry and Sessional Paper No.12 of 2012 prepared for consideration of debt write off.

#### **Committee Observation**

**The Committee observed that the Fund has given loans to sugar companies which had defaulted in payment.**

#### **Committee Recommendations**

**The Committee recommends that:-**

- (i) The Chief Executive Officer recovers the loans and interest from the sugar companies and report to Parliament on the status of recovery within six months after adoption of this report.**
- (ii) The Fund puts in place a policy on loans to sugar companies with measures to caution against default.**

#### **49.2 GRANTS TO MUMIAS SUGAR COMPANY LTD: FY 2003/2004 ACCOUNTS:**

The Committee heard that on 31<sup>st</sup> January 2004, Kenya Sugar Board through Sugar Development Fund gave grants totaling Kshs. 94 million to Mumias Sugar Company Ltd for purchase of road maintenance equipment to be registered in the name of the Board. Although the Kshs. 94 million was meant to be a grant for the purchase of equipment, it has been included under loans amount to Mumias Sugar Company Ltd. The Management has not explained why the amount has been treated as loan instead of being treated as properties of the Fund as intended.

#### **Management Response**

The CEO, SDF informed the Committee that the amount was erroneously posted as loan. This figure of Kshs. 94 million has since been reversed from loan to infrastructure grant account.

#### **Committee Observation**

**The Committee observed that Kenya Sugar Board had wrongly recorded the grant to Mumias as a loan.**

#### **Committee Recommendation**

**The Committee recommends that the Board should ensure that it properly documents and records figures entered in the books of accounts lest it gives a wrong impression of the financial statements of the Fund.**

#### **49.3 KENYA SUGAR RESEARCH FOUNDATION DEBT- KSHS 5,103,936: FY 2003/2004 ACCOUNTS**

The Committee heard that Kenya Sugar Research Foundation (KESREF) owes SDF an outstanding debt amounting to Kshs. 2,372,192,477 dating back to August 2001. This debt was in respect of various services rendered including travelling and accommodation, fuel and other expenses. There was no evidence of any positive action being taken to recover the money from KESREF.

#### **Management Response**

The CEO, SDF informed the Committee that the recovery of this debt was made difficult by the fact that Kenya Sugar Research Foundation had been inadequately funded over the years. Following enhancement of funding from 0.5% to 1.0% of levy, the debt has now been settled through recovery from share of their levy. The debt stands fully repaid.

#### **Committee Observation**

**The Committee observed that the Fund owed KESREF money which had taken too long to be repaid.**

### **Committee Recommendation**

**The Committee recommends that the Fund puts in place measures to ensure recovery of any debt owed within the shortest possible period.**

#### **49.4 OUTSTANDING IMPREST: FYS 2003/2004 TO 2011/2012 ACCOUNTS**

The Committee heard that included in the Fund's Balance Sheet debtors and prepayment figure is an amount of Kshs. 4,823,021 in respect of staff imprest due from four former staff and one current member of staff. Of the above figure Kshs. 1,858,966 is due from a current staff member who as at the time of this report been interdicted. The board has not explained how it intends to recover the outstanding imprest.

#### **Management Response**

The CEO, SDF informed the Committee that the Board was owed Kshs. 4,823,021 in form of imprest by former employees (Augustine Amulyoto; Francis Chahonyo; Peter Kegode and Joseph Ogombo) and a Board member (Hon. Mark Too). Mr. Augustine Amulyoto who owes the Fund Kshs. 200,000 is being pursued through the Court to collect the above debt and others owed to Kenya Sugar Board. Investigations are underway to establish his attachable assets to recover the debts.

Debts owed by Hon. Mark Too, Mr. Francis Chahonyo and Mr. Joseph Ogombo have since been cleared in full. The case to recover Kshs 1, 139,055 owed by Mr. Peter Kegode's is on course.

#### **Committee Observation**

**The Committee observed that the recoverability of the debts had taken inordinately long and that Mr. Augustine Amulyoto owed Sugar Board and Sugar Development Fund and that the Board had taken long to recover the debt.**

#### **Committee Recommendations**

**The Committee recommends that:-**

- (i) The Board fast tracks the recoverability of the debts owed by Mr. Augustine Amulyoto and Mr. Peter Kegode and report to Parliament within six months of adoption of this report.**
- (ii) The EACC investigates the circumstances under which the imprest amounts have accumulated for so long without recovery.**
- (iii) Mr. Augustine Amulyoto be prosecuted for abuse of office contrary to Section 99 of the Penal Code.**

#### **49.5 DEBTORS: FYS 2004/2005 TO 2011/2012 ACCOUNTS**

The Committee heard that included in debtors and prepayment figure of Kshs. 1,852,743,415 is an amount of Kshs. 338,049,927 being SDF levy arrears on institutions

and sundry debtors outstanding for more than two years and no debts provisions have been provided.

#### **Management Response**

The CEO, SDF informed the Committee that the high debt portfolio and insolvency of the Government-owned companies has crippled the industry and cannot allow the millers to operate efficiently. To enhance levy collection, this function has been out-sourced to Kenya Revenue Authority through a Memorandum of Understanding.

#### **Committee Observation**

**The Committee observed that the Board had a perennial problem of debt recovery.**

#### **Committee Recommendation**

**The Committee recommends that the Board develops a stringent policy on debt recovery and outsource its levy collection to Kenya Revenue Authority to enhance its revenue.**

#### **49.6 UNEXPLAINED PAYMENTS: FY 2006/2007 ACCOUNTS**

The Committee heard that during the year ended 30<sup>th</sup> June 2007 the Fund paid a creditor an amount of Kshs 350 million on behalf of Miwani Sugar Company Ltd. The amount was paid following a High Court decree issued for an amount of Kshs. 289,004,712 against Miwani Sugar Company Ltd. The resultant overpayment of Kshs. 60,995,288 has not been explained. Similarly the Fund paid a commercial bank an amount of Kshs. 330 million on behalf of Miwani Sugar Company against bank overdraft of only Kshs.159, 031,701 resulting in unexplained variance of Kshs. 170,968,299.

#### **Management Response**

The Chief Executive Officer, SDF informed the Committee that the Authority was granted to the Board by the Parent Ministry to negotiate with secured creditors of Miwani Sugar Co. Ltd (In Receivership) so as to remove all encumbrances that would stand in the way of selling the company. This was a recommendation that came out of an Inter-Ministerial Taskforce that was appointed by the Minister to address the whole issue of tackling the Miwani Sugar Co. (In Receivership) question.

#### **Committee Observation**

**The Committee observed that the Board overpaid a creditor by Kshs. 60,995,288 and a bank Kshs. 170,968,299 over and above the actual debt owed by Miwani Sugar Co. Ltd.**

#### **Committee Recommendations**

**The Committee recommends that:-**

- (i) EACC investigates the circumstances and the conduct of the then Managing Director (Andrew .O Otieno) and the Finance Manager under whose tenure the creditors of Miwani Sugar Co. Ltd were overpaid.**
- (ii) The Director of Public Prosecutions institutes criminal proceedings against the then Managing Director, Andrew O. Otieno under whose tenure the creditors of Miwani Co. Ltd were overpaid for:**
  - (a) Contravention of Section 10 of the Public Officer Ethics Act, 2003**
  - (b) Abuse of office contrary to Section 101 of the Penal Code**
  - (c) Fraud in contravention of Section 127 of the Penal Code.**
- (iii) The then Managing Director, Andrew O. Otieno under whose tenure the creditors of Miwani Co. Ltd. were overpaid be surcharged and money lost by the Corporation recovered.**

#### **49.7 EXTRA-ORDINARY ITEM- KSHS 467,565,168: FY 2007/2008 ACCOUNTS:**

The Committee heard that there is an extra ordinary expenditure of Kshs. 467,565,168 which relates to payment to lawyers handling a protracted court settlement on behalf of two suppliers for Kshs 312,209,406 and legal fees of Kshs. 155,355,762 paid to a law firm for legal work handled by the firm on behalf of Kenya Sugar Board. The amount of Kshs. 467,565,168 was paid by Sugar Development Fund without budgetary provision. Further, there were no Board minutes produced for audit review to support the payment of Kshs 155,355,762 paid to a law firm and Kshs.135, 228,125 paid by one of the suppliers. Similarly no evidence was produced to confirm that the Parent Ministry approved the payment of Kshs 467,565,168 as per Treasury Circular EFN 87/07A/OLXV/ (70) of 18<sup>th</sup> July 2006.

#### **Management Response**

The CEO, SDF informed the Committee that the Management made payments of Kshs. 467,565,168.25 from the Fund in relation to legal fees amounting to Kshs. 20,570,000 to M/s Jane Ondieki & Co. Advocates; Kshs.155, 355,762 to M/s Rachier &Co; payments of Kshs.135, 228,125 to M/s Sigma Enterprises and Kshs. 156, 411,281 to M/s Genetic Technology Company for provision of Irrigation and Tissue Culture services respectively.

#### **Committee Observations**

**The Committee observed that:-**

- (i) Sugar Development Fund paid an amount of Kshs. 467,565,168 as legal fees without budgetary provision or Treasury approval, as per Treasury Circular EFN 87/07A/OLXV/ (70) of 18<sup>th</sup> July 2006, to two legal firms representing the Board in case against two suppliers .**

- (ii) **The procurement of the legal firms and suppliers of Irrigation and Tissue Culture services was doubtful**
- (iii) **The services rendered by M/s Jane Ondieki & Co. Advocates; M/s Rachier & Co; payments and M/s Sigma Enterprises are doubtful.**

### **Committee Recommendations**

**The Committee recommends that:-**

- (i) **The Inspectorate of State Corporations investigates the nature of services rendered by the legal firms and whether the payment was in tandem with the Advocates Remuneration Order.**
- (ii) **The Inspectorate should also investigate the services offered by M/s Sigma Enterprises, value for money and the procurement of the legal firms and the provision of Irrigation and Tissue Culture services.**
- (iii) **The EACC investigates the circumstances under which the firms were procured and the conduct of the then Managing Director Mr. Andrew O. Otieno in relation to the procurement of the services of the legal firms and the services offered by M/s Sigma Enterprises and the provision of Irrigation and Tissue Culture services with a view to recommending prosecution by the director of public prosecution.**
- (iv) **The then Managing Director Mr. Andrew Otieno be held responsible for incurring expenditures not provided for in the budget without Parent Ministry and the National Treasury approval contrary to Section 12 of State Corporations Act, Cap. 446 and Section 79 of the Public Finance Management Act, 2012.**

### **49.8 TRADE AND OTHER RECEIVABLES: FYS 2008/2009 TO 2011/2012 ACCOUNTS.**

The Committee heard that the Trade and other Receivables balances of Kshs.1,784,167,000 as at 30<sup>th</sup> June, 2009 includes an amount of Kshs.1,299,840,000 being Sugar Development levy arrears due from various institutions. Further included in the Trade and other Receivables figure is Kshs. 145,314,000 relating to expenses incurred by the Fund on behalf of various institutions, including some which are under receivership and Kshs. 600,874,000 of un-surrendered staff imprest.

The CEO, SDF that efforts have been made to recover the debts through legal means. Some of the debtors are under receivership. Levy arrears have increased to Kshs. 1 653,741,000 by June 2013 owing to poor performance by Government-owned sugar firms. Sundry debtors have since reduced from Kshs. 600,874,000 to Kshs. 146,953,000 as at 30<sup>th</sup> June 2013. Treatment of this debt is covered under the Privatization Programme currently being undertaken by the Government.

## **Committee Observation**

**The Committee observed that:-**

- (i) There was no change in trade and receivables balance between 2008/2009 to 2011/2012 and that the recoverability of debts was posing a serious challenge to the Management.**
- (ii) The management had failed to recover debts owed to the Board and the Fund thus leading to a huge debt portfolio whose recoverability was doubtful either due to poor management style or lack of interest to recover public funds.**

## **Committee Recommendations**

**The Committee recommends that:-**

- 1) The Board develops a policy on recoverability of debts including imprest.**
- 2) The EACC investigates the circumstances under which the Chief Executive Officers, Mr. Andrew O. Otieno and Ms. Rosemary Mkok failed to recover imprest owed by employees in contravention of financial regulations.**
- 3) The Director of Public Prosecutions institutes criminal proceedings against the Chief Executive Officers, Mr. Andrew O. Otieno and Ms. Rosemary Mkok for:
  - (i) Contravention of Section 79 of the Public Finance Management Act**
  - (ii) Abuse of office in contravention of Section 101 of the Penal Code and Section 10 of the Public Officer Ethics, 2003 and****
- 4) The Chief Executive Officers, Mr. Andrew O. Otieno and Ms. Rosemary Mkok be surcharged or money recovered from them.**

## **50.0 KENYA SUGAR BOARD: FY 2003/2004 TO 2011/2014**

### **REPORTS OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF KENYA SUGAR BOARD (KSB) FOR THE FINANCIAL YEARS 2003/2004 TO 2011/2012**

The Chief Executive Officer, Kenya Sugar Board (KSB) Ms. Rosemary Mkok accompanied by, Mr. Silas Nyaga, Ag Head of Finance; Ms. Anne Onyango, Ag Agriculture Secretary (Alternate Director); Mr. Timothy Ogwang, Principal Agriculture Ministry Officer; Mr. Peter Lukoye ,Human Resource Manager; Mr. Jude Chesire, Legal Officer and Mr. James Njue, Accountant appeared before the Committee to respond to the audit queries raised by the office of the Auditor General on the Accounts of Kenya Sugar Board for FYs 2003/2004 to 2011/2012.

#### **50.1 FINANCIAL POSITION: FYs 2003/2004 TO 2004/2005 ACCOUNTS**

The Committee heard that Kenya Sugar Board realized a deficit of Kshs 18,288,472 thus reducing accumulated reserves to a negative of Kshs 58,323. The financial statements are prepared on a going concern basis assuming continued Government, creditors and other related parties support.

##### **Management Response**

The Chief Executive Officer (CEO) Kenya Sugar Board presented that the deficit was occasioned by the Board receiving 0.5/7 of the 75% of the Sugar levy for administration which is far below their needs. This was addressed by increasing the KSB share of the Sugar Levy to 1.5/7 of the 75% levy collected. The accumulated deficit was offset in 2008/2009 and currently the Board has accumulated reserves of Kshs. 486,357,000.

##### **Committee Observation**

**The Committee observed that the Board operated on a deficit.**

##### **Committee Recommendation**

**The Committee recommends that the Board diversifies its revenue base so as to avoid over-reliance on Government funding.**

#### **50.2 STAFF IMPREST: FYs 2003/2004 TO 2011/2012 ACCOUNTS**

The Committee heard that Kshs. 9,921,416 is related to staff imprest and advance out of which Kshs. 6,923,746 is attributed to ex-staff. There is no evidence of adequate action by management to recover the debt or provision for the uncertainty of recovery in the financial statements.

##### **Management Response**

The CEO KSB presented that the debts of Kshs. 4,920,898 owed by Hon. Mark Too, former Chairman of the Board and Kshs. 913,732.80 owed by Francis Chahonyo, former

Chief Executive Officer of the Board had been fully paid up. Mr. Amulyoto had signed off for recovery of the debt from his pension but Kshs. 1 million remained outstanding. The challenge facing the Board was finding his attachable assets since he had since relocated from the country. The Land was in his father's name and the logbook on the car bought with a car loan issued in his name.

### **Committee Observation**

**The Committee observed that:-**

- (i) There was abuse of office since Mr. Amulyoto being the Head of Finance used his position for personal gain.**
- (ii) The car logbook should have been with National Bank of Kenya and registered both in the bank and the loanee's name.**

### **Committee Recommendation**

**The Committee recommends that the Board should liaise with the Credit Reference Bureau and the immigration department in locating Mr. Amulyoto including placing an alert for his arrest when he gets back into the country until the money owed is fully recovered.**

### **50.3 LOSS OF CASH IN TRANSIT: FY 2003/2004 ACCOUNTS**

The Committee heard that the Board's cashier using his personal vehicle and not accompanied by security agents withdrew Kshs. 1,084,051 cash from the bank which was later stolen during an accident. The insurance paid up Kshs. 400,000 but the Board has not explained nor indicated the action taken to recover the remaining Kshs. 684,051.45 even though the cashier was suspended pending investigations.

The CEO KSB informed the Committee that the cashier Mr. Joseph Ogombo was interdicted for one year at half pay and the matter reported to Kabete police station. The cashier was reinstated but not as a cashier and the amount fully recovered from him.

### **Committee Observations**

**The Committee observed that:-**

- (i) The Board did not have a comprehensive policy and implementation mechanisms on withdrawal and transit of cash resulting in loss of monies (Kshs. 1,084,051) by the Board.**
- (ii) It took very long for the Board to report the loss of public funds and its approach amounted to condoning the breach of law by the cashier.**
- (iii) The then cashier Mr. Joseph Ogombo contravened provisions of the law as follows:-**
  - (a) Contravening Section 79 of the Public Finance Management Act, 2012;**

- (b) Abuse of office contrary to Section 101 of the Penal Code and Section 10 of the Public Officer Ethics Act and**  
**(c) Contravention of Article 226(5) of the Constitution.**

### **Committee Recommendations**

**The Committee recommends that:-**

- (i) The Board puts in place stringent measures and policies for withdrawal and transit of cash.**  
**(ii) The cases occasioning loss of public funds should be promptly reported and firmly dealt with to prevent such occurrences in future.**

### **50.4 UNACCOUNTED CASH: FY 2003/2004 ACCOUNTS**

The Committee heard that the Board cashier Mr. Joseph Ogombo failed to account for Kshs. 383,793.55 being surrendered cash by other officers as well as a Kshs. 1 million withdrawal from StanChart Bank. The Board suspended the officer but did not explain how the money would be recovered.

### **Management Response**

The CEO, KSB presented to the Committee that all the unaccounted cash including imprest in both Kenya Sugar Board and Sugar Development Fund were fully surrendered and the staff cleared.

### **Committee Observation**

**The Committee observed that the Board did not have a comprehensive policy and implementation mechanisms on staff imprest as well as withdrawal of cash and surrender of imprest.**

### **Committee Recommendation**

**The Committee recommends that the Board should strengthen its policy on imprest as well as withdraw of cash and implement strictly the financial regulations relating to surrender of imprest.**

### **50.5 UNAUTHORISED OVER EXPENDITURE: FYs 2004/2005 TO 2007/2008 ACCOUNTS**

The Committee heard that the Board incurred an over expenditure in legal fees of Kshs. 15,528,886 and Directors expenses of Kshs. 7,158,123 without Board and Treasury approval.

### **Management Response**

The CEO Kenya Sugar Board presented that over expenditure in legal fees arose because of the Board being sued for trying to stop illegal importation of sugar, while the Director's expenses were due to ad hoc meetings dictated by the Parent Ministry and

travels by the Directors. The KSB made an assumption that since the over expenditure did not exceed a 10% threshold in the overall budget, they did not require Treasury approval although they did get Board approval.

### **Committee Observation**

**The Committee observed that Kenya Sugar Board incurred over expenditure in legal fees and directors' expenses without board and Treasury approval contrary to Section 12 of the State Corporations Act, Cap. 446.**

### **Committee Recommendations**

**The Committee recommends that:-**

**(i) The Parent Ministry should not unduly interfere with the spending of Corporations through giving irregular directives on the Board's expenditure.**

**(ii) The EACC investigates the circumstances and the conduct of the then Chief Executive Officer (name) under whose tenure the over expenditure was incurred in contravention of Section 12 of the State Corporations Act, Cap. 446.**

**(iii) The Director of Public Prosecutions should institute criminal proceedings against the then Chief Executive Officer under whose tenure the over expenditure was incurred for:-**

- (a) Contravention of Section 12 of the State Corporations Act, Cap. 446;**
- (b) Contravention of Section 79 of the Public Finance Management Act**
- (c) Abuse of office contrary to Section 101 of the Penal Code and Section 10 of the Public Officer Ethics Act, 2003 and**

**(iv) The then Chief Executive Officer be surcharged or money recovered from him.**

### **50.6 CREDITORS AND ACCRUALS: FY 2004/2005 ACCOUNTS**

The Committee heard that Kshs. 7,714,140 in the balance sheet for creditors and accrual list did not have adequate supporting records and documentation.

### **Management Response**

The CEO, KSB informed the Committee that this figure related to accruals which related to unforeseeable trade liabilities for which claims may arise. Since no liabilities crystallized, the accruals were reversed in FY 2005/2006 accounts.

### **Committee Observation**

**The Committee observed that the Board lacked supporting documents for its creditors and accrual list and this could be used to pay non-existent creditors.**

### **Committee Recommendation**

**The Committee recommends that the Board should have supporting documents for creditors and accrual list.**

### **50.7 FIXED ASSETS: FYs 2005/2006 TO 2006/2007 ACCOUNTS:**

The Committee heard that the land in Kabete on which the Head office of KSB is located valued at Kshs. 7,336,181 did not have title documents which are said to have been lost. A replacement title was requested from the Commissioner of Lands both by the KSB and the Parent Ministry. Further to that the parent Ministry requested that a caveat be placed on the title of the land in lieu of Kshs. 118,635,558 owned by KSB to Sugar Development Fund to construct the said Headquarters.

### **Management Response**

The CEO informed the Committee that the KSB resolved to repay the debt to Sugar Development Fund which has so far reduced to Kshs. 57,723,532. The KSB further presented that they were in possession of the replacement Title LR No. 21705 of the 1.6 hectare parcel which is currently valued at Kshs. 47 million.

### **Committee Observation**

**The Committee observed that the original title was lost in unclear circumstances.**

### **Committee Recommendation**

**The Committee recommends that the Board should put in place measures to protect crucial documents and information from loss.**

### **50.8 IRREGULAR PAYMENT OF PERSONAL EMOLUMENTS: FY 2005/2006 ACCOUNTS**

The Committee heard that Kshs. 1,795,510 was paid to two former staff from FYs 2002/2003 to 2005/2006 who were on suspension contrary to the Public Service Regulations.

### **Management Response**

The Chief Executive Officer informed the Committee that the two staff members Mr. Joseph Ogombo and Mr. George Nandwa were interdicted and according to the Public Service Regulations they are allowed to receive half pay for the duration of the interdictions. Mr. Ogombo was later reinstated but to a different job while Mr. Nandwa retired while under interdiction.

### **Committee Observations**

**The Committee observed that:-**

- 1. The KSB ought to have dismissed the two employees due to the nature of the offences they committed as opposed to suspension.**

2. The Board continued to pay the two employees (Mr. Joseph Ogombo and Mr. George Nandwa) and reinstating Mr. Joseph Ogombo without satisfactory explanations and Kenya Sugar Board's act amounted to :-

- (i) Breach of Section 79 of the Public Finance Management Act, 2012
- (ii) Abuse of office contrary to Section 101 of the Penal Code and Section 10 of the Public Officer Ethics Act
- (iii) Occasioning loss of public funds contrary to Article 226(5) of the Constitution

#### **Committee Recommendations**

The Committee recommends that:-

1. The EACC investigates the circumstances surrounding the reinstatement and payment of half pay of the two employees for the duration of their interdictions.
2. The two employees be surcharged or money recovered from them.
3. The KSB should adhere to rules and regulations governing public service employees.

#### **50.9 NON CURRENT ASSETS: FYs 2005/2006 TO 2010/2011 ACCOUNTS:**

The Committee heard that the value of the land allocated to KSB in Athi River in 1995 was not included in the fixed assets figure nor the title of the land availed for audit review.

#### **Management Response**

The CEO, KSB informed the Committee that despite follow ups with the Ministry of Land and being up to date with payments for both land rates and rents, they are yet to receive the title document.

#### **Committee Observation**

The Committee observed that KSB lacked ownership documents for its land at Athi River and that it had taken inordinately long (nine years) for the process of securing title.

#### **Committee Recommendations**

The Committee recommends that:-

1. KSB should liaise with the Ministry of Lands, Housing and Urban Development and National Lands Commission to fast track the issuance of title to the Kenya Sugar Board for the Athi River parcel of land.
2. The land be surveyed, valued and included in the list of fixed assets.

## **50.10 TRADE AND OTHER RECEIVABLES: FY 2008/2009 ACCOUNTS**

The Committee heard that Kshs. 6,726,309 related to staff imprest and Kshs. 4,111,832 related to car loans owed by ex-staff who left without clearing them. The ex-staff left with both the vehicles and logbooks without clearing the loans. The Kenya Sugar Board being a guarantor of the car loans captured the debts in their financial statement but repayment and recovery from the ex-staff remains doubtful.

### **Management Response**

The CEO, KSB presented that the debts had been recovered from some of the ex-staff from their pension dues and in the case of Mr. Otieno the bank decided to pursue the matter. The remaining ex-staff Mr. Amulyoto is still sought by the Board to repay the Kshs. 1 Million debt. The ex-staff with un-accounted for staff imprest have either been taken to court, cleared the amount or have issued standing orders to make monthly payments until the amounts are settled. The car loan policy is being reinforced.

### **Committee Observation**

**The Committee observed that the Kenya Sugar Board was not keen on pursuing the recovery of the debt going by the long period it had taken to recover the debt and the lack of progress on the recovery process.**

### **Committee Recommendations**

**The Committee recommends that:-**

- 1. The then Chief Executive Officer be held responsible and accountable for the debts and in case the Board fails to recover then the money should be recovered from the Chief Executive Officer since he failed to recover the imprest or get a collateral or log books as insurance for the loans.**
- 2. The Kenya Sugar Board recovers all debts owed by staff and ex-staff within six months and report to the Committee on the status of recovery.**
- 3. The Inspectorate of State Corporations recovers all debts owed by staff and ex-staff within six months of adoption of this Report and report to the Committee on the status of recovery.**
- 4. The KSB reviews its car loan policy and puts in place measures to ensure that the Corporation does not lose in case of default.**

## **51.0 LOCAL AUTHORITY PROVIDENT FUND: FY 2002/2003 TO 2011/2012**

### **REPORTS OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF LOCAL AUTHORITY PROVIDENT FUND (LAPFUND) FOR THE FINANCIAL YEARS 2002/2003 TO 2011/2012**

**The Chief Executive Officer, Local Authority Provident Fund (LAPFUND), Mr. David Koross accompanied by Mr. Bernard Mbogoh, Finance Manager appeared before the Committee to respond to audit queries on accounts of LAPFUND for FYs 2002/2003 to 2011/2012.**

#### **51.1 NON- REMITTANCE OF CONTRIBUTIONS BY LOCAL AUTHORITIES: FYs 2001/2002 TO 2002/2003 & 2008/2009 TO 2009/2010 ACCOUNTS**

The Committee heard that, of contributions due and totaling Kshs 1,203,264,508 include an amount of Kshs 973,477,442 and accrued interest against the outstanding amount stood at Kshs 257,028,314. Although the management has explained that it had agreed with the Councils on a repayment plan developed in liaison with the Retirement Benefits Authority, the recoverability of the dues is still doubtful and no provision for bad and doubtful debts was made during the year.

#### **Management Response**

The Chief Executive Officer, LAPFUND informed to the Committee that non remittance was caused by deliberate failure of some Local Authorities to remit monthly contributions, financial challenges of others and the 3 % monthly penalties levied for non-payment. The transition to County Governments who failed to recognize the outstanding liabilities was compounding the debtiness now. The Chief Executive Officer further informed the Committee that the fund was taking action to reduce the outstanding debts by engaging the services of debt collectors and legal services, operating regional offices for prompt follow up and negotiating for debt property swap. Undertaken recently is negotiations with the National government to assume the debts of the defunct local authorities.

#### **Committee Observation**

**The Committee observed that some Local Authorities had either deliberately failed or faced financial challenges in remitting monthly contributions to the Fund.**

#### **Committee Recommendation**

**The Committee recommends that the County Governments having taken over from Local Authorities should pay to the Fund amounts owed arising from the unremitted monthly contributions.**

## **51.2 IRREGULAR PAYMENTS OF SALARIES AND ALLOWANCES: FYS 2001/2002 TO 2003/2004 ACCOUNTS:**

The Committee heard that LAPFUND reviewed terms and services of Board Members and Staff and increased their salaries and allowances without seeking or receiving government approval which resulted in irregular payments totaling Kshs. 3,932,022. Though they have also sought a retroactive approval from the Advisory Committee of State Corporation, they are yet to be granted.

### **Management Response**

The Chief Executive Officer, LAPFUND presented that the salaries and allowances were factored in the budget and approved by the Parent Ministry. The terms and conditions of Board members and staff were approved by the Minister of Local Government in retrospect in 2005. The CEO conceded that this was an oversight on the part of LAPFUND. They are currently abiding with the Government Guidelines of November, 2004.

### **Committee Observations**

**The Committee observed that:-**

- 1. The Fund reviewed terms and services of Board Members and Staff and increased their salaries and allowances without seeking or receiving government approval resulting in irregular payments.**
- 2. The retrospective approval from the Parent Ministry was erroneous. LAPFUND should have sought the approval of National Treasury and the State Corporation Advisory Committee.**

### **Committee Recommendations**

**The Committee recommends that:-**

- 1. The EACC investigates and recommends prosecution of the then Managing Director(s)for:**
  - (i) Approving the payment of irregular salary and allowances resulting to irregular payments incurred by the Fund without approval of the State Corporations Advisory Committee;**
  - (ii) Incurring expenditure without approval from Parent Ministry and Treasury in contravention of Section 12 of the State Corporations Act (Cap. 446) and**
  - (iii) Abuse of office contrary to Section 101 of the Penal Code and Section 10 of the Public Officer Ethics Act, 2003**

2. **The State Corporations Advisory Committee (SCAC) surcharges or recovers the amount of Kshs. 3,932,022 from the then Chief Executive Officer Board members and staff who benefited from the irregular salary and allowances review.**

### **51.3 LATE SUBMISSION OF THE ACCOUNTS: FYs 2003/2004 TO 2005/2006 ACCOUNTS**

The Committee heard that LAPFUND submitted their financial statements 8 months late contrary to Section 13(1) of the Public Audit Act 2003. LAPFUND did not seek National Assembly approval for extension of time and as such the Office of the Auditor General did not sign the report.

#### **Management Response**

The CEO LAPFUND informed the Committee that during the period under review, they suffered from lack of capacity in all functional departments. The manual records were maintained by staff seconded from the Parent Ministry. The situation was addressed by the Board who competitively recruited in 2006 thus enhancing capacity. The accounts were computerized in 2007 and moved to an ERP platform in 2011.

#### **Committee Observation**

**The Committee observed that the Fund operated without qualified staff in the key Finance and Accounts Departments resulting in late submission of accounts.**

#### **Committee Recommendation**

**The Committee recommends that the then Chief Executive Officer Mr. Philip Ouko under whose tenure the records were not kept, be held accountable for the late submission of accounts.**

### **51.4 NON PAYMENT OF RETIREMENT BENEFITS AUTHORITY LEVY: FY 2003/2004 ACCOUNTS**

The Committee heard that LAPFUND had not been remitting the Retirement Benefits Levy which had accumulated to Kshs 2,763,162 since June 2000 and neither explained why thus occasioning a loss of Kshs 3,245,310 representing penalties.

#### **Management Response**

The CEO conceded that LAPFUND had not paid the levy, but that they had addressed it in the subsequent period. They were now fully compliant.

#### **Committee Observation**

**The Committee observed that the Fund had delayed in remitting the Retirement Benefits Levy resulting in loss of Kshs 3,245,310 representing penalties.**

## **Committee Observations**

**The Committee recommends that:-**

- 1. The EACC investigates and recommends prosecution of the then Chief Executive Officer Mr. Philip Ouko for:**
  - i) The loss incurred by the Fund in the form of penalties for their failure to remit the Retirement Benefits Levy as required in law;**
  - ii) Abuse of office in breach of Section 101 of the Penal Code and Section 10 of the Public Officer Ethics Act, 2003; and**
  - iii) Neglect of official duty in breach of Section 128 of the Penal Code;**
- 2. The then Chief Executive Officer Mr. Ouko be surcharged or money recovered from them to make good the loss incurred.**

## **51.5 PRESENTATION OF FINANCIAL STATEMENTS AND DISCLOSURE: FYs 2003/2004 TO 2004/2005 ACCOUNTS**

The Committee heard that contrary to IAS No. 1, notes to the accounts and cash flow statements do not have 2002/2003 comparative figures. The nature of administrative expenses receivable balance of Kshs. 16,107,588 has not been fully disclosed in note 12. The reserve fund balance of Kshs. 57,550,105 has not been presented in compliance with IAS 26(13).

### **Management Response**

The CEO LAPFUND presented that failure of proper presentation and disclosure as per International Accounting Standards was due to lack of capacity in the finance department. The Board addressed the situation in 2006 by competitively sourcing key employees.

### **Committee Observation**

**The Committee observed that the Fund operated without qualified staff in the key Finance and Accounts Departments resulting to late submission of accounts.**

### **Committee Recommendation**

**The Committee recommends that the then Chief Executive Officer Mr. Philip Ouko and Ms. Christine Ndaka under whose tenure the records were not kept be held accountable for the poor presentation of accounts and disclosures.**

## **51.6 BUDGET CONTROL: FYs 2003/2004 TO 2004/2005 ACCOUNTS**

The Committee heard that the Fund's budget of FY 2003/2004 was not submitted to Treasury contrary to Section 11 of the State Corporation Act. The Fund's expenditure

exceeded the approved budget in 12 expenditure items totaling Kshs. 7,384,183 and the excess expenditure still remains unauthorized from Treasury.

### **Management Response**

The CEO informed the Committee that the omissions occurred due to lack of coordination and accountability of the seconded officers from the Parent Ministry. The Board addressed the situation by competitively recruiting key employees in 2006.

### **Committee Observation**

**The Committee observed that the situation may have been created deliberately.**

**The Committee also observed that the Fund expended money without approval and contravention Sec 12 of State Corporation Act and overspent in several expenditure items.**

### **Committee Recommendations**

**The Committee recommends that:-**

- (i) All the officers seconded by the Ministry to the Finance and Accounts Department of LAPFUND and who were responsible for the non-submission of the Fund's budget for the FY 2003/2004 and who authorized expenditure without an approved budget be held responsible and to account for the expenditure.**
- (ii) The disciplinary action be instituted against the officers including surcharge and recovery of the monies spent without an approved budget and over expenditure in contravention of Section 12 of the State Corporations Act.**
- (iii) The Fund should ensure adherence to approved budget so as to avoid over expenditure.**

### **51.7 ADMINISTRATIVE EXPENSES RECEIVABLE: FYs 2003/2004 TO 2004/2005 ACCOUNTS**

The Committee heard that administrative expenses were not provided for re-charge to the Local Authorities as per Section 4 (4) of the Local Authorities Provident Fund Act, Chapter 272. Failure to which this may result into non-reimbursement to the Fund in respect of net administrative expenses of Kshs 16,107,588 reflected in the balance sheet and for which cumulative bad and doubtful debts provision in the accounts totaling Kshs 117,651,019 have been made.

### **Management Response**

The Chief Executive Officer presented that Section 4(4) provides for the Sponsors of The Fund to pay for the administration expenses of the Fund. This requirement has not been practicable in consideration of the current arrangement of running pension schemes,

where, costs of scheme administration are paid from the Fund. Therefore there was no provision for the same in the financial statements since it was deemed as non-recoverable. In the later years, the same has been recognized in the financial statements, and the Board has approved amortization of the same at the rate of 20% annually.

The Committee was further informed that the matter has now been addressed in the proposed Bill, the County Retirement Scheme Bill 2014, that is before Parliament.

### **Committee Observations**

**The Committee observed that:-**

- (i) There was a lacunae in Section 4(4) of the Local Authorities Provident Fund which provides for the Sponsors of the Fund to pay for the administration expenses of the Fund. This places an undue burden on the administrative costs of running pension schemes.**
  
- (ii) The proposed County Retirement Scheme Bill, 2014 will address this anomaly and that there is need for this proposed law to be in operation soon.**

### **Committee Recommendation**

**The Committee recommends that the County Retirement Scheme Bill, 2014 should be fast tracked.**

### **51.8 RESERVE FUND - KSHS 57,550,195: FYs 2003/2004 TO 2004/2005 ACCOUNTS**

The Committee heard that Local Authorities Provident Fund Act Cap 272 Section 12 (c) stipulates that all excess income be distributed to the members and initially the Fund did do so, part to members and part to the Reserve fund Accounts contrary to the Act. The Fund stopped transferring excess income in the year ending June 2001 and it's not clear why, and so there is an overstatement of the balance sheet figure to the extent of the undistributed amount.

### **Management Response**

The CEO, LAPFUND presented that Section 11 of the Act, provides for the transfer to Reserve Account of the annual income or to a Profit & Loss Account maintained by the Board. Subject to direction of the Minister, the excess income can be transferred to and from the Profit & Loss account to a Reserve Fund such sums that are deemed sufficient. The Board used best market practice to declare annual interest administered in FUNDMASTER to distribute to members at a percentage rate. The CEO admitted that at

the time of the Audit, this was not explained to the Office of the Auditor General otherwise it would not have been raised as an audit query.

### **Committee Observation**

**The Committee observed that the Fund failed to distribute excess income to the members contrary to Section 12 (c) of the Local Authorities Provident Fund Act, Cap 272.**

### **Committee Recommendations**

**The Committee recommends that the EACC investigates and recommends prosecution of the then Chief Executive Officer, Mr. Philip Ouko, for:**

- (i) Contravening Section 12(c) of the Local Authorities Provident Fund Act (Cap. 272)**
- (ii) Abuse of office in contravention of Section 101 of the Penal Code and Section 10 of the Public Officer Ethics Act, 2003 and**
- (iii) Neglect of official duty in contravention of Section 128 of the Penal Code**

### **51.9 CASH ON HAND BALANCE: FYs 2003/2004 TO 2004/2005 ACCOUNTS:**

The Committee heard that the Fund did not conduct Cash Board of Survey exercise and cash on hand balance of Kshs 20,248 has not been supported by a certificate.

### **Management Response**

The CEO, LAPFUND informed the Committee that this was an omission and errors noted were as a result of lack of competency in the functional department and has been subsequently addressed by recruitment of competent staff.

### **Committee Observation**

**The Committee observed that the Fund operated without qualified staff in the key Finance and Accounts Departments resulting in the Fund not conducting cash board of survey.**

### **Committee Recommendation**

**The Committee recommends that the Fund should ensure that it has qualified staff in the key finance and accounts departments.**

### **51.10 FIXED DEPOSITS: FY 2003/2004 ACCOUNTS**

The Committee heard that a fixed deposit of Kshs. 33, 000,000 had been held at the National Bank of Kenya since December, 2003. No evidence was produced to show that Board and Treasury approval was sought and given before placement of funds in a

financial institution other than in Treasury bills and bonds in accordance with Treasury Circular No. 10 of 29 November, 2002. Additionally, FDR's certificates for these amounts were not produced for audit verification.

### **Management Response**

The CEO, LAPFUND informed the Committee that the Fund being a retirement benefits scheme, invests contributions received from the members, in line with the guidelines of the Retirement Benefits Act, as spelt out in the Investment Policy Document, Fixed Deposits being one of them. Currently, the day to day investment activities are carried out by the Board-appointed Investment Fund Managers who are prequalified and registered by Retirement Benefits Authority (RBA) while all documents of assets ownership and the assets are held by a Custodian, who is appointed by the Board from the prequalified list provided by Retirement Benefits Authority (RBA). There are no specific requirements for Retirement Benefits Scheme to seek Treasury approval for investments in fixed deposits.

### **Committee Observation**

**The Committee observed the Fund breached the establishing Act, the Local Authorities Provident Fund Act Cap 272 and the Retirement Benefits Authority by not seeking Board and Treasury approval before placement of funds in a financial institution other than in Treasury bills and bonds in accordance with Treasury Circular No. 10 of 29 November, 2002.**

### **Committee Recommendation**

**The Committee recommends that the Fund should ensure strict adherence to the establishing Act, the Local Authorities Provident Fund Act Cap 272 and the Retirement Benefits Authority Act with regard to investment of member contributions.**

## **51.11 FINANCIAL STATEMENTS PRESENTATION AND DISCLOSURES: FY 2004/2005 ACCOUNTS**

The Committee heard that the financial statements for the FY 2004/2005 have not been prepared in accordance with the International Accounting Standards IAS - NO. 7 on Cash Flow Statements, accounting for Retirement Benefits Schemes was not in accordance with IAS No. 26, and notes on cash on hand and bank have not been provided as required by IAS No. 1.

### **Management Response**

The CEO, LAPFUND informed the Committee that failure of proper presentation and disclosure as per the then International Accounting Standards was due to lack of capacity in the Finance Department. This problem was addressed by the Board competitively recruiting key personnel in 2006. Since then the financial statements

have been presented and reported in accordance to the International Financial Reporting Standards (IFRS).

#### **Committee Observation**

**The Committee observed that the Fund failed to present its financial statements for the FY 2004/2005 in accordance with the International Accounting Standards (IAS).**

#### **Committee Recommendation**

**The Committee recommends that the then Chief Executive Officer Ms. Christine Ndaka be held responsible for their failure to ensure adherence to International Accounting Standards (IAS) in the presentation of financial statements and disclosures during their tenure.**

#### **51.12 IRREGULAR PROCUREMENT PROCEDURES: FY 2004/2005 ACCOUNTS:**

The Committee heard that a firm of Civil Engineers was contracted to renovate LaproFund House at an initial cost of Kshs. 2,323,774.65 which escalated to Kshs. 3,273,274.65. The Fund explained that the escalation was due to extra work although the increase was not approved by the Board and was not justified. The Board approved the award of a tender in respect of scanning 50,000 documents at Kshs 550,000 but an additional expenditure of Kshs 266,123 was incurred on this contract without the authority of the Board and this has not been justified by the Fund.

#### **Management Response**

The Chief Executive Officer, LAPFUND presented that the increase was explained by the management then as necessitated by omissions during the estimation of the works to be done at the preliminary stage. The Fund has been fully compliant with the requirements of the Public Procurement and Disposal Act 2007. The CEO acknowledged that Board approval was not sought for the increases in expenditure for LaproFund house and scanning of documents.

#### **Committee Observation**

**The Committee observed that the Fund realized a variation in the cost of renovation of LaproFund House in spite there having been an engineer's bill of quantities and instructions on what needed to be done and what was required and further that omission of items especially key components was one of the ways of escalating cost for gain.**

#### **Committee Recommendations**

**The Committee recommends that:-**

- 1. EACC investigates and recommends prosecution by the Director of Public Prosecutions of the procurement of the renovations works and**

circumstances leading to the variation which was not approved by the Board.

2. EACC investigates and recommends prosecution of the then Chief Executive Officer Ms. Christine Ndaka for:

(i) Incurring expenditure without Parent Ministry and the National Treasury approval in contravention of Section 12 of the State Corporations Act (Cap. 446)

(ii) Contravention of Section 79 of the Public Finance Management Act

(iii) Allowing a variation in the cost of the renovation of LaproFund House in contravention of Section 85(2) of the Public Procurement and Disposal Act, 2005 and

(iv) Abuse of office contrary to Section 101 of the Penal Code and Section 10 of the Public Officer Ethics Act, 2003

### **51.13 SUSPENSE ACCOUNT: FY 2004/2005 ACCOUNTS**

The Committee heard that the Balance Sheet as at June 30, 2005 reflects a suspense account debit balance of Kshs. 344,828.10 which has not been explained or analyzed.

#### **Management Response**

The Chief Executive Officer informed the Committee that this was due to lack of competent and permanent staff resulting to misreporting, inaccuracies and variances. The amount presented members contributions without their membership numbers.

#### **Committee Observation**

The Committee observed that the Fund had a suspense account with an unexplained debit balance of Kshs. 344,828.10.

#### **Committee Recommendation**

The Committee recommends that the Fund management ensures that it analyses and clears the suspense account.

### **51.14 INACCURACIES IN THE FINANCIAL STATEMENTS: FY 2004/2005 ACCOUNTS**

The Committee heard that the balances reflected in Financial Statements of the Fund differ from those reflected in its ledger and no explanation has been given for the inaccuracies and what the differences represent.

#### **Management Response**

The CEO, LAPFUND informed the Committee that lack of competent and permanent staff in the department led to misreporting, inaccuracies and variances. In this period, the accountant was dismissed and another seconded from the Parent Ministry, but no money was lost. The CEO, presented that they currently do monthly reconciliations.

### **Committee Observation**

**The Committee observed that there were inaccuracies in the financial statements of the Fund.**

### **Committee Recommendations**

**The Committee recommends that the Fund should in future ensure that competent staffs are recruited in its finance and accounts departments.**

### **51.15 RECEIVABLES AND PREPAYMENTS: FY 2005/2006 ACCOUNTS**

The Committee heard that, other receivables and prepayments balance includes administrative expense receivable of Kshs 159,120,780, which is net of gross amount of Kshs 176,800,866 after a 10% provision amounting to Kshs 17,680,087 and administration adjustment of Kshs 162,304,037 recoverable from various councils, out of which Kshs 118,390,926, recoverability is doubtful. Adequate provision was not made in view of this uncertainty of recoverability from the councils.

The CEO, LAPFUND presented that the Board approved an increase of the provision from 10% recoverable in 10 years to the current amortization rate of 20% annually recoverable in 5 years.

### **Committee Observation**

**The Committee observed that the Fund did not make adequate provision for the uncertainty of recoverability of Kshs. 118,590,926 from the Councils.**

### **Committee Recommendation**

**The Committee recommends that the Fund should ensure that adequate provision for uncertainty of recoverability of the debt from Councils is made and approval of the Board and the National Treasury sought for such provision.**

### **51.16 SHORT TERM DEPOSITS: FY 2006/2007 ACCOUNTS:**

The Committee heard that short term deposits balance of Kshs. 180,192,562 includes balances of Kshs. 70,074,260 in respect of three (3) bank accounts which were at variance with the total bank confirmation certificates balance of Kshs. 69,670,940 and the resultant difference of Kshs 403,320 has not been reconciled or satisfactorily explained.

The CEO, LAPFUND informed the Committee that the variance noted was addressed by carrying out a detailed reconciliation of the account. The variance was because at the end of the month the Fund manager reported projected earnings while the custodian presented cash in bank. This audit issue has not recurred in the subsequent years.

### **Committee Observation**

The Committee observed that the Fund had exhibited difficulties in its reconciliation of accounts although the challenge has been addressed.

### **Committee Recommendation**

The Committee recommends that the Fund should ensure that proper reconciliations are undertaken on its accounts.

### **51.17 UNQUALIFIED ACCOUNTS: FYs 2008/2009 & 2010/2011 TO 2011/2012 ACCOUNTS:**

The Committee heard that the Fund had received unqualified reports in the FY 2008/2009 & 2010/2011 TO 2011/2012.

### **Committee Observation**

The Committee observed that the Fund received unqualified reports in the FYs 2008/2009 & 2010/2011 to 2011/2012.

### **Committee Recommendation**

The Committee commended the Fund for receiving unqualified accounts for the FYs 2008/2009 and 2010/2011 to 2011/2012.

### **52.0 NATIONAL CEREALS AND PRODUCE BOARD: FY 2002/2003 TO 2011/2012**

### **REPORTS OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF NATIONAL CEREALS AND PRODUCE BOARD (NCPB) FOR THE FINANCIAL YEARS 2002/2003 TO 2012/2013**

The Managing Director, National Cereals and Produce Board (NCPB) Mr. Newton Terer accompanied by General Manager Finance Mr. Cornel Ngelechey, Finance Manager Mr. John Gichuru, Procurement Manager Mr. Mwanja Mutinda, Operations Manager Mr. Ernest Ogwora and Ms. Mary Kamau representing the Ministry of Agriculture, Livestock and Fisheries appeared before the Committee to adduce evidence on accounts of the Board for 2002/2003-2012/2013 Financial Years.

### **52.1 FINANCIAL POSITION: FYs 2001/2002 TO 2007/2008 & 2009/2010 TO 2011/2012 ACCOUNTS**

The Committee heard that during the year ended 30 June 2003 the Board realized a loss of Kshs.766,513,829 (2002 Kshs.2,202,761,677) bringing accumulated revenue reserves to negative Kshs.3,214,908,413 (2002 Kshs.2,456,838,906) as at 30<sup>th</sup> June 2003. In addition, the Board owed the Government of Kenya Kshs. 1,305,048,192 as at 30<sup>th</sup> June 2003 on account of famine relief maize under the GoK famine relief programme, past market intention programme and an old GoK agency account. From the foregoing it is

evident that the Board's financial position is precarious, and it is likely that it will face financial difficulties in meeting its financial obligations as and when they fall due.

### **Management Response**

The Managing Director, National Cereals & Produce Board, informed the Committee that out of the Kshs. 2.457 billion accumulated loss Kshs. 2.2 billion is attributed to export loss during 2001/2002 FY. The Government acknowledged the liability and in the Printed Estimate of 2011/2013 there was a budgetary provision of Kshs. 500 million to be channeled towards redemption of the claim as shown in letter ref. MOA/B.1/36A/1 VOL.III/17 dated 13<sup>th</sup> September 2012. However due to the freezing of the Board's account as a result of the on-going court case with Erad Supplies and General Contracts the amount was reallocated to other uses by The National Treasury.

### **Committee Observation**

**The Committee observed that Board's financial position is precarious, and that it is likely to face financial difficulties in meeting its financial obligations as and when they fall due.**

### **Committee Recommendations**

**The Committee recommends that the Board explores avenues of increasing its revenue base to mitigate against the losses and over reliance on Government.**

**The Committee also recommends that the National Treasury should release funds that had been earmarked for use by the Board in the budget to alleviate the situation.**

### **52.2 DONOR FUNDED PROJECTS: FYS 2001/2002 TO 2011/2012 ACCOUNTS:**

The Committee heard that the balance sheet fixed assets figure of Kshs. 5,055,383,103 includes 55 donor funded storage facilities whose ownership has not been clarified by the Government to date. Although the public Investments Committee during its Sitting on 11<sup>th</sup> August 1998, directed the Parent Ministry and the Treasury to consult with a view to formally transferring the facilities to N.C.P.B, to date there is no evidence that the Board and the Government have come up with any fruitful conclusion of the ownership status of the donor funded facilities/projects. In the circumstances therefore it is not possible to confirm the propriety of incorporating the donor funded storage facilities in the Board's financial statements without conclusive evidence of the ownership status of the facilities.

### **Management Response**

The Managing Director, National Cereals and Produce Board (NCPB) informed the Committee that implementation of the transfer donor funded project is part of the commercialization reform actions which are still outstanding as they require approval

by the Cabinet. The revised and updated Cabinet Memorandum asking for approval for transfer of donor funded projects among other reform actions has been forwarded to the Ministry of Agriculture, Livestock and Fisheries.

### **Committee Observation**

**The Committee observed that there were 55 donor funded storage facilities whose ownership has not been clarified by the Government.**

### **Committee Recommendation**

**The Committee recommends that the National Treasury and the Ministry of Agriculture, Livestock and Fisheries fast track the process of transfer of donor funded projects to the Board.**

## **53.0 TANA AND ATHI RIVER DEVELOPMENT AUTHORITY: FY 2001/2002 TO 2011/2012**

### **REPORTS OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF TANA AND ATHI RIVER DEVELOPMENT AUTHORITY (TARDA) FOR THE FINANCIAL YEARS 2001/2002 TO 2011/2012**

**The Ag. Managing Director, Tana & Athi Rivers Development Authority (TARDA), Mr. Steven Githaiga accompanied by Mr. John Nyoike, Ag. CMFA and Mr. D. Kimaiyo, Ag. Finance Manager appeared before the Committee and gave evidence on the accounts of the Authority for the FYs 2001/2002 to 2011/2012.**

#### **53.1 BACKGROUND INFORMATION**

The Ag. Managing Director of TARDA informed the meeting that TARDA and KPLC entered a legally binding sales and lease agreements with KPLC in 1978 and 1988 respectively for sale of bulky power by TARDA from its Masinga and Kiambere dam reservoirs. In 1988, there was a cabinet directive on the mode of releasing revenues generated from KPLC to TARDA. Equally, there was a communication from the PS Treasury concerning the way KPLC continued to dishonor the cabinet directive of 1988 and also the commercial agreement between TARDA and KPLC which were affecting the operations of TARDA fundamentally in terms of finances and fulfillment of development mandate of this Authority.

Further, had KPLC continued to honor the commercial agreements between TARDA and themselves this Authority would have received 4.26 billion shillings between 1988 to 2000. This is the period from the date KPLC started dishonoring the above mentioned commercial agreements (1988) and 2000, the time the assets were taken over by KenGen without any regards to compensation. These 4.26 billion shillings can be compared to 293 million shillings which the power sector organization released to TARDA leaving a net of 3.97 billion shillings in favour of TARDA.

### **53.2 STATE OF AUTHORITY FOR THE FYs 2001/2002 TO 2011/2012 ACCOUNTS:**

The Committee noted that the state of TARDA's insolvency as captured by Auditors would not have occurred had KPLC had paid this Authority the claim, which has accumulated to 3.97 billion shillings in line with commercial agreements or 3.1 billion shillings if the Authority were to receive the funds in accordance with 1988 agreement.

It further resolved that a comprehensive report of TARDA and KPLC should be presented to the committee for the FY 2001/2002 to 2011/2012 while highlighting the breakdown accumulation of the 3.97 billion shillings, provide an overview on financial performance of the Authority, why there was a high turnover of staff in TARDA, provide documents to show the agreements between the two parties from inception and up to date.

The Committee expressed concern that the matter is weighty and a provision of a report will attempt to resolve some of the current issues and also add value as background knowledge for the new members of Public Investments Committee.

### **53.3 FINANCIAL STATEMENTS: THE STATUS REPORT: FYs 1987/1988 TO 2011/2012 ACCOUNTS:**

The Committee heard that during the FYs 1988-2012 the Authority recorded a cumulative loss of Kshs. 10,201,804,090 which had been mainly attributed to the yearly depreciation charges of about Kshs. 387,984,972 on Masinga and Kiambere Hydroelectric facilities due to the non-remittance of accrued revenue from KENGEN of Kshs. 4.09 billion and KPLC of Kshs. 4.9 billion following a Government directive that all revenue from hydroelectric power be remitted to Treasury. The Authority's current liabilities of Kshs. 395,034,899 exceeded the current assets of Kshs. 264,825,043 as at 30<sup>th</sup> June 2012 resulting in a negative working capital of Kshs. 130,209,856.

#### **Management Response**

The Management of TARDA responded that despite several pieces of advice to the National Treasury; World Bank; KPLC and KENGEN and its Ministry continued to disregard the pieces of advice. They were further not honoring the sales and lease agreements. This was contributing to the negative working capital.

#### **Committee Observation**

**The Committee observed that the non-remittance of accrued revenue due to TARDA occasioned by the Government directive that all revenue from hydroelectric power be remitted to Treasury needs to be addressed by relevant parties.**

### **Committee Recommendation**

The Committee recommends that the Ministry of Energy, Treasury, KPLC, KENGEN, Inspectorate of State Corporations, Attorney General's Office and TARDA's Parent Ministry work together to reach an amicable solution on the matter.

#### **54.0 KENYA NATIONAL LIBRARY SERVICES: FY 2003/2004 TO 2012/2013**

### **REPORTS OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF KENYA NATIONAL LIBRARY SERVICES (KNLS) FOR THE YEAR ENDED JUNE 2003/2004 TO 2012/2013**

The CEO, Kenya National Library Services (KNLS) Mr. Richard Atuti accompanied by Mr. Jack Wafula Deputy Director (F.E.A), Personal Assistant Ms. Margaret Mwangi and Personal Assistant Julie Musandu appeared before the Committee to respond to the audit queries raised on the accounts of the National Library Services for the period 2003/2004 to 2012/2013.

#### **54.1 PROPERTY, PLANT AND EQUIPMENT: FYs 2003/2004 TO 2012/2013 ACCOUNTS**

The Committee heard that as of 30<sup>th</sup> June, 2011 the Property, Plant and equipment figure of Kshs 503,548,298 included Kshs. 250,000 representing the value of a land in Karatina with no title but excluding 10 parcels with no titles.

### **Management Response**

The Chief Executive Officer, Kenya National Library Services informed the Committee that the Karatina plot had erroneously been included in the Property, Plant and Equipment figure and that conducting valuation on the assets of the Library Service was an expensive venture way beyond the limited budgetary resources of the organization and would require more personnel. The valuation exercise if undertake will increase their premiums.

### **Committee Observation**

The Committee observed that some parcels of land had title deeds and had been valued while others had not.

### **Committee Recommendation**

The Committee recommends that the management liaises with the Government Valuer and the National Land Commission to fast-track the process of title acquisition and valuation of land.

#### **54.2 STOCKS ON BOOKS: FYs 2004/2005 TO 2011/2012 ACCOUNTS**

The Committee heard that valuing of donated books was made at a price not respective of costs of similar books in the local market and contrary to the requirements of IAS No. 2 which requires stocks to be stated as the lower of cost and net realizable value.

##### **Management Response**

The Chief Executive Officer, KNLS informed the Committee that some of the books donated were not new and did not have cover value and that valuation of the books had been done at the port. The Committee was further informed that the service was in the process of automating its libraries to improve efficiency in movement of all information materials.

##### **Committee Observation**

**The Committee observed that the Service had valued donated books at a price not representative of cost of similar books in the market i.e. the lower of cost and net realizable value as per the requirements of IAS No. 2.**

##### **Committee Recommendations**

**The Committee recommends that the Management of Kenya National Library Services formulates and implements a consistent policy on valuation of books in line with I.A.S No. 2.**

#### **54.3 DEBTORS: FYs 2007/2008 TO 2012/2013 ACCOUNTS:**

The Committee heard that as of 30<sup>th</sup> June 2008, an outstanding debt of Kshs 800,000 had been recovered as at the date of this report and therefore it was not possible to confirm the debtors' balance of Kshs 5,306,518.

##### **Management Response**

The Chief Executive Officer, KNLS informed the Committee that the Service was recovering monies owed by the three staff members mentioned and others recently added through deductions from their salaries and terminal benefits. One of KNLS former CEOs, Ms Deborah Nyabundi had relocated to USA and the management had exhausted available avenues to recovery of the debt from her and had requested the Parent Ministry to write off the debt.

##### **Committee Observation**

**The Committee observed that the management had failed to recover monies owed by the following staff member: Ms Deborah Nyabundi, Philemon Chebon, Beatrice Ayoti, Ferdinand Kasimu and Mr. Sylvester Hasusa Makhokha. There was no will on the part of management to recover the debt.**

## **Committee Recommendations**

**The Committee recommends that:-**

- (i) The Chief Executive Officer be held responsible and accountable for failure to recover the debt owed by employees: Ms Deborah Nyabundi, Philemon Chebon, Beatrice Ayoti, Ferdinand Kasimu and Mr. Sylvester Hasusa Makhokha and a former Chief Executive Officer (Ms Deborah Nyabundi) .**
- (ii) The KNLS liaises with Inspectorate of State Corporations to surcharge the employees who are culpable.**
- (iii) The management should use all available avenues including Courts of Law and attaching properties of concerned individuals to recover the amounts owed.**

## **54.4 CONTRACTED LEGAL SERVICES: FY 2004/2005 ACCOUNTS**

The Committee heard that KNLS management paid a firm of advocates hired without a contract specifying terms and conditions of engagement and no records to confirm instructions from KNLS on cases, a negotiated down payment of Kshs. 3,200,000 when their services were terminated.

### **Management Response**

The Chief Executive Officer, KNLS informed the Committee that the Board negotiated to pay the firm of advocates Kshs 3,200,000 in exchange for them to withdraw a suit against the KNLS for non- payment of due legal fees. This decision was recommended by an ad hoc committee and was then approved by the Board.

### **Committee Observation**

**The Committee observed that the Management of KNLS hired and paid a legal firm without a contract specifying terms and conditions of engagement.**

### **Committee Recommendation**

**The Committee recommends that :-**

- (i) The EACC investigates:-**
  - (a) The procurement process of the Legal Firm of Ms. Migos-Ogamba & Co. Advocates,**
  - (b) The circumstances under which the KNLS terminated the services of the firm,**
  - (c) How the Board approved an out of court settlement and**
  - (d) The hiring of a new firm of advocates.**
- (ii) The found culpable should be prosecuted and surcharged for any losses that KNLS incurred.**

## **55.0 COMMISSION FOR UNIVERSITY EDUCATION: fy 2002/2003 to 2012/2013**

### **REPORTS OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF COMMISSION FOR UNIVERSITY EDUCATION (CUE) FOR THE FINANCIAL YEARS 2002/2003 TO 2012/2013**

**The Commission for University Education (CUE) Secretary Prof. David Some accompanied by Deputy Commission Secretaries; Prof. Anne Nangulu, Dr. Eusibius Mukhwana, Dr. Flora Karimi & Dr. Linah Kiptoo and Head of Legal and Enforcement appeared before the Committee to adduce evidence on accounts of the Corporation for the Financial Years 2002/2003 to 2011/2012.**

#### **55.1 IRREGULAR PAYMENTS OF UTILITY ALLOWANCES: FYS 2002/2003 & 2003/2004 ACCOUNTS**

The Committee heard that during the Financial Year 2002/2003 the Commission paid a total of Kshs. 394,641 in respect to domestic, water and electricity expenses on behalf of the Commission Secretary and the two Deputies contrary to the provisions of the Office of the President Circular No. 1/87 of 2<sup>nd</sup> July, 1987 which requires that prior approval be given from Office of the President. Further Section 22 of the Circular requires that a Chief Executive and all employees of State Corporation should continue to make their own arrangements to pay for their own expense and amenities. These payments remain irregular although the Commission wrote to the Government seeking exemption from the provisions of the above Circular.

#### **Management Response**

The Commission Secretary, Commission for University Education informed the Committee that the Commission Secretary and the two Deputies were drawn from the university sector where they were enjoying these privileges and it was understood that the same were transferrable to their new appointments. Various correspondences were entered between the Commission, Office of the President, Ministry of Education, Science and Technology with a view of resolving the matter by exempting the office holders from the requirements of the Circular No. 1/87 of 2<sup>nd</sup> July, 1987 that required prior approval from Office of the President to be sought before such benefits are conferred. However, the exemption was not given and the allowances were discontinued upon expiry of their contractual terms and the subsequent appointees. The office holders who were paid the allowances are;

1. Prof. Irina	CEO	Kshs. 152, 218.65
2. Prof. W. Kipng'eno	Deputy Commission Secretary	Kshs. 112,754.60
3. Prof. Florence Kaberia	Deputy Commission Secretary	Kshs. 129, 666.74

### **Committee Observation**

**The Committee observed that;**

- i. The Committee observed that the payment of utility allowances was irregular and amounted to abuse of office.**
- ii. The Commission acted contrary to the Circular No. 1/87 of 2<sup>nd</sup> July, 1987 from Office of the President.**

### **Committee Recommendations**

**The Committee recommended that:-**

- (i) The Commission urgently recovers the monies paid as utility allowances from the then Commission Secretary Prof. Irina and the two deputies Prof. W. Kipng'eno and Prof. Florence Kaberia.**
- (ii) The then Commission Secretary, Prof. Irina be held responsible for abuse of office contrary to the Public Officers and Ethics Act by paying irregular Utility Allowances to himself and his two deputies.**

### **55.2 NON-ACCOUNTED AIDS CONTROL FUNDS: FY 2003/2004 ACCOUNTS**

The Committee heard that the Commission received Kshs. 6,247,500 from the National AIDS Control Council during 2003/2004 financial year to coordinate efforts geared prevention of Aids. The amount brought forward from the 2002/2003 financial year amounted to Kshs. 69,965.50 giving a total of Kshs. 6,317,465.50. The Commission disbursed Kshs. 5,723,422 to various agencies according to the memorandum records availed leaving a balance of Kshs. 594,043.50. The receipt and disbursement of funds and the balance have not however been accounted for in the Commission books of accounts.

### **Management Response**

The Commission Secretary, CUE informed the Committee that the Commission disbursed the funds to various institutions/universities which have since accounted for the funds. Accounting for the funds was on continual basis depending on how the institutions planned their HIV & AIDS prevention activities. The Commission was not in control of their work plans on stated projects and therefore the accounting for funds utilized was done at different times by different institutions as from 2003 up to year 2012, when most of the institutions concerned accounted for their last tranche expenditure.

### **Committee Observation**

**The Committee observed that the Commission received funds for coordination of efforts to prevent AIDS, however the expenditure of the funds received and disbursed have not been accounted for in the Commission books of accounts.**

### **Committee Recommendation**

**The Committee recommends that the Commission should ensure that funds received and or disbursed are accounted for promptly.**

### **55.3 TRADE AND OTHER RECEIVABLES: FYs 2010/2011 & 2011/2012 ACCOUNTS**

The Committee heard that trade and other receivables balance of Kshs. 5,266,461 includes an amount of Kshs. 2,912,801 which also includes Kshs. 261,054 in respect of funds during the year to various institutions which had not been accounted for as at 30<sup>th</sup> June, 2011. Further, the trade and other receivables balance include Kshs. 103,069 due from Maurice Onyango who has since left the Commission and whose recoverability is doubtful. Consequently it has not been possible to confirm recoverability of funds distributed to various institutions and staff imprest all totaling to Kshs. 364,123 and that the trade and other receivables balance of Kshs.5, 266,461 is fairly stated as at 30<sup>th</sup> June, 2011.

### **Management Response**

The Commission Secretary, CUE informed the Committee that Kshs. 261,054 relates to funds received by the Commission from National Aids Control Council. The funds have since been accounted for. Unaccounted imprest of Kshs. 103,069 due to Mr. Maurice Onyango, who has since left the Commission and who cannot be traced, has since been written off in a meeting of the Commission held on 27<sup>th</sup> January, 2010. Mr. Maurice Onyango was employed on contract terms.

### **Committee Observation**

**The Committee observed that the Commission had not done enough to recover debts and they should confirm the whereabouts of Mr. Maurice Onyango before writing off the debt.**

### **Committee Recommendation**

**The Committee recommended that the Commission should institute measures to pursue Mr. Maurice Onyango and recover the debt.**

## **56.0 KENYA FORESTRY RESEARCH INSTITUTE: FY 2001/2002 TO 2012/2013**

### **REPORTS OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF THE KENYA FORESTRY RESEARCH INSTITUTE (KEFRI) FOR THE FINANCIAL YEARS 2001/2002 TO 2012/2013**

**The Managing Director, Kenya Forestry Research Institute (KEFRI) Dr. Ben Chikamai accompanied by Senior Deputy Director Research and Development; Dr. Benard Kigumo , Senior Deputy Director Finance and Administration; Mr. Patrick Omesa, Deputy Director Administration; Mr. John Gisemba, Senior Accountant; Mr. Shem Ogao and Deputy Director Ministry of Environment, Water and Natural Resources appeared before the Committee to adduce evidence on accounts of the Corporation for the Financial Years 2001/2002 to 2011/2012.**

#### **56.1 BOARD OF DIRECTORS: FY 2001/2002 ACCOUNTS**

The Committee heard that the Institute operated without a Board of Directors during the year under review, as a result of which the Institute's major decisions with financial implications were made by the management. The Institute was, therefore, in breach of the State Corporations Act.

#### **Management Response**

The Managing Director, Kenya Forestry Research Institute informed the Committee that the Director had written to the P.S informing them about the expiry of the 4<sup>th</sup> KEFRI Board on 2<sup>nd</sup> June 2001 and requesting the Ministry to initiate the process of appointing new members. The issue was raised to the head of Public Service who in a letter O.P 11/52A of 19<sup>th</sup> September 2001 instructed the Permanent Secretary Dr. Mohammed Isahakia to initiate immediate action to ensure appointment of a new Board of Management. Major decisions with financial implications were deferred until the new Board was incorporated in the year 2003.

#### **Committee Observation**

**The Committee observed that the Institute operated without a Board of Directors during the year under review, as a result of which the Institute's major decisions with financial implications were made by the Management.**

#### **Committee Recommendation**

**The Committee recommends that the Institutes adheres to the State Corporations Act by ensuring that new Boards are in place when the term of the previous Board has expired.**

## **56.2 IRREGULAR PAYMENT OF HOUSE ALLOWANCE: FY 2001/2002 ACCOUNTS**

The Committee heard that although the Institute was granted authority to implement new house allowances on 19<sup>th</sup> September 2001 in accordance with harmonization of terms and conditions of service in public service, the Institute, however, paid employees at rates applicable to Nairobi instead of Kiambu where the Institute's headquarters are located, thereby resulting in an overpayment of Kshs. 29,732,616. No explanation has been provided for the anomaly.

### **Management Response**

The Managing Director, KEFRI informed the Committee that the Institute made a proposal to the Ministry of Environment and Natural Resources to pay House Allowance based on Nairobi rates vide letter dated 30<sup>th</sup> August 2001. The proposal was forwarded to the Office of the President through the Parent Ministry letter reference No. MENR/016A/13/3/12 26<sup>th</sup> July 2001 and an approval letter was obtained from the Head of Civil Service reference letter No. OP.11/52A of 19<sup>th</sup> September 2001.

### **Committee Observation**

**The Committee observed that the approval was granted by the Head of Civil Service after the new allowances were paid thus the Institute acted in breach of the State Corporation Act.**

### **Committee Recommendation**

**The Committee recommends that:-**

- 1. EACC investigates the circumstances under which the irregular house allowances were paid.**
- 2. The then Director, Dr. Paul K.A Konuche and be held culpable for the irregular payments of House Allowance of Nairobi rates instead of the Kiambu rates where the KEFRI Headquarters are based.**
  - i) Approving the payment of irregular House allowances based on Nairobi rates resulting to irregular payments incurred by the Institute without approval;**
  - ii) Abuse of office contrary to Section 101 of the Penal Code and Section 10 of the Public Officer Ethics Act, 2003 and**
  - iii) Incurring expenditure without approval from Parent Ministry and the National Treasury in contravention of Section 12 of the State Corporations Act (Cap. 446)**
- 3. The then Director (Dr. Paul K.A Konuche) be surcharged for the excess amount.**

### **56.3 NON-CURRENT ASSETS/ PROPERTY, PLANT AND EQUIPMENT: FYs 2002/2003 TO 2012/2013 ACCOUNTS:**

The Committee heard that Property, Plant and Equipment balance of Kshs. 1,212,864,184 as at 30<sup>th</sup> June, 2013 includes an amount of Kshs. 46,000,000 in respect of Maseno station building situated on a land belonging to Maseno University. The balance includes value of various parcels of land and buildings in Gede, Nyeri, Muguga, Karura, Turbo, Londiani, Kakamega and Kibwezi on land owned by Kenya Forest Service. The value of these particular pieces of land has not been incorporated in the financial statements. Further, the Institute has not revalued its property, plant and equipment since financial year 1988/1989.

#### **Management Response**

The Managing Director, KEFRI informed the Committee that the Maseno land is being pursued with Maseno University and Ministry of Education, Science and Technology. A Joint Task Force (KEFRI/KFS) was formed to determine the ownership parcels of land shared by the Kenya Forest Services in the final stages of finalizing the data of assets. The process will then be followed by the transfer of properties and acquisition of the title deeds for the respective parcels of land. The valuation of the parcels of land had not been done during the period because the institute had first to acquire title deeds for the said parcel of land.

#### **Committee Observation**

**The Committee observed that value of particular pieces of land has not been incorporated in the financial statements. Further, the Institute has not revalued its Property, Plant and Equipment since Financial Year 1988/1989.**

#### **Committee Recommendations**

**The Committee recommends that:-**

- 1. The Institute to expedite the process of acquisition and the transfer of the land to KEFRI.**
- 2. The Institute revalued its Property, Plant and Equipment.**

### **56.4 OUTSTANDING IMPREST: FY 2002/2003 ACCOUNTS**

The Committee heard that imprest amounting to Kshs. 345,000 issued between 1998 and 2000 to cater for Board expenses have neither been recovered nor accounted for. No action appears to have been taken to clear this imprest from the books of account.

#### **Management Response**

The Managing Director, KEFRI informed the Committee that Members of the Board duly signed for the payments in time except that the officers took time to surrender the

imprest. All the imprest totaling to Kshs. 345,000 were surrendered in 2002. The surrender documents had initially been misplaced by the imprest holder. The imprest documents have since been submitted and surrendered.

### **Committee Observations**

**The Committee observed that:-**

- 1. Imprest issued to cater for Board expenses have neither been recovered nor accounted for.**
- 2. No action appears to have been taken to clear this imprest from the books of account.**

### **Committee Recommendation**

**The Committee recommends that there should be better keeping of records to avoid misplacing them.**

### **56.5 NON-COMPLIANCE WITH INTERNATIONAL FINANCIAL REPORTING STANDARDS: FY 2003/2004 ACCOUNTS**

The Committee heard that the Institute's Financial Statements were not prepared and presented in accordance with the International Accounting Standards and International Financial Reporting Standards contrary to the requirement of International Accounting Standard No. 1 on presentation of financial statements. Work in Progress and Medical Scheme balances of Kshs 3, 179, 980 and Kshs. 9,824,360 respectively have not been analyzed or explained in footnotes to these financial statements. Consequently, the financial statements do not provide relevant, reliable, comparable and understandable information.

### **Management Response**

The Managing Director, KEFRI informed the Committee that this was a period of transition from Kenya Accounting Standards to International Accounting Standards and the Institute staff was still in the process of acquitting themselves with the new standards. The subsequent accounts of 2004/2005 financial year were prepared and fully complied in accordance with the International Accounting Standards and International Financial Reporting Standards. There were omissions in terms of analysis and explanation in footnotes of certain items namely the Work-in-Progress and Medical Scheme funds.

### **Committee Observations**

**The Committee observed that:-**

- 1. The Financial Statements were not prepared and presented in accordance with the requirement of International Accounting Standard No. 1 on presentation of financial statements.**
- 2. The financial statements do not provide relevant, reliable, comparable and understandable information**

#### **Committee Recommendation**

**The Committee recommends that the Institute should prepare and present its Financial Statements in accordance with IAS NO. 1 requirement.**

#### **56.6 PROPERTY, PLANT AND EQUIPMENT: FY 2004/2005 ACCOUNTS**

The Committee heard that included in the asset schedule of Kshs. 963,606,124 are twelve (12) motor vehicles at its Muguga headquarters for which the Institute does not have title documents and hence it is not possible to confirm the ownership of the said motor vehicles. Consequently, it is not possible to confirm that the carrying values as stated in the financial statements reflect the fair values of the property, plant and equipment as at the balance sheet date.

#### **Management Response**

The Managing Director, KEFRI informed the Committee that the twelve (12) motor vehicles at Muguga headquarters were part of the Institute's fleet of cars donated by the Government of Japan through JICA for the implementation of JICA funded projects. The vehicles were registered under GK no. plates and did not have log books. The Institute wrote to the registrar of motor vehicles requesting for the log books. However, there was no response from the Registrar. The vehicles have since been disposed of.

#### **Committee Observation**

**The Committee observed that disposal of the vehicles was not done in accordance with the provisions of the Public Procurement and Disposal Act, hence the sale was irregularly done.**

#### **Committee Recommendations**

**The Committee recommended that the Managing Director be held responsible for contravening the Public Procurement and Disposal Act.**

#### **56.7 STATEMENT OF CASH FLOWS: FY 2010/2011 ACCOUNTS**

The Committee heard that the financial statements reflect acquisition of assets valued at Kshs.100, 750,172 during the year under review. However, the statement of cash flows shows a figure of Kshs.88, 255,802 for the same. The Management has explained that the difference of Kshs. 12,494,370 was financed through credit purchases and thus did not involve movement of cash. The statement of comprehensive income reflects an

income of Kshs. 534,256 from interest on fixed deposits and savings accounts which ought to have been adjusted to arrive at income from operations in the statement of cash flows. The same should have been added to income from investing activities. However, only Kshs.183, 709 was adjusted to arrive at income from operations and Kshs. 350,547 added to income from investing activities. As a result of the anomalies, the statement of cash flows does not comply with the international Accounting Standard No. 7 as well as generally accepted accounting principles and therefore its accuracy could not be confirmed.

### **Management Response**

The Managing Director, KEFRI informed the Committee that anomalies reported related to the treatment and interpretation of the items in the statement of cash flows in accordance to International Accounting Standard No. 7. After discussion with the External Auditors, (KENAO) it was agreed that the treatment of acquisition of assets (credit purchases) amounting to Kshs. 12,494,370 was erroneous and did not comply with IAS7. As regards the income of Kshs. 534,256 from interest on Fixed Deposits and saving accounts, we are also in agreement that the same should have been added to income from investing activities. The Institute will ensure that proper treatment is accorded to the items in subsequent accounts.

### **Committee Observation**

**The Committee observed that the statement of cash flows does not comply with the International Accounting Standard No. 7 as well as generally accepted accounting principles and therefore its accuracy could not be confirmed.**

### **Committee Recommendation**

**The Committee recommends that cash flow statements are prepared in adherence to IAS No 7.**

## **57.0 NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY: FY 2007/2008 TO 2011/2012**

### **REPORTS OF AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY (NEMA) FOR THE FINANCIAL YEARS 2007/2008 TO 2011/2012**

**The Director General, National Environment Management Authority (NEMA), Mr. Geoffrey Wahingu accompanied by Mr. Kennedy Ochuka, Director Finance & Administration; Ms. Agnes Yobterik, Director Programs, Projects & Strategic Initiatives; Mr. Samson Toniok Finance Manager, NETFUND and Anaclet Biket Chief Accountant appeared before the Committee to respond to audit queries on accounts of Coffee Board of Kenya for FY 2002/2003 to 2011/2012.**

#### **57.1 PROPERTY, PLANT AND EQUIPMENT: FYs 2007/2008 TO 2011/2012 ACCOUNTS**

The Committee heard that the Property, Plant and Equipment balance includes a figure of Kshs 21,141,288 in respect of vehicles, 13 of which are GK vehicles valued at Kshs 4,400,000 whose log books were not produced for audit verification. Although the Authority operated them, the vehicles logbooks had not been transferred from the Parent Ministry and so it was not possible to ascertain ownership of the vehicles.

The Director General, National Environment Management Authority informed the Committee that one logbook for KAU 505V had been found; the extract from registration particulars for GKU 939 were available; GKA 417 and GKP 409 were disposed of; KRA had provided response on five vehicles (GKW 352; GKA176C; GKX919; GKA957B and GKY825) and NEMA is following up on the other remaining five vehicles. The Authority plans to follow up with the Government Departments from which the vehicles were released through the Parent Ministry of Environment Water and Natural Resources.

#### **Committee Observation**

**The Committee observed that the Authority operated and included the value of 13 vehicles in its accounts which are GK vehicles valued at Kshs 4,400,000 whose log books were not produced for audit verification and therefore it was not possible to ascertain ownership of the vehicles**

#### **Committee Recommendation**

**The Committee recommends that the Authority should follow up with the parent Ministry to obtain all the log books of the vehicles under its custody.**

#### **57.2 CHAIRMAN'S HONORARIA AND COMMITTEE MEMBERS ALLOWANCES: FY 2007/2008 ACCOUNTS**

The Committee heard that contrary to the Office of the President's circular Ref: OP/CAB/189A of 4<sup>th</sup> December 2003, the Authority approved payment of the Chairman's honoraria in respect of the National Environment Tribunal at a monthly rate of Kshs 15,000, the Authority paid the Tribunal Chairman who is also chair to the National Environment Trust Fund Kshs 80,000 per month. This represents an overpayment of Kshs. 1,560,000 charring both the Tribunal and the Fund. In addition, contrary to the OP circular, a total of Kshs 80,000 was paid to members of the Tribunal in respect of writing of the rulings at the rate of Kshs 50,000 per member. The Authority said that the honoraria and allowances were paid in accordance with the approval of the Parent Ministry, but no evidence was given to show that the Parent Ministry's approval compiled with the OP circulars of 25<sup>th</sup> November 2004 and 26<sup>th</sup> September 2005. It is not possible to ascertain that both expenditures were a proper charge to public funds.

### **Management Response**

The Director General, NEMA informed the Committee that the payments to the Chairman of both the National Environment Tribunal and the National Environment Trust Fund and the one lawyer member writing a ruling at any given time were based on the circular from the Permanent Secretary Ministry of Environment and Natural Resources Ref: MENR/E5.07 VOL.II/55 dated 1<sup>st</sup> November 2007. NEMA itself compiles with OP circular, but the Tribunal and Fund are separate entities from NEMA and their members are appointed by the Parent Ministry so their allowances are per the circular from the PS.

### **Committee Observation**

**The Committee heard that the Authority paid the Chairman of the National Environment Tribunal an honorarium contrary to the Office of the President's circular Ref: OP/CAB/189A of 4<sup>th</sup> December 2003.**

### **Committee Recommendation**

**The Committee recommends that the Authority recovers the money irregularly paid to the Chairman and those who made the decision in contravention of financial regulations be held accountable.**

### **57.3 PROPERTY, PLANT AND EQUIPMENT: FIXED ASSETS REGISTER: FY 2008/2009 ACCOUNTS**

The Committee heard that the Authority did not maintain a Fixed Asset Register (FAR) with the result that the value of Kshs 63,994,955 in respect of Property, Plant and Equipment could not be confirmed.

### **Management Response**

The Director General, NEMA informed the Committee that the Fixed Asset Register was developed in November 2009. A consultant was contracted to verify and value the Authority's assets. A listing plus values of the assets was produced though it does not

represent a comprehensive asset register nor is it possible to do real time management of fixed assets. The authority is undertaking online management of fixed assets through the ERP Navision during the current financial year.

#### **Committee Observation**

**The Committee observed that the Authority did not maintain a Fixed Asset Register with the result that the value of Kshs 63,994,955 in respect of Property, Plant and Equipment could not be confirmed.**

#### **Committee Recommendations**

**The Committee recommends that the Authority should ensure that it maintains an updated Fixed Asset Register.**

**The Committee further recommends that then Director General (Mr. A Muusya Mwinzi) under whose tenure the FAR was not maintained be held responsible for failure to protect public property entrusted under his care by exposing public property to the risk of loss.**

#### **57.4 CASH AND BANK BALANCES: FY 2008/2009 ACCOUNTS**

The Committee was informed that the Cash and Bank Balance included Kshs 66,368,383 in respect of a Pension Account whose analysis was not provided for audit review. The Authority said that the analysis could not be produced because the signatories to the Pension Fund account had left the Authority. The Authority did not give a reason why the analysis could not be produced from the Authority's records.

#### **Management Response**

The Director General, NEMA told the Committee that they had provided an analysis of the Pension account and the cash balance reconciled with the bank statement balance as per their ERP system generated report.

#### **Committee Observation**

**The Committee observed that the Authority had failed to provide an analysis of the Cash and Bank Balance in respect of a Pension Account for audit review.**

#### **Committee Recommendation**

**The committee recommends that the Authority should ensure that it provides an analysis the cash and bank balances and more as it relates to the Pension Account.**

#### **57.5 TRADE AND OTHER RECEIVABLES: FYs 2008/2009 & 2010/2011 TO 2011/2012 ACCOUNTS**

The Committee heard that included in the Trade and other Receivable balance was long outstanding imprest amounting to Kshs 5,608,200 due from an employee who had since

left the Authority and an amount of Kshs 848,400 which had been outstanding for over two years. Recoverability of the debts is doubtful.

### **Management Response**

The Director General, NEMA told the Committee that the Kshs 5,608,200 was imprest /advance was issued to Humphrey Osili a Project Accountant of one of the European Union funded projects to support activities including fuel travel expenses for staff, furniture and other consumables. The imprest was surrendered up to Kshs 5,491,791 leaving a balance of Kshs 116,409. The employee was terminated, he sued the Authority, won the case and was awarded Kshs 2,932,230. It's unlikely the authority will recover the balance of Kshs 116,409.

The Committee after deliberating requested the Authority to provide them with a report on the genesis of the Kshs 116,409 and the evidence relating to it. The Committee also requested for a report on the ex-staff with outstanding imprest, what is being done to recover it and the current status.

### **Committee Observation**

**The Committee observed that the Authority had failed to recover outstanding imprest amounting to Kshs 5,608,200 due from an employee who had since left the Authority.**

### **Committee Recommendation**

**The Committee recommends that the Authority should ensure that imprest issued to its staff is promptly recovered as per the provisions of financial regulations.**

## **57.6 CONSTRUCTION OF NEMA OFFICES IN UASIN GISHU: FY 2008/2009 ACCOUNTS**

The Committee heard that a contract awarded on November 2008 to construct the NEMA offices in Uasin Gishu at Kshs 8, 171,753 stalled when it was a 40 % completed but the contractor was paid Kshs 5,171,973 representing 63% of the original contract price. No reason was given as to why the project stopped and why the contractor was paid 63 % of the contract value against 40% of work done.

### **Management Response**

The Director General, NEMA informed the Committee that the contractor was recalled and completed the offices on May 2010. The delay was occasioned by the Eldoret municipal council refusal to fix a septic tank, which necessitated a change of plan to connect directly to the sewer lines. The offices are currently occupied by NEMA staff.

### **Committee Observation**

**The Committee observed that NEMA should have stringent measures to ensure payments to contractors are done as per the Government guidelines.**

### **Committee Recommendation**

**The Committee recommends that NEMA puts in place stringent measures to ensure payments to contractors are done as per the Government guidelines and regulations.**

### **57.7 CASH AND CASH BALANCES: BANK OVERDRAFT, STALE CHEQUES AND BANK RECONCILIATIONS: FY 2009/2010 ACCOUNTS**

The Committee heard that the financial statements showed a bank balance of Kshs 238,760,779 and a bank overdraft of Kshs 8,286,960. The Committee was informed that

- (i) The bank overdraft balance of Kshs 8,286,960 in note 10 in the financial statements differs from the cash book balance of Kshs 12,696,270 with Kshs 4,409,310. The difference has not been reconciled or explained.
- (ii) There are stale cheques amounting to Kshs 11,377,177 relating to K.C.B (K.I.C.C) recurrent account and other stale cheques amounting to Kshs 1,419,340 relating to the Authority Development Account, which have been investigated but no meaningful progress done.
- (iii) The bank reconciliation of the K.C.B (K.I.C.C branch) recurrent account reflects receipts in the cash book not recorded in the bank statements of Kshs 28,250,094 out of which Kshs 23,577,177 has been outstanding for a long time. KCB revenue account also reflects receipts in the bank statements not recorded in the cash book of Kshs 20,120,689 out of which Kshs 14,007,739 has been outstanding since 2007. The bank reconciliation statement of the restoration account reflects receipts in the cashbook not in the bank statement of Kshs 1,943,740 which have been outstanding for over one year.

### **Management Response**

The Director General, NEMA presented to the Committee that

- (i) The Cash book balance of Kshs 12,696,270 relating to the bank overdraft balance was erroneous and had since been reduced to Kshs 6,703.11 which was being investigated.
- (ii) The Kshs 11,377,177 was erroneously reflected as stale cheques which had not been presented, but instead were mis-postings and cancelled cheques in the cash book which were subsequently reversed. As for the Development bank account, Kshs 366,450 representing stale cheques was reversed and the remaining Kshs 872,758 debited into the Development Account statement since it was a payment to MIBM done through EFT.
- (iii) The receipts that were in the cash book and not in the bank statement were erroneous entries and were reversed in the subsequent year. Proponents and Customers deposit money in the KCB revenue accounts but do not present the deposit slips to the Authority's office for the cashbook update, which creates a challenge identifying them and receipting. The Authority sought and

got approval to do bulk receipting of Kshs 19,328,233.50 out of the Kshs 20,120,689. The Authority has as one of its measure to identify the depositors, a unique EIA number issued when paying, which is then used to obtain a receipt from NEMA.

### **Committee Observations**

**The Committee observed that the bank overdraft balance differs from the cash book balance with Kshs 4,409,310.**

**The Committee also observed that there are stale cheques amounting to Kshs. 11,377,177 and others amounting to Kshs. 1,419,340 which have been investigated but no meaningful progress done.**

**The Committee further observed that receipts were not recorded either in the cash book but in the bank statements or Vis versa.**

### **Committee Recommendations**

**The Committee recommends that:-**

- 1. Reconciliations should be done between the bank statements and cash book balances monthly.**
- 2. The Authority should conclude on the investigations of the stale cheques and give an up to date status report on the same within six months of adoption of the Report.**

### **57.8 BOARD COMMITTEE EXPENSES: FYs 2009/2010 TO 2010/2011 ACCOUNTS:**

The Committee heard that the Board and Committee expenses of Kshs 50,366,081 include an expenditure of Kshs 39,914,970 which has not been supported with the relevant documents.

### **Management Response**

The Director General, NEMA presented that Kshs 39, 914,940 related to the expenses of the Public Complaints Committee and National Environment Tribunal which had been misclassified as board expenses.

### **Committee Observation**

**The Committee observed that the Authority's Board and Committee included an expenditure of Kshs. 39,914,970 which has not been supported with the relevant documents.**

### **Committee Recommendation**

**The Committee recommends that the management should ensure that classification of expenses is undertaken accordingly.**

## **57.9 PROPERTY, PLANT AND EQUIPMENT: BUDGETARY APPROVAL: FY 2010/2011 ACCOUNTS**

The Committee heard that Note 7 of the Financial statements reflect an addition of Property, Plant and Equipment amounting to Kshs 40,515,869 whose budgetary approvals both from the Parent Ministry and the National Treasury were not availed for audit verification contrary to Sec 12 of the State Corporation Act.

### **Management Response**

The Director General, NEMA informed the Committee that the Authority has provided Board of Management approval of the Development budget.

### **Committee Observation**

**The Committee observed that the Authority's Financial Statements reflected an addition of Property, Plant and Equipment amounting to Kshs 40,515,869 whose budgetary approvals both from the Parent Ministry and the National Treasury were not availed for audit verification.**

### **Committee Recommendation**

**The Committee recommends that the management should ensure that all the items in its financial statements are as approved in the budget and that approvals should be provided for audit review.**

## **57.10 DISBURSEMENT OF FUNDS TO NATIONAL ENVIRONMENT TRUST FUND: FY 2010/2011 ACCOUNTS**

The Committee heard that included in the statement of comprehensive income is government grants, out of which Kshs 50,000,000 is shown as intended for National Environment Trust Fund (NET Fund). NEMA has not been able to provide an analysis of how this money intended for NET Fund for the FY 2010/2011 was disbursed, spent and the balance that remained.

### **Management Response**

The Director General, NEMA presented that of the Kshs 50,000,000 for NET Fund, Kshs 4,166,666.80 was transferred directly to NET Fund, Kshs 29,166,666 and 16,666,666 were received on behalf of NET Fund and Kshs 6,439,366.90 was paid by NEMA on behalf of NET Fund leaving a balance of Kshs 39,393,966

### **Committee Observation**

**The Committee observed that the Authority failed to provide an analysis of funds disbursed to NET Fund.**

### **Committee Recommendation**

**The Committee recommends that the Authority should ensure that funds disbursed are analyzed and analysis provided for audit review.**

## **58.0 THE GEOTHERMAL DEVELOPMENT COMPANY: FY 2009/2010 TO 201/2012**

### **REPORTS OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF GEOTHERMAL DEVELOPMENT COMPANY (GDC) FOR FINANCIAL YEARS 2009/10 TO 2011/2012**

The Director General, Geothermal Development Company (GDC), Eng. Silas Simiyu, accompanied by Bruno Linyiru, Chief Manager, Commercial Services appeared before the Committee and gave evidence on the accounts of the Board for the 2009/2010 to 2011/2012.

#### **58.1 UNQUALIFIED ACCOUNTS: FYs 2009/2010 TO 2011/2012 ACCOUNTS**

The Auditor General informed the Committee that the accounts of Geothermal Development Company for the Financial Years 2009/2010; 2010/2011; 2011/2012 and 2012/2013 were unqualified. The Accounts were audited by private auditors, PricewaterhouseCoopers (PWC) appointed by the Auditor General.

**The Committee heard that the Company's Accounts for the Financial Years were unqualified.**

#### **Committee Observation**

**The Committee observed that the Auditor General gave Geothermal Development Company a clean report on Accounts for the Financial Years 2009/2010; 2010/2011; 2011/2012 and 2012/2013.**

#### **Committee Recommendation**

**The Committee commended GDC for receiving unqualified Accounts for the FYs 2009/2010 to 2011/2012.**

## **58.2 VESTING OF FIFTY SEVEN (57) WELLS**

#### **Management Response**

The Managing Director informed the Committee that the only outstanding issue at GDC was the vesting of fifty seven (57) wells in Olkaria. He further informed the Committee that:-

- (i) Olkaria is licensed to KENGEN Company but the wells are drilled using government resources;
- (ii) The assets in form of wells worth Kshs. 27 billion are neither in the GDC accounts nor KENGEN accounts. The National Treasury should give direction on where the wells should be vested since it is government property;
- (iii) The wells were drilled directly by Government with GDC and KENGEN being the executing agents. KENGEN is charged with constructing power plants at the wells

and the steam will be sold to KENGEN as a power producer while the revenue thereof shall be paid to GDC.

- (iv) The National Treasury had written to GDC directing the Corporation to process the vesting of the wells to itself. GDC and the Ministry of Energy and Petroleum started the process but it stalled at the National Treasury.

### **Committee Observation**

**The Committee observed that the Auditor General had outsourced the auditing of the accounts of the Geothermal Development Company.**

### **Committee Recommendation**

**The Committee recommends that:-**

- 1. The Auditor General undertakes an audit of the accounts of Geothermal Development Company beginning FY 2013/2014 pursuant to Article 229 of the Constitution of Kenya 2010.**
- 2. All the energy sector companies be audited by the Auditor General.**

### **58.3 PROCUREMENT OF DRILLING RIGS**

The Managing Director informed the Committee that:-

- i). Procurement and commissioning of three drilling rigs for Phase I of the Menengai Geothermal Development Project was financed by the African Development Bank (AfDB) under the African Development Fund (ADF) at a cost of US\$ 120,000,000 with GDC as the Executing Agent.
- ii). The procurement method used was Limited International Method in accordance with the Bank's General Conditions of Loan Agreement and procurement rules. All stages of procurement including document preparation, evaluation award were reviewed and approved by the Bank before any action by GDC.
- iii). The procurement of the initial two rigs at a cost of \$43,187,345.85 was done within the legal provisions of the Public Procurement and Disposal Act, and in accordance with the relevant rules of procurement of the AfDB which exempts the procurement of goods and services under a negotiated grant or loan from the ambit of the local procurement regulations. The tender was awarded to a Chinese company M/s Sichuan Honghua Petroleum Equipment.
- iv). A saving of approximately US\$ 31 million was realized from the procurement of the two rigs. The Bank allowed utilization of these savings for procurement of

one additional rig from the awarded bidder under the same terms and conditions at a cost of US\$21, 593,650.92

- v). All payments under this contract procurement were processed by the Bank upon receipt of certifications of invoices and requests to make payments submitted by GDC to its parent Ministry, Ministry of Energy and Petroleum and finally the National Treasury.

### **Committee Observation**

**The Committee observed that the financier, African Development Bank, allowed the procurement of the third rig using funds saved from the purchase of initial two rigs from the same supplier under the same terms and conditions at a cost of US\$21, 593,650.92**

### **Committee Recommendation**

**The Committee recommends that the management of geothermal development corporation ensures that the provisions of Public Procurement and Disposal Act, 2005 are applied at all times even where funding is externally sourced.**

### **58.4 STEAM AVAILABILITY FOR 90 MEGAWATTS PROJECT**

The Committee heard that a feasibility study report conducted by independent consultants engaged under the World Bank confirmed the resource potential for the area earmarked for the 90MW project is 150MW. A total 70 MW has already been realized from 8 tested wells. It is expected that 90MW will be realized prior to the completion of construction of the power plants.

The Managing Director informed the Committee that: -

- i). The Company has dug a total of 59 wells in Olkaria at a total cost of Kshs. 27 billion.
- ii). Shareholding of the Company is between the Principal Secretary for the National Treasury and the Principal Secretary for Ministry of Energy and Petroleum. The shares are held in trust by a person and not a body corporate.
- iii). Shares held by the Ministry of Energy and Petroleum were initially registered under the name of Mr. Patrick Nyoike, the former Permanent Secretary Ministry of Energy. The shares have since been transferred to the Principal Secretary Ministry of Energy and Petroleum, Mr. Joseph Njoroge, as the legal person. Transfer form has been signed so that when Mr. Joseph Njoroge leaves office it will be transferred to the institution.

- iv). The process of vesting of the wells and other assets of the Company has started but has not been concluded. All the necessary documentation for transfer of the ownership of the wells and other assets to the Company has been prepared by the Ministry of Energy & Petroleum, Geothermal Development Company and KenGen and approved by the Attorney General. The process is awaiting conclusion by the National Treasury.

### **Committee Observations**

**The Committee observed that:-**

- i). It is not in public interest for the ownership of a public company to be in the name of an individual. Though retired, Mr. Patrick Nyoike was still appears as a shareholder of the Company.**
- ii). Although the Management has not been aggressive in resolving the issue of ownership of the Company the anomaly has since been corrected.**

### **Committee Recommendations**

**The Committee recommends that:-**

- i). The process of vesting of the wells and other assets of the Company ought to be concluded immediately.**
- ii). Ownership of the Geothermal Development Company should be reviewed to ensure the Company is not registered in individuals' names and instead vested in a state office.**
- iii). The management of Geothermal Company Limited should ensure that the anomaly does not recur and that all property is vested in the right institution.**

## **59.0 THE COFFEE RESEARCH FOUNDATION: FY 2002/2003 TO 2011/2012**

### **REPORTS OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF THE COFFEE RESEARCH FOUNDATION( CRF) FOR THE FINANCIAL YEARS 2002/2003 TO 2011/2012**

**The Managing Director, Coffee Research Foundation (CRF), Mr. Elijah K. Gichuru accompanied by the Internal Auditor Mr. S. K. Muchoki and the Ag. Chief Accountant Mr. Magera Murithi appeared before the Committee to adduce evidence on the Financial Statements of Coffee Research Foundation for the FY 2002/2003 to 2011/2012.**

#### **59.1 FINANCIAL POSITION: FYS2002/2003 TO 2003/2004 ACCOUNTS**

The Foundation balance sheet reflected a negative working capital of Kshs. 20, 958,786 as at 30<sup>th</sup>June, 2004. Further the payables and accruals balance of Kshs. 138,701,202 as at 30<sup>th</sup> June, 2004 included an amount due to staff pension scheme of Kshs. 61,161,153 and Kshs. 53,748,350 for accrued payroll. Although management indicated steps being taken to make monthly payments and to service its debts, the payables and accruals have not been liquidated and the financial position remains precarious.

#### **Management Response**

The Managing Director informed the Committee that the Foundation was in economic depression that was experienced in the whole of the coffee sector due to the international coffee crisis. The depression culminated in the Foundation having to undertake retrenchment exercise in the FY 2002/2003 with the support of the Government. The staff pension debt arose out of accumulated non-remitted staff deductions.

The Committee also heard that during the periods prior to operationalization of the Coffee Act, 2001, the Foundation used to receive budgetary support in form of subventions from Coffee Board of Kenya. During the time of the coffee crisis, the subventions were not enough to cater for salaries and other payroll related costs. As such, the Foundation paid net salaries only while the statutory deductions accumulated for some time and hence the figures quoted by the auditor.

The Committee further heard that the Foundation entered into an agreement on servicing the outstanding accrued payroll of Kshs.53, 748,350. The Foundation has observed the terms of the agreement and has paid the total outstanding statutory deductions that were cleared in the year 2012.

Similarly, the Foundation committed to settle the Retirement Benefit Scheme (RBS) debts by servicing the Kshs. 61,161,153 outstanding arrears through monthly

repayment of Kshs. 1,000,000. The arrears has been fully settled where the last payment was made in the year 2010.

### **Committee Observation**

**The Committee observed that the Foundation was in economic depression that was experienced in the whole of the coffee sector due to the international coffee crisis.**

### **Committee Recommendation**

**The Committee recommends that the Foundation should ensure that proper measures are put in place to cushion it from fluctuating world prices and that all statutory obligations are met on time.**

### **59.2 FIXED ASSETS REGISTER (FAR): FYS 2002/2003 TO 2003/2004 ACCOUNTS**

The Fixed Assets Register maintained by the Foundation was not up to date so as to show the identity, type, location and values of all assets of the Foundation. In the circumstances, it was not possible to confirm that the fixed assets value of Kshs. 282,460,105 in the balance sheet is fairly stated.

### **Management Response**

The Managing Director informed the Committee that the Foundation was until the operationalization of the Coffee Act 2001 operating under Coffee Board of Kenya and the assets were in the name of Coffee Board of Kenya e.g. Azania and Koru farms.

The Committee also heard that the fixed assets register in the subsequent years has been maintained and updated with any assets acquired/disposed during the year under review. However, there are still assets in the name of Coffee Board of Kenya(CBK) but being utilized by the Foundation. In the recent years, the Foundation has made efforts to have the land transferred from Coffee Board of Kenya to the Foundation

### **Committee Observation**

**The Committee observed that the Foundation did not maintain a Fixed Assets Register during the year and it was not possible to confirm the current value of plant, property and equipment but the issue has since been resolved.**

### **Committee Recommendation**

**The Committee recommends that the Foundation maintains an updated Fixed Assets Register.**

### **59.3 BUDGETARY CONTROL: FY 2002/2003 ACCOUNTS**

During the year under review, the Foundation operated without an approved budget contrary to the provisions of Section 11(2) of the State Corporation Act (CAP 446)

which requires state corporations to submit budgets to the Minister and the National Treasury for approval. The Foundation was therefore in breach of law.

### **Management Response**

The Committee heard that the Foundation prior to the operationalization of the Coffee Act 2001 was an “Official Organization” under the Coffee Board of Kenya. Its budget therefore was under the CBK where the Foundation only received subventions. The actual operationalization of the Coffee Act 2001 that allowed the Foundation to receive coffee levies directly, took effect during the FY 2002/03. Furthermore, the Foundation’s financial year was based on the coffee year (1st October to 30<sup>th</sup> September). However, the Foundation forward the budget estimates to the Parent Ministry but did not receive the communication for approval.

### **Committee Observation**

**The Committee observed that the Foundation operated without an approved budget thereby breaching Section 11(2) of the State Corporations Act (Cap446) which requires State Corporations to submit their budgets to the Minister and the National Treasury for approval.**

**The Committee further observed that it was not clear how the Corporation operated without a budget.**

### **Committee Recommendation**

**The Committee recommends that the Foundation ought to always prepare its budget and have it approved by the Parent Ministry as required by law.**

### **59.4 BOARD EXPENSES: FY 2002/2003 ACCOUNTS**

During the FY 2002/03, the Board expenses increased by Kshs. 3,167,642 from Kshs. 1,524,203 in 2001/2002 to Kshs. 4, 691,845 in 2002/2003 (207.85%). The increase in expenditure is attributed to many meetings totaling forty-three (43) during the year, which the Foundation had not justified.

### **Management Response**

The Managing Director informed the Committee that the Board and its subcommittees held meetings during the year under review to address various issues after its separation from the Coffee Board of Kenya. The Foundation held meetings for Coffee Research Advisory Committee, 4 meetings for Project Steering Committee (for EU funded biotechnology facility), 13 full board meetings and 6 Staff Retirement Benefits Scheme meetings. In addition, the Foundation held 6 Staff/Finance Committee meetings, 1 Tender Committee meeting and 1 Board of Survey Committee meeting.

The full Board and Staff/Finance Committee had more meetings to address the financial situation and the retrenchment programme. At the same time, the Retirement Benefits Scheme was addressing pension for staff being retrenched against a background of the

Foundation having not remitted all the deductions. The other additional meetings related to the Board of Directors induction training, consultative meetings with the Parent Ministry and other stakeholders on transition, debt and coffee rules after the enactment of the Coffee Act 2001.

The Committee further heard that the Foundation currently holds board meetings as per the approved schedule.

#### **Committee Observation**

**The Committee observed that the Foundation held very many unjustified meetings that resulted in an increase in expenditure.**

#### **Committee Recommendation**

**The Committee recommends that the Foundation should hold Board meetings as per the approved work plan.**

#### **59.5 LAND AND BUILDINGS: FYs 2003/2004 - 2004/2005 TO 2006/2007 ACCOUNTS**

The Committee heard that the land and buildings figure of Kshs. 227,446,160 as at 30<sup>th</sup> June excludes under-determined value of 5 parcels of land totaling 312.48 hectares in Ruiru (264.64), Kitale (25.7) and Mariene (22.14). The situation is indicative of significant impairment of properties. Consequently, it was not possible to confirm the carrying value of land and buildings as reflected in the financial statements.

#### **Management Response**

The Managing Director informed the Committee that the Foundation was experiencing difficulties in the financial position due to the performance of the coffee sub-sector affecting its main revenue resources. The main source of revenue from the 2% coffee levy was inadequate. With limited financial resources, the Foundation was not able to value its land in order to determine the carrying value in the financial statements.

#### **Committee Observation**

**The Committee observed that the Foundation excluded under-determined value of 5 parcels of land totaling 312.48 hectares in Ruiru (264.64) Kitale (25.7) and Mariene (22.14) and thus it was not possible to confirm the carrying value of land and buildings as reflected in the financial statements.**

#### **Committee Recommendation**

**The Committee recommends that the Foundation ensures that all its land and other assets are properly and regularly valued and the values included in the books of account.**

## **59.6 RECEIVABLES AND PREPAYMENTS: FYs 2003/2004; 2007/2008 TO 2010/2011 ACCOUNTS**

The gross receivables and prepayments balance of Kshs. 161, 877,123 as at 30 June, 2011, includes long outstanding debts amounting to Kshs. 124,495,782 due from Kenya Planters Cooperative Union, Kshs. 23, 445, 076 from the Coffee Board of Kenya and Kshs. 745, 532 from Bungoma Union. It has not, however, been indicated as to when the dates would be cleared. Although the management has increased the provision for the bad and doubtful debts to Kshs. 83, 563, 855 (2009/10: Kshs. 42,117,549) during the FY 2010/11, the provision is still inadequate considering that the long outstanding debts represent 91% of the total receivables and prepayments. In the circumstances, it has not been possible to confirm the accuracy of the gross receivables balance of Kshs. 161, 877,123 as at 30 June, 2011.

### **Management Response**

The Managing Director informed the Committee that the bulk of these debts related to non-remitted 2% Ad Valorem Levy made against coffee sales by Coffee Board of Kenya and Kenya Planters Cooperative Union. The Bungoma debt was as a result of coffee deliveries from the Foundation's Namwela demonstration plot whose proceeds were channeled through the Union. The Coffee Board of Kenya debt arose out of non-remitted subvention and coffee proceeds when the Foundation operated under CBK up to the FY 2002/03. CBK has raised a counter claim against this particular debt, a matter that has been deliberated by the Foundation's Board of Directors. The Foundation resolved to give CBK some time to update their book of accounts for the matter to be resolved.

The Committee further heard that as at FY 2010/11, Kshs. 23.4 million subventions from Coffee Board of Kenya is still in the Foundation's books of accounts as it was disputed by CBK. The Foundation and CBK were to clear these items once the CBK books of accounts are updated. The Bungoma Union's debt is in the books of accounts and the Foundation is pursuing the issue with the Union though the Union demanded lease rentals for the use of the land. The KPCU debts have over the years grown to Kshs. 124.4 million as at the time it went into liquidation. However, despite full provision for this debt in FY 2012/13, the Foundation is still pursuing the same from KPCU.

### **Committee Observation**

**The Committee observed that the Auditor General cleared the Accounts of the Coffee Research Foundation for FY 2011/2012, despite the organization having audit queries on receivables and prepayments and land and buildings.**

### **Committee Recommendation**

**The Committee recommends that the Auditor General should ensure that all audit queries from preceding years have been adequately addressed before issuing unqualified reports.**

## **60.0 THE BOMAS OF KENYA: FY 2004/2005 TO 2012/2013**

### **REPORTS OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF THE BOMAS OF KENYA (BOK) FOR THE FINANCIAL YEARS 2004/2005 TO 2012/2013**

**The Chief Executive Officer, Bomas of Kenya (BOK) Mr. Quresh H. Ahmed accompanied by Mr. John Olela, Senior Economist, Mr. Bwire Ojiambo, Production Manager, Mr. Jimmy Okidiang'i, Human Resource Officer, Mr. Joseph W. Njoroge, Property Manager, Mr. Felix K. Korir, Internal Auditor and Mr. David Rono, Finance Manager appeared before the Committee to respond to audit queries on accounts for Bomas of Kenya for FY 2004 /2005 - 2012/2013**

#### **60.1 FINANCIAL POSITION: FYs 2004/2005 AND 2005/2006 ACCOUNTS:**

During the year under review, the Company realized a net loss of Kshs.33,585,319 which brought its accumulated losses to Kshs. 234,934,628 that have completely eroded its share capital, the revaluation reserve and grants. Further, the Company was unable to service its creditors including VAT statutory deduction of Kshs.4, 535,357 and Telkom Kenya bill of Kshs.3, 725,031. The Company also could not meet its long-term loan obligations to KTDC of Kshs.288, 973,765 which continue to accumulate due to accrued interest charges over the years. In view of the foregoing, the financial statements have been prepared on the going concern basis, which assumes continued financial support from the Government and its creditors.

#### **Management Response**

The CEO, Bomas of Kenya (BoK) informed the Committee that the net loss realized during the financial year was because the Kenya Tourist Development Corporation's outstanding loan and accrued interest thereon wiped out the profits and eroded shareholders' funds to negative figures. The two boards (KTDC and BoK) agreed on loan restructuring to be Kshs.11, 058,239 as at 1<sup>st</sup> July, 2006 attracting an interest rate of 9% down from the accumulated amount of Kshs.346, 768,517 at interest of 20%. The restructuring of the KTDC loan also resulted in the reduction of the loan owed to KTDC from Kshs.346, 768,517 to Kshs. 8, 408,547 as at May 2014. This led to the organization returning to profitability as at financial year ending 30<sup>th</sup> June, 2013 where the organization posted a profit of Kshs.25, 242,326

#### **Committee Observation**

**The Committee observed that the Corporation did not meet its long-term loan obligations to KTDC of Kshs. 288,973,765, which continued to accumulate due to accrued interest charges over the years.**

#### **Committee Recommendation**

**The Committee recommends that the Board of Bomas of Kenya should ensure that its loan obligation is met in time to avoid interest and penalty.**

## **60.2 KENYA TOURIST DEVELOPMENT CORPORATION LOAN: FYs 2004/2005 AND 2005/2006, 2011/2012 ACCOUNTS:**

The Statement of financial position included a loan balance of Kshs.10, 780,038 due to Kenya Tourism Development Corporation. However, the loan amount is inclusive of loan and interest overdue amounting to Kshs.5, 286, 942 and reflected in these financial statements as long-term loans. This is contrary to International Accounting Standards (IAS) 1 paragraph 69 (c) which requires an entity to classify its liability as current when the same is due to be settled within twelve months after the reporting period.

### **Management Response**

The CEO informed the Committee that the two Boards (KTDC and BoK) agreed on loan restructuring to be Kshs. 11, 058,239 as at 1<sup>st</sup> July, 2006 attracting an interest rate of 9% down from the accumulated amount of Kshs. 346, 768,517 at an interest of 20%. Following the restructuring of the loan, Bomas of Kenya started repaying the loan in August 2007 at a rate of Kshs. 140, 081 per month on both capital and interest. Since there was a time lag before payment was effected, interest continued to accrue on the loan and hence the treatment of the balances as outstanding loan, since they could not be settled within a year.

As at 31<sup>st</sup> May 2014, the outstanding loan had reduced to Kshs.8,408,547 and the organization is repaying the loan at rate of Ksh.140,081 per month. The accounts have been adjusted and the loan interest of Kshs.5, 286,942 transferred to current liabilities in the 2011/2012 financial statements.

### **Committee Observation**

**The Committee observed that:-**

- 1. The Corporation reflected its loan balance of Kshs. 10,780,038 owed to KTDC which is inclusive of loan and interest overdue amounting to Kshs. 5,286, 942 as long-term loans contrary to International Accounting Standards (IAS) 1 paragraph 69 (c) which requires an entity to classify its liability as current when the same is due to be settled within twelve months after the reporting period.**
- 2. Bomas is considered a subsidiary of KTDC yet it is a separate parastatal with its own assets and management/Board of directors.**

### **Committee Recommendation**

**The Committee recommends that:-**

- 1. The Board of Bomas of Kenya should ensure that its loan balance is properly captured in the books of accounts.**

**2. Bomas of Kenya should be delinked from Kenya Tourism Development Corporation as recommended in previous Public Investments Committee reports.**

**60.3 TRADE AND OTHER RECEIVABLES: FY s2004/2005 TO 2010/2011 ACCOUNTS**

The trade and other receivables balance of Kshs. 11,415,719 as at 30<sup>th</sup> June 2011 includes an amount of Kshs. 5,844,308 and Kshs. 112,135, due from trade and ex-staff respectively and which have remained outstanding for over 12 years. Although the management has made a provision of Kshs. 970,670 for bad and doubtful debts in the financial statements during the year, the provision appears inadequate.

In the circumstances, it has not been possible to confirm the recoverability of Kshs. 4,985,773 and that the trade and other receivables balance of Kshs. 11,415,719 is fairly stated as at 30 June 2011.

**Management Response**

The CEO informed the Committee that the Company had trade receivable of Kshs. 11,415,719 includes amounts of Kshs. 5,844,308 and Kshs. 112,135 due from trade debtors and ex-staff respectively. The management did the investigation and found out that the debtor's figure of Kshs. 4,516,301 was a result of clerical errors and misposting due to incompetence of the staff at that time, as some staff were seconded from other departments to accounts Section. Some of the errors included posting proforma invoices. They were advised by the Auditor General to request for a write off to remove the debts from their books. The main cause has been missing supporting documents, deceased staff or the businesses closed. Bad and doubtful debts write-off, and approval was granted by the Board of Directors in the 172<sup>nd</sup> Board Meeting held on 27<sup>th</sup> January, 2011.

However the organization was advised that the Minister in charge of the National Treasury must give the approval before any write off is done. The Organization on its part has made a full provision for these bad and doubtful debts on its financial statements. No loss was incurred by the organization.

The staff receivables balance of Kshs. 1, 411,739 came about as result of the organization not having facilities such as development loans or house loans and the only place they could get emergency fund was through salary advance. The Organization recovered debts from staff monthly through the payroll deduction and most outstanding debts have since been recovered.

The Corporation has a HR policy in place which includes a medical scheme and staff Sacco. It has employed persons in various grades for instance permanent and pensionable while the performing artistes are on 3 years renewable contracts.

### **Committee Observation**

**The Committee observed that Kshs 4,516,301.95 could have been reconciled. Further the Committee observed that no loss was incurred by the Corporation.**

### **Committee Recommendation**

**The Committee recommends that the Board should ensure proper reconciliation of the books of accounts.**

### **60.4 INVESTMENT OF SURPLUS FUNDS: FY 2004/2005 TO 2005/2006 ACCOUNTS**

The Committee heard that the balance sheet investment of Kshs. 4,220,172 represents a fixed deposit accounts at Kenya Commercial Bank, Moi Avenue Branch contrary to Treasury Circular No. 10 of 15 July 1992, which requires investment of surplus funds to be made in Treasury Bonds/Bills or Treasury approval for investments elsewhere be obtained first. Further, the Company operated an overdraft facility in the same bank, which stood at Kshs.2, 913,027 as at 30 June 2005, an indication that the Company had no surplus funds to invest. The Management has not explained the rationale of investing in a fixed deposit while at the same time operating an overdraft in the same bank.

### **Management Response**

The BoK CEO presented to the Committee that the fixed deposit was used as a security for the overdraft facility, in the absence of any other security since the land title deed is mortgaged with KTDC to secure the long-term loan. Currently, the organization does not have any fixed deposit account and does not operate an overdraft facility.

### **Committee Observation**

**The Committee observed that Bomas of Kenya operated a fixed deposit accounts at Kenya Commercial Bank, Moi Avenue Branch contrary to Treasury circular No. 10 of 15 July 1992, which requires investment of surplus funds to be made in Treasury bonds/bills or Treasury approval for investments elsewhere be obtained first and it also operated an overdraft facility at the same bank.**

### **Committee Recommendation**

**The Committee recommends that the management should ensure that National Treasury circulars and other financial guidelines relating to investments are adhered to.**

### **60.5 TRADE AND OTHER PAYABLES: FYs 2006/2007 TO 2010/2011 ACCOUNTS**

The Committee was informed that the payables figure of Kshs.13,932,484 as at 30 June 2007, includes an amount of Kshs.1,052,000 in respect of audit fees and another sum of Kshs.4,272,33 payable to Telkom Kenya on account of advertising charges in the yellow pages of the telephone directory. Apart from the fact that the Company is in breach of

Section 19(1) of the Public Audit Act, 2003 which requires a state corporation to pay for the costs of the audit, the amount due to Telkom Kenya is in dispute.

### **Management Response**

The CEO, BoK informed the Committee that this was caused by a liquidity problem that the Corporation was experiencing at the time. However, the situation has now been addressed and the audit fees balance stood at Kshs.764, 000 as at 31<sup>st</sup> June, 2013 and the provision for the settlement of the audit fees arrears in full was factored in the Financial Year 2014/15 budget. The Telkom Kenya dispute in respect of Yellow Pages Directory advertisement was settled.

### **Committee Observation**

**The Committee observed that the Corporation had failed to pay audit fees as required under Section 19(1) of the Public Audit Act, 2003 and had a disputed debt from Telkom Kenya relating to advertising charges.**

### **Committee Recommendation**

**The Committee recommends that the Corporation's Chief Executive Officer should ensure that audit fees are paid promptly and that all debts are settled in time to avoid disputes.**

## **60.6 BOARD OF DIRECTORS: FYS 2007/2008 TO 2008/2009 ACCOUNTS**

The Board of Directors' term expired on 30<sup>th</sup> November 2007 and new appointments were not made as at 30<sup>th</sup> June, 2008. As a result, the financial statement for the year ended 30<sup>th</sup> June 2008 was not approved by the Board as required by the Companies Act (cap 486). The Company was therefore in breach of law.

### **Management Response**

The CEO, BoK informed the Committee that the mandate of appointing Board Members is the sole responsibility of the parent Ministry and as such, the BoK had no control. The Board of Directors was appointed on 16<sup>th</sup> October 2009 and its term expired on 15<sup>th</sup> October, 2012.

The Company does not currently have a Board in place except the Chairman of the Board who was appointed on 12<sup>th</sup> February, 2013. The delay in appointing the Board of Directors was because some of the former Board members sued the Corporation halting appointment of new members. Amendments to the National Tourism Act have also delayed the appointment of new Board members.

### **Committee Observation**

**The Committee observed that the Corporation's financial statement for FY 2008/2009 had not been approved by a Board as required by the Companies Act due to lack of a duly appointed Board.**

### **Committee Recommendation**

**The Committee recommends that the appointing authority of State Corporations should ensure that Corporations have duly appointed Boards in place for each State Corporation.**

### **60.7 UNQUALIFIED ACCOUNTS:FY 2011/2012 ACCOUNTS**

The Committee heard that the Corporation had unqualified accounts for the FY 2011/2012.

The Auditor General qualified that the issues were then reinstated in the FY 2012/2013.

### **Committee Observation**

**The Committee observed that the Auditor General issued BoK with a clean report of Accounts for the FY 2011/2012 despite unresolved issues in previous years' audited accounts.**

### **Committee Recommendation**

**The Committee recommends that the Auditor General should not issue unqualified reports to State Corporations before previous audit issues have been resolved.**

### **61.0 THE KENYA FILM CLASSIFICATION BOARD: FY 2009/2010 TO 2012/2013**

#### **REPORTS OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF THE KENYA FILM CLASSIFICATION BOARD (KFCB) FOR FINANCIAL YEARS 2009/2010 TO 2012/2013**

**The Acting Managing Director, Kenya Film Classification Board(KFCB) Mr. Onesmus Mutua accompanied by Senior Human Resource Officer; Mr. John Malombe, Senior Chief Finance Officer; Mr. Okello K'Ojwang', Senior Film Monitoring and Enforcement Officer Mr. Wilson Koskei, Senior Supply Chain Management Officer; Ms. Immaculate Mulaku, Monitoring and Enforcement Officer; Ms. Nancy Munyi, Film Examination and Classification Officer; Ms. Redempta Oginga, Corporate Communication Officer; Ms. Evelyn Mbuni, Information and Technology Officer Mr. Antony Kamar and Accountant Mr. Ayaya Vincent appeared before the Committee to adduce evidence on accounts of the Board for the Financial Years 2009/2010 to 2012/2013.**

### **61.1 UNQUALIFIED REPORTS AND ACCOUNTS: FYs 2009/2010 TO 2012/2013 ACCOUNTS**

The Managing Director informed the Committee that the Board had unqualified accounts for the Financial Years 2009/2010 and 2012/2013.

### **Committee Observation**

The Committee observed that the Auditor General gave Kenya Film Classification Board clean reports for the FYs 2009/2010 to 2012/2013.

### **Committee Recommendation**

The Committee commended the Board for the unqualified report for four consecutive years from 2009/2010 to 2012/2013.

## **62.0 KENYATTA INTERNATIONAL CONVENTION CENTRE: FY 2005/2006 TO 2012/2013**

### **REPORTS OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF THE KENYATTA INTERNATIONAL CONVENTION CENTRE (KICC) FOR FINANCIAL YEARS 2005/2006 TO 2012/2013**

The Ag. Managing Director Kenyatta International Convention Centre(KICC), Mr. Fred Simiyu accompanied by Mr. Fredrick Akhonya, Financial Controller, Mr. Mohammed Loo, General Manager Finance and Administration, Mr. Johnson Omwega, Internal Auditor and Ms Maureen Chogo, Legal and Regulatory Affairs Manager appeared before the Committee to audit queries on accounts for Kenyatta International Convention Centre for FY 2005 /2006 - 2012/2013

#### **62.1 UNQUALIFIED ACCOUNTS: FYS 2005/2006 AND 2006/2007 ACCOUNTS**

The Committee heard that the Corporation had unqualified accounts for the FYs 2005/2006 and 2006/2007.

### **Committee Observation**

The Committee observed that Kenyatta International Convention Centre (KICC) received a clean report from the Auditor General for the FYs 2005/2006 to 2006/2007.

### **Committee Recommendation**

The Committee commended Kenyatta International Convention Centre for receiving unqualified accounts for the FY's 2005/2006 to 2006/2007.

#### **62.2 ACCOUNTS AND RECEIVABLE: FY 2007/2008 ACCOUNTS:**

The account receivable balance of Kshs. 83, 868,720 as at 30 June 2008 includes Kshs. 47,311,344 owed to the Centre by the Kenya National Assembly in respect of International Parliamentary Union (IPU) Conference held in May 2008. The amount of Kshs. 47,311,344 has remained outstanding for a long time and no provision for bad and doubtful debts has been made in the financial statements.

### **Management Response**

The Ag. Managing Director informed the Committee that the amount includes Kshs 47,311,344 owed by Kenya National Assembly in respect of International Parliamentary Union (IPU) Conference held in May, 2008. The amount has been outstanding for a long time and no provision for bad and doubtful debts has been made in the financial statements.

The Committee further heard that the amount is billed to Kenya National Assembly (KNA) and a number of deliberations have occurred between KICC Management and KNA with a view to conclude the matter. In a meeting between KICC, KNA and Public Accounts Committee held in September 2008, the PAC resolved that the amount should be settled but it is yet to be paid.

### **Committee Observation**

**The Committee observed that the debt owed by the Kenya National Assembly is still outstanding.**

### **Committee Recommendations**

**The Committee recommended the KICC management to aggressively pursue the Kenya National Assembly for settlement of the debt as per the Public Accounts Committee recommendation. The Committee further recommends that KNA should factor the outstanding amount in its budget with a view to settling the debt.**

### **62.3 PROPERTY, PLANT AND EQUIPMENT:FY 2008/2009 ACCOUNTS**

The Property, Plant and Equipment balance of Kshs 2,257,832, 665 as at 30June 2009 includes the value of land and buildings of Kshs 1 billion and Kshs. 1,113,111,175 respectively under LR. NO 209/11157. However, ownership documents for the Conference Centre were not availed for audit verification apparently because the process of transfer of the facility to KICC following a court ruling in favor of the government in November 2009 has not been concluded. In the circumstances, it was not possible to confirm the ownership of LR. NO 209/11157 valued at Kshs. 2,257,832, 665 as at 30June 2009.

#### **(i) Replaced Lifts**

Seven new lifts valued at Kshs 140, 103,365 were procured, subsequently capitalized and included in KICC's financial statements for the year ended 30 June 2009. The value of the old lifts had not been removed from the statements, although the lifts had been disposed of during the period, but no indication was given of how this disposal value was arrived at.

### **Management Response**

The Committee heard that the old replaced lifts had not been removed from the financial statement although the same had been disposed during the period and no indication had been given as to how the disposal was arrived at.

### **Committee Observation**

**The Committee observed that the old lifts were not functional and were sold off piecemeal. There is no documentary evidence of the disposal though they were actually sold off.**

### **Committee Recommendation**

**The Committee recommends that the management should always ensure that all disposals of Corporation equipment should be accurately recorded.**

#### **(ii) Supply and Installation of Lifts**

A firm was contracted in November 2005 to supply and install seven new lifts at the KICC at Kshs 140,103,365. The contractor was to install goods' lift with a load capacity of 1,500 Kg as specified in the bill of quantities, but the contractor installed a goods' lift with a load capacity of 800 kg. The KICC Management rejected the lifts before terminating the contract on January 2009 and a sum of Kshs 17,070,856 in respect of the lifts was still owing to the contractor although the issues of the goods' lift had not been conclusively addressed.

### **Management Response**

The Ag. Managing Director informed the Committee that the Bills of Quantities for supply and installation of the goods lift were prepared by the Ministry of Public Works through the Chief Electrical and Mechanical Engineer, who was the Project Manager. Though the contractor Schindler requested variation on the load capacity from 1500kg to 800kg citing shaft area limitation as reason for variation, the Project Manager denied the request, but the contractor went ahead to install the 800 kg capacity goods lift. The management sought the services of an arbitrator and the terms of the resolution said that the claimant to pay KICC Kshs. 7 Million in respect of the installed 800kg good's lift instead of 1,500 kg lift, the performance bond of Kshs 10,507,752 to be discharged by the respondent and the cost of arbitration and award to be borne by Ms. Schindler Ltd.

### **Committee Observations**

**The Committee observed that the Ms. Schindler installed 800 Kg lifts instead of 1,500 kg against the Corporation's wish. The Corporation sued the contractor and as a result, the Centre was compensated Kshs. 7 Million and performance bond of Kshs 10,507,752.**

### **Committee Recommendation:**

**The Committee commends the Corporation for using legal redress to have the contractor pay the damages for going against the agreement.**

### **62.4 TRADE AND OTHER RECEIVABLES: FYS 2009/2010 TO 2012/2013 ACCOUNTS:**

As reported in the previous years, the trade and other receivables balance of Kshs. 428, 337,425, as at 30 June 2013 includes an amount of Kshs. 417, 377,481 owed by various government ministries, departments and other organizations and which has been outstanding for a considerably long period of time. Although the debt portfolio has been increasing over the years, no evidence has been seen to show that management has made adequate recovery efforts. Further, management has not made in its financial statements a provision for bad and doubtful debts as at 30 June, 2013.

### **Management Response**

The Ag. Managing Director, KICC informed the Committee that the Corporation has experienced tremendous increase in business over the years. The debt portfolio also increased in tandem with the increase in sales. However, management made substantial efforts in pursuing the outstanding debts. In addition, the existing procedures for issuance of debt have been enhanced to ensure most clients pay before the event is held (for private clients), while the government institutions, an LSO or Commitment Letter ought to be provided. In future, government clients will also be required to pay a 50% deposit beforehand.

The Principal Secretary, National Treasury has written to all ministries to settle their debts.

### **Committee Observation**

**The Committee observed that the debts were still outstanding.**

### **Committee Recommendation**

**The Committee recommended that KICC management aggressively pursues payments/recovery of the debts.**

### **62.5 PRIOR YEAR ADJUSTMENT: FYS 2009/2010 TO 2011/2012 ACCOUNTS**

The Statement of Changes in Equity for the year ended 30 June 2011 disclosed a prior a prior year adjustment of Kshs 9,150,346 reflected under shareholders loans and grants however, no note was provided to explain the nature and purpose of the adjustment. A review of the matter during the audit of the year under review revealed the same position of no note. In the circumstances, the adjustment had not been effected and

disclosed in accordance with the requirements of International Accounting Standard No. 8.

### **Management Response**

The Ag. Managing Director presented to the Committee that the amount of Kshs. 9,150,346 appearing as prior year's adjustments has been adjusted in the Statements of Changes in Equity. The expenses were incurred before KICC became a corporation and had wrongly been expensed instead of reducing the Shareholders Equity- Government at KICC. Some of the organizations are foreign-owned and enjoys tax rebates.

The prior year's adjustments relates to VAT levied to clients who were exempted from tax.

### **Committee Observation**

**The Committee observed that the amount of Kshs. 9,150,346 appearing as prior years adjustments has been adjusted in the Statements of Changes in Equity.**

### **Committee Recommendation**

**The Committee commended the Corporation for settling the Statements of Changes in Equity.**

## **62.6 CORPORATION TAX: FY 2010/2011 ACCOUNTS**

The Corporation Tax provided for in the Financial Statements for the Year 2009/2010 of Kshs 16,787,946 has neither been remitted to KRA nor included in the payables balance as at 30<sup>th</sup> June 2011. The Management explained that the tax profits for 2009/2010(Kshs 16,787,946); 2008/2009 (Kshs 1,963,786) and 2007/2008 (Kshs 596,575) had been used to offset the tax loss of Kshs 41,864,011 of 2006/2007. However, the annual tax returns for these years were not availed for audit review.

### **Management Response**

The Ag. Managing Director informed the Committee that the annual returns have since been filed.

### **Committee Observation**

**The Committee observed that the annual returns should have been availed for audit review in accordance with Section 37(b) of the Public Audit Act, 2003.**

### **Committee Recommendation**

**The Committee recommends that the primary documents are made available for audit verification as per Section 37(b) of the Public Audit Act, 2003.**

## **62.7 LAND: FYs 2011/2012 AND 2012/2013 ACCOUNTS**

The value of land of Kshs. 1 billion, excludes land commonly referred to as COMESA parking and the courtyard on which the former president's monument stands. Further, the land on which Garden Square Restaurant stands is under dispute between the Corporation and City Council of Nairobi and the case filed by the restaurant has not been determined. The Management indicated that as at 30 June 2013, the allocation process of the said land had not been finalized.,

### **Management Response**

The Committee heard that the National Rainbow Coalition (NARC) Government repossessed the building in 2003. Consequently, the alleged owner, Kenya African National Union (KANU), sued the Government challenging the repossession. The Court ruled in favor of the Government and the property thus reverted to government. The Management has secured the Land Title on which the premises (the Building and two fountains) stand. The Corporation is negotiating through the parent ministry, with the Ministry of Lands to ensure that the rest of the unallocated land is transferred to KICC. This land includes the presidential monument, COMESA parking and global forests (12 acres). KICC is not able to develop the land even though they have a presidential directive to develop it. As a government requirement and also for insurance purposes, a valuation was commissioned to ascertain the value of the property that is at Kshs 1 Billion.

### **Committee Observations**

**The Committee observed that:-**

- (i) The matter of ownership of the land had been outstanding for a long time.**
- (ii) The valuation report did not give a breakdown of the components that make up the value of the buildings. Management could not therefore ascertain the net book value of the old lifts that were finally disposed. Consequently, the profit or loss on disposal could not be established.**

### **Committee Recommendation**

**The Committee recommends that KICC liaises with the National Lands Commission with the aim of fast tracking the process of acquiring title documents and in the meantime they can get an allotment letter on the land.**

## **62.8 CASH AND CASH EQUIVALENTS: FY 2011/2012 ACCOUNTS**

The Certificate of Balance as at 30 June 2012, for Co-operative Bank fixed deposit receipt of Kshs. 28,663,685 was not presented for audit review. Management of KICC indicated that the bank information technology system could not generate the certificate since the fixed deposit receipt was to mature at a date beyond the 30<sup>th</sup> June

2012. Consequently, it has not been possible to confirm that the cash equivalents balance of Kshs. 330,364,154 as at 30 June 2012 is fairly stated.

### **Management Response**

The Ag. Managing Director, presented to the Committee that the bank IT system could not generate the certificate since the Fixed Deposit Receipt (FDR) was set to mature at a date beyond 30<sup>th</sup> June, 2012. The KICC management has since realigned all the maturity dates of their FDRs to coincide with their quarterly and yearly closure dates of their accounts.

### **Committee Observation**

**The Committee observed that during the year under review, the maturity date for the fixed deposit receipt was set beyond 30<sup>th</sup> June, 2012. The KICC management has since realigned all the maturity dates of their FDRs to coincide with their quarterly and yearly closure dates of their accounts.**

### **Committee Observation**

**The Committee recommends that the maturity date for all FDRs should be set to coincide with quarterly and yearly closure date of the Corporation's accounts.**

## **62.9 EMPHASIS OF MATTER FOR THE FY 2012/2013 ACCOUNTS**

The Auditor General drew the Committee's attention to the fact KICC had been operating without a Board for over one year after revocation of the term of the previous Board by the then Minister for Tourism through Gazette Notice No. 10232 of July 2012 and subsequently appointed other Board members. However, the newly appointed members did not take up their duties due to a court case filed by the degazetted Board members of various state corporations under the Ministry of Tourism, whose three years' terms had not expired.

As a result KICC is operating without a full Board contravening Section 6(1) of the State Corporations Act, Cap 446 and Tourism Act, No 28 of 2011.

### **Management Response**

The Ag. Managing Director, KICC informed the Committee that a Miscellaneous Amendments Bill had been passed which required vetting of board members by Parliament in contravention of the Constitution. The Cabinet Secretary in the Parent Ministry has been advising them. The Management has not required Board approval for any matter so far.

### **Committee Observation**

**The Committee observed that KICC was in contravened Section 6(1) of the State Corporations and the Tourism Act No. 28 by operating without a Board.**

### **Committee Recommendation**

The Committee recommended that the appointing Authority fast-tracks the process before matters requiring Board approval start arising and negatively affect its normal operations.

### **63.0 THE PUBLIC COMPLAINTS COMMITTEE ON ENVIRONMENT: FY 2005/2006 TO 2012/2013**

#### **REPORTS OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF THE PUBLIC COMPLAINTS COMMITTEE ON ENVIRONMENT (PCCE) FOR FINANCIAL YEARS 2005/2006 TO 2012/2013**

The Member, Public Complaints Committee on Environment (PCCE) Ms. Pauline M. Mureithi accompanied by Mr. Fredrick Olendo, Secretary, Public Complaints Committee on Environment and Mr. Paulstone Shamwama, Accountant, Public Complaints Committee appeared before the Committee to evidence on accounts of Public Complaints Committee on Environment for FY 2005/2006- 2012/2013.

#### **63.1 AUDITED ACCOUNTS: FYS 2005/2006 TO 2011/2012 ACCOUNTS**

The Committee heard the Public Complaints Committee on Environment's (PCC) financial statements from 2005/2006 to 2011/ 2012 were audited under the Ministry of Environment and Mineral Resources. PCC however did not table the audited accounts of FY 2006/2007 and 2009/2010.

#### **63.2 UNQUALIFIED ACCOUNTS:FY 2012/2013 ACCOUNTS**

The Committee was informed that Public Complaints Committee on Environment had unqualified accounts for the FY 2012/2013.

### **Committee Observation**

The Committee observed that the Auditor General gave the Public Complaints Committee on Environment a clean report for the FY 2012/2013.

### **Committee Recommendation**

The Committee commended the Corporation for the clean reports for the FY 2012/2013.

#### **64.0 THE NATIONAL CONSTRUCTION AUTHORITY: FY 2012/2013**

##### **REPORTS OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENT OF NATIONAL CONSTRUCTION AUTHORITY (NCA) FOR THE FINANCIAL YEAR 2012/2013**

The Chief Executive Officer, National Construction Authority Arch. Daniel Manduku accompanied by Ms Leah Marugari, Alternate to P.S, Ministry of Lands, Housing & Urban Development; Mr. Samson Lukoba, Senior Legal Officer; Ms. Christine Kirimi, Finance and Accounts Manager; Mr. Maurice Akech, General Manager, Research, Training and Capacity Building and Mr. Raymond Karani, Manager, Registration and Compliance appeared before the Committee to give evidence on accounts of National Construction Authority for FY 2012/2013.

#### **64.1 UNQUALIFIED ACCOUNTS: FY 2012/2013 ACCOUNTS**

The Committee was informed that the National Construction Authority had unqualified accounts for the FY 2012/2013.

##### **Committee Observation**

The Committee observed that the Auditor General had given a clean report to National Construction Authority for the FY 2012/2013

##### **Committee Recommendation**

The Committee commended the Corporation for the clean report for the FY 2012/2013.

#### **65.0 THE NATIONAL COHESION AND INTEGRATION COMMISSION: FY 2010/2011 TO 2012/2013**

##### **REPORTS OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF THE NATIONAL COHESION AND INTEGRATION COMMISSION (NCIC) FOR THE FINANCIAL YEARS 2010/2011 TO 2012/2013**

The Commission Secretary, National Cohesion and Integration Commission (NCIC) Mr. Hassan S. Mohamed accompanied by Mr. Benjamin Kituku, Director Finance and Mr. Catherine M. Njuki, Senior Accountant appeared before the Committee to give evidence on accounts and audit queries of National Cohesion and Integration Authority for FY 2010/2011 to 2012/2013.

#### **65.1 TRADE AND OTHER RECEIVABLES: FY 2010/2011 ACCOUNTS**

The Committee heard that the Trade and other receivables balance includes imprest totaling Kshs. 1,422,575 owing from the Chairman and employees of the Commission which ought to have been accounted for or otherwise surrendered on or before 30<sup>th</sup> June, 2011. No explanation has been provided for failure to recover the amount.

### **Management Response**

The Commission Secretary informed the Committee that out of the outstanding imprest of Kshs. 1,422,575, Kshs. 1,359, 225 had been surrendered and accounted for leaving a balance of Kshs. 78,250.

The Commission wrote to the imprest holder Dr. Mzalendo Kibunjia to repay the amount. The amount has accumulated from the incidental amounts given out for trips which need to be surrendered if all is not used.

The Commission had written to the Director General to recover the amount owed. The Commission would take the matter to court if all other avenues to recover fail.

### **Committee Observation**

**The Committee observed that the Corporation has not aggressively pursued the outstanding imprest of Kshs. 1,422,575 which had been irregularly issued to the former Chairman of the Commission, Mr. Mzalendo Kibunjia.**

**The Committee further observed that the Commission was too lenient on the former Chairperson Mr. Mzalendo Kibunjia on the payment of the remainder of the outstanding imprest. From the correspondence adduced before the Committee, the Commission had given a firm date by which the amount is to be paid yet full recovery was not made.**

### **Committee Recommendation**

**The Committee recommends that the Commission uses all available avenues to collect the outstanding imprest in the shortest time possible.**

**The Committee further recommends that the Commission Secretary should be held responsible for failure to recover the outstanding imprest.**

### **65.2 TRADE AND OTHER RECEIVABLES: FY 2011/2012 ACCOUNTS**

The Committee heard that the trade and receivable balance includes Kshs. 14,008,156 being outstanding imprest whose supporting documentation was not availed for audit review as at 30<sup>th</sup> June 2012.

### **Management Response**

The Commission Secretary, National Cohesion and Integration Commission presented that of the Kshs 14,008,156 outstanding; Kshs 11,204,056 has been recovered leaving a balance of Kshs 2,804,100. The Commission has initiated a recovery process for the imprest totaling Kshs. 933,350. The balance of Kshs. 1,807,750 cannot be recovered. This is because the accountant who was in-charge was taken to court on charges of fraud and charged but unfortunately he passed away before the case could be determined. The Commission is awaiting the official termination of the case to proceed with writing off this amount from its books of accounts.

The Commission Secretary further informed the Committee that most of the money still outstanding was at the county level.

The Commission Secretary also informed the Committee that the Commission is currently in the process of recruiting an internal auditor. The Commission is losing staff to other better paying commissions and authorities due to the low remuneration. The Commission currently has a constituted an Audit Committee.

#### **Committee Observation**

**The Committee observed that the Commission made efforts to recover outstanding imprest and as a result recovered Kshs. 11,204, 056.**

**The Committee further observed that Kshs. 1,807,750 is unrecoverable because the accountant who was in-charge was taken to court on charges of fraud and charged but unfortunately he passed away before the case could be determined.**

#### **Committee Recommendation**

**The Committee recommends that the Commission should continue with efforts to recovery the outstanding Kshs. 933,350 and in future ensure that all imprest are surrendered as per National Treasury guidelines.**

#### **65.3 UNQUALIFIED ACCOUNTS: FY 2012/2013 ACCOUNTS**

The Committee was informed that National Cohesion and Integration Commission had unqualified accounts for the FY 2012/2013.

#### **Committee Observation**

**The Committee observed that the Auditor General issued a clean report to National Cohesion and Integration Commission for the FY 2012/2013.**

#### **Committee Recommendation**

**The Committee commended the Corporation for the clean report for the FY 2012/2013.**

## **66.0 THE ENERGY REGULATORY COMMISSION: FY 2006/2007 TO 2012/2013**

### **REPORTS OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF THE ENERGY REGULATORY COMMISSION (ERC) FOR THE FINANCIAL YEARS 2006/2007 TO 2012/2013**

The Director General, Energy Regulatory Commission (ERC), Mr. James Njogu Ng'ang'a accompanied by Mr. Robert Mahenia Senior Manager Legal; Eng. Linus Gitonga, Director Petroleum; Mr. James M Kilonzo, Senior Manager Finance; Dr. Fredrick Nyang, Director, Economic Regulations and Mr. Robert Pavel Oimeke appeared before the Committee to give evidence on accounts of Energy Regulatory Commission for FY 2006/2007 to 2012/2013.

#### **66.1 UNQUALIFIED ACCOUNTS: FYS 2006/2007 TO 2012/2013 ACCOUNTS**

The Committee was informed that Energy Regulatory Commission had unqualified accounts for the FYS 2006/2007; 2007/2008; 2008/2009; 2010/2011; 2011/2012 and 2012/2013.

#### **Committee Observation**

The Committee observed that the Auditor General issued clean reports for the FY's 2006/2007 to 2012/2013.

#### **Committee Recommendation**

The Committee commended the Corporation for the unqualified audit reports for the FYS 2006/2007 to 2012/2013.

## **67.0 EMBU UNIVERSITY COLLEGE: FY 2012/2013**

### **REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENT OF EMBU UNIVERSITY COLLEGE FOR THE FINANCIAL YEAR 2012/2013**

The Principal Embu University College, Professor Daniel N. Njiru, accompanied by Professor Eucharia Kenya, Deputy Principal, Mr. Joseph Ogeto, Accountant, Mr. Lawrence Kamonjo, Head of Finance, Mr. Nyang'ate Areba, Directorate of Higher Education and Mr. Evans Atambi, Directorate of Higher Education appeared before the Committee to respond to audit queries on accounts of Embu University College for FY 2012/2013.

#### **67.1 PROPERTY, PLANT AND EQUIPMENT :FY 2012/2013 ACCOUNTS:**

The statement of financial position as at 30 June 2013 reflects the Property, Plant and Equipment balance of Kshs. 272,473,355 excluded Kshs 2,371,500, being the value of 4,507 library books taken over from EAST College.

### **Management Response**

The Principal, Embu University College presented to the Committee that the College had identified the omission. However, the same was inadvertently left out during the adjustment of the final report. The correction has been done in 2013/2014 financial year as a prior year adjustment.

### **Committee Observation**

**The Committee observed that Kshs. 2, 3731,500, being the value of 4,507 library books taken over from EAST College, was inadvertently left out during the adjustment of the final financial report. The correction has been done in 2013/2014 financial year as a prior year adjustment.**

### **Committee Recommendation**

**The Committee recommends that the Corporation should avail all relevant information to the Auditor during auditing of the financial statements as required by Section 37(b) of the Public Audit Act 2003. The Committee however notes that this has since been done.**

### **67. 2 STATEMENT OF CASH FLOWS: FY 2012/2013 ACCOUNTS**

The Committee heard that the statement of cash flows for the year under review reflects an adjustment for current assets of Kshs 2,080,590. However, the figure has not been properly explained as to what it represents and has also not been supported.

### **Management Response**

The Principal, Embu University College presented to the Committee that the assets were assorted assets that were inherited from East College and consumed during the year. The items were wrongly treated in the statement of comprehensive income and a correction has been effected in 2013/2014 financial year.

### **Committee Observation**

**The Committee observed that the document annex was not an accounting document because it did not show each item with its cost adding up the total figure.**

**The Committee also observed that the queries were due to accounting errors and questioned if these were just teething issues or human resource gaps in the relevant accounting department since Embu University College was a new entity.**

### **Committee Recommendation**

**The Committee recommended that the College liaises with the Auditor General's office to ensure such errors do not recur.**

## **68.0 THE KENYA INSTITUTE OF CURRICULUM DEVELOPMENT: FY 2001/2002 TO 2012/2013**

### **REPORTS AND AUDIT QUERIES OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF THE KENYA INSTITUTE OF CURRICULUM DEVELOPMENT (KICD) FOR THE FINANCIAL YEARS 2001/2002 TO 2012/2013**

**The Director/Chief Executive Officer, Kenya Institute of Curriculum Development (KICD) Mr. Julius Jwan accompanied by Ms. Rebecca Kiplagat, Deputy Chief Accountant, Mr. Jared Obiero, Senior Assistant Director, Mr. S. M Kathuo, Chief Finance Officer, Mr. Charles Mugambi, Senior Deputy Director, Corporate Services and Ms. Mercy Karogo, Senior Deputy Director, Curriculum Research Services appeared before the Committee to respond to audit queries on accounts of Kenya Institute of Curriculum Development for FYS 2001/2002 to 2012/2013.**

#### **68.1 TRADE AND OTHER RECEIVABLES: FY 2010/2011 ACCOUNTS:**

The Committee heard that the trade and other receivable balance included the following:-

- (i) Kshs 28,400,000 in respect of printing of orange books supplied to the Ministry of Education in March 2009 and January 2010 and Kshs 33,628,728 relating to trade receivables, some of which have been outstanding for over 6 years.
- (ii) Kshs 8,062,147 in respect to staff receivables comprising of imprest of Kshs 3,596,147; car loans Kshs 227,906 and other advances Kshs 704,159 relating to staff who have since left the service of the institute.
- (iii) However, the provision for bad and doubtful debts of Kshs 16,030,527 appears inadequate and the management did not set a specific and clear policy which takes into account the age and value of the bad debts.

#### **Management Response**

The Director/Chief Executive Officer, Kenya Institute of Curriculum Development informed the Committee that:-

##### **(i) Ministry of Education Debt: Kshs. 28,400,000**

The Institute has been following up the amount of Kshs.28,400,000 owed by the Ministry of Education through various reminders. To date, the Ministry has so far paid Kshs.25,810,000 leaving a balance of Kshs.2, 590,000. The Institute has continued to pursue the balance through reminder letters.

### **(ii.) Trade and Other Receivables: Kshs. 33,628,728**

The outstanding amount of Kshs. 33,628,728 relating to the Trade and Other Receivables for the Institute some of which were outstanding for more than six years, were KICD Resource Centre debts owed by mainly different Ministries and public entities. The Centre offers conference and accommodation facilities. During that time, most of the bookings were done verbally and there were minimal controls. The Institute has so far collected Kshs. 25,254,350 of the outstanding receivables. The Institute has also continued to follow up the outstanding debts of Kshs. 8,374,377.

### **(iii.) Staff Debts (Imprest, Car Loans and Staff Allowances) Kshs. 4,528,978**

The outstanding amount then of Kshs. 3, 596, 553, Kshs. 227,906 and Kshs. 704,159 for imprest, car loans and staff advances respectively are debts incurred when the Institute was still a department of the Ministry of Education. Before 2008, the Institute's senior staff who were involved in the activities that required imprest were on secondment from the Teachers Service Commission and Ministry of Education while the rest were employees of the then KICD Council. In addition, it was during the orientation and piloting of 8-4-4 system i.e. between 1983 and 1986 when officers from Ministry of Education and other Government department were issued with imprest. These officers carried out the activities but did not surrender the imprest and the records of the same could not be traced. The same was applicable to the Institute's staff, some of who were dismissed/absconded and have never cleared with the Institute to date. On the car loan and advances the Institute's staff accessed these facilities with no collateral provided. The Management undertook various and vigorous measures to recover the same but in vain.

With the available records, the Management managed to recover an amount of Kshs. 36,648 and Kshs, 159,000 for imprest and car loans respectively and reverted back to the Council requesting for approval to write off these debts which had proved irrecoverable. The balance of Kshs. 3,559,905.20 relating to imprest and Kshs. 704,159.90 outstanding staff advances plus Kshs. 68,905 relating to car loans were written off based on approval by the Council in the 44<sup>th</sup> Council meeting of September, 2012.

The Institute currently ensures that all imprest is accounted for within the stipulated period. Management has discontinued car loan facility and granting of staff advances.

As at March 2015, KICD management reported that it had recovered Kshs. 96,825

### **Provision for bad and doubtful debts**

The KICD management admitted that it is true that the provision of Kshs. 16,930,269 was not adequate to mitigate against the possible non-recoverability of the debt then. To address the same, the Institute prepared its own policies i.e. Finance and Accounting Policy Manual and Credit Policy Manual, which were approved by the Council in September 2012. The Finance Policy has clearly provided for determination of both

specific and general provisions for bad and doubtful debts. Since then all financial statements have incorporated the provisions as per the policy and since then no issues have been raised relating to the adequacy of provision.

#### **Committee Observation**

**The Committee observed that the amounts outstanding in relation to staff could still be recovered by tracing the officers via their personnel numbers.**

**The Committee further observed that the Corporation has since put in policies to address the issue of bad and doubtful debts.**

#### **Committee Recommendations**

**The Committee recommends that the Institute continues to recover outstanding amounts from the officers using their personnel numbers.**

#### **68.2 UNQUALIFIED ACCOUNTS: FYS 2011/2012 TO 2012/2013 ACCOUNTS:**

The Committee heard that the Institute had received unqualified accounts for the financial years 2011/2012 and 2012/2013.

#### **Committee Observation**

**The Committee observed that the Institute received clean reports by the Auditor General for the FYS 2011 to 2013**

#### **Committee Recommendation**

**The Committee commended the Institute for the clean audit reports.**

### **69.0 THE INFORMATION, COMMUNICATION AND TECHNOLOGY AUTHORITY: FY 2007/2008 TO 2012/2013**

#### **REPORTS AND ACCOUNTS OF THE INFORMATION, COMMUNICATION AND TECHNOLOGY AUTHORITY ( ICTA ) FOR THE FINANCIAL YEARS 2007/2008 TO 2012/2013**

**Information Communication and Technology Authority (ICTA) Acting Chief Executive Officer, Mr. Victor Kyalo accompanied by Accountant, Mr. Daniel Ouma appeared before the Committee to adduce evidence on accounts of the Corporation for the Financial Years 2007/2008 to 2012/2013.**

#### **69.1 UNQUALIFIED ACCOUNTS: FYS 2007/2008 & 2009/2010 TO 2012/2013**

The Committee heard that the Authority obtained unqualified reports for Financial Years 2009/2010 to 2012/2013.

### **Committee Observation**

The Committee observed that the Auditor General issued clean reports to Information, Communication and Technology Authority for the FY 2009/2010-2012/2013.

### **Committee Recommendation**

The Committee commended the Authority for having unqualified accounts.

### **69.2 TENDER PROCUREMENT AND EVALUATION COMMITTEE ALLOWANCES: FY 2008/2009 ACCOUNTS**

Included under hospitality supplies and services expenditure of Kshs. 1,133,000 is an amount of Kshs. 936,000 comprising allowances of Kshs 430,000, Kshs 67,000 and Kshs 439,000 paid to Tender, Procurement and Evaluation Committees respectively. Although the payments were approved by the Board of Directors, the approval was in contravention of the State Corporations Advisory Committee Circular Ref OP/SCAC.9/21/2AVol.I(77) of May 2007 which states inter alia that *members of the Tender Committees in State Corporations ought not to receive payment for the service they render to their respective tender committees.*

Further the amount of Kshs. 936,000 paid was not subject to tax in accordance to Section 3(2) of the Income Tax Act Cap 470, which requires that gains or profits from employment besides employment services rendered be taxed. No reasons were provided for failure to comply with the Circular or the Act.

### **Management Response**

The Chief Executive Officer informed the Committee that all payments irregularly made were recovered from the Committee members in the FY 2010/2011.

### **Committee Observation:**

**The Committee observed that Kshs 430,000, Kshs 67,000 and Kshs 439,000 was irregularly paid to Tender, Procurement and Evaluation Committees respectively in contravention of the State Corporations Advisory Committee Circular Ref OP/SCAC.9/21/2AVol.I (77) of May 2007 which states inter alia that *members of the Tender Committees in State Corporations ought not to receive payment for the service they render to their respective tender committees.***

The Committee further observed that the irregular payment made to the members of the Tender, Procurement and Evaluation Committees has since been recovered from the committee members and the matter therefore resolved.

### **Committee Recommendation:**

**The Committee recommends that in future, the Corporation should adhere to the State Corporations Act and all relevant circulars issued by the Inspectorate of State Corporations.**

## **70.0 THE KENYA NUCLEAR ELECTRICITY BOARD: FY 2012/2013**

### **REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENT OF THE KENYA NUCLEAR ELECTRICITY BOARD (KNEB) FOR THE FINANCIAL YEAR 2012/2013**

The Executive Chairman, Kenya Nuclear Electricity Board Hon. Ochilo Ayacko, EGH, accompanied by Mr. John Omenge, Chief Geologist Ministry of Energy and Petroleum, Mr. Philip Mutai, Director Legal and Regulatory, Mrs. Sophia Githuku, Chief Manager Human Resource and Administration Affairs appeared before the Committee on accounts of Kenya Nuclear Electricity Board.

#### **70.1 UNQUALIFIED ACCOUNTS: FY 2012/2013 ACCOUNTS**

The Auditor General issued a clean report on the Accounts of Kenya Nuclear Electricity Board for the year ended 30<sup>th</sup> June 2013.

##### **Committee Observation**

The Committee observed that the Auditor General issued a clean report on the accounts of Kenya Nuclear Electricity for the FY 2012/2013.

##### **Committee Recommendation**

The Committee commended the Kenya Nuclear Electricity Board for having unqualified accounts.

## **71.0 THE NATIONAL ENVIRONMENT TRUST FUND: FY 2011/2012 TO 2013/2014**

### **REPORTS OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF THE NATIONAL ENVIRONMENT TRUST FUND (NETFUND) FOR THE FINANCIAL YEAR 2011/2012 TO 2013/2014**

The Chief Executive Officer, National Environmental Trust Fund (NETFUND), Ms. Catherine Ndegwa accompanied by Mr. Eric Kangi, Manager Internal Audit and Mr. Samson Tonoik, Ag. Director, Finance appeared before the Committee and gave evidence on the accounts of the Fund for the FY 2011/12 to 2013/2014.

#### **71.1 NEGATIVE RESERVE AND WORKING CAPITAL: FY 2012/2013 ACCOUNTS**

The Fund incurred a deficit of Kshs 8,610,845 (2011/12- Kshs. 22,655,746 which brought the cumulative revenue reserve to negative Kshs. 7,944,872. The statement of financial position also reflects a negative working capital of Kshs. 10, 300, 18. The financial statements have therefore been prepared on the going concern basis, which assumes continued financial support from the Government and Donors.

### **Management Response**

The Management informed the Committee that the negative reserve and negative working capital was occasioned by a decline in the government funding from Kshs. 68,500,000 in FY 2011/12 to Kshs. 49,730,000 in FY 2012/13 with a small drop in corresponding administrative expenses. In addition, the Fund recruited a number of staff to fill vacant positions in the middle of the preceding year 2011-12 hence increasing personnel emolument costs by Kshs. 6,369,841 in FY 2013/13.

The Committee further heard that increased support from the Government and institution of the relevant resource mobilization measures and robust fund raising strategy have yielded in improved funding in 2013/13 to Kshs. 122,000,000 and consequently increased the fund surplus to Kshs. 26,000,000 this has also seen the negative working capital decline to a positive of Kshs, 16,730,671 in FY 2013/14.

### **Committee Observations**

**The Committee observed that the Fund has since received government support and put in place relevant mobilization measures and robust fundraising strategy that has resulted in surplus funds for the corporation.**

**The Committee further observed that NETFUND is little known to the people of Kenya..**

### **Committee Recommendation**

**The Committee commended the Corporation for putting in place a resource mobilizing strategy to increase its revenue to support its operations.**

**The Committee recommends that NETFUND creates awareness of its mandate and mission through educating the general public.**

## **72.0 TAITA TAVETA UNIVERSITY COLLEGE: FY 2012/2013**

### **REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENT OF TAITA TAVETA UNIVERSITY COLLEGE FOR THE FINANCIAL YEAR 2012/13**

**The Principal, Taita Taveta University College, Prof. Hamada Boga, Deputy Finance Officer Ms. Rosalyn Wachira and Finance Officer Mr. Peter Kismet appeared before the Committee and gave evidence on the accounts of the Authority for the FY 2012/13.**

### **72.1 UNQUALIFIED ACCOUNTS: FINANCIAL POSITION FOR THE FY 2012/2013 ACCOUNTS:**

The Auditor General issued a clean report on the Accounts of Taita Taveta University College for the year ended 30<sup>th</sup> June 2013.

**Committee Observation**

The Committee observed that the Auditor General issued a clean report on the accounts of Taita Taveta University College for the FY 2012/2013.

**Committee Recommendation**

The Committee commended the Management for the unqualified report for 2012/2013 financial year.