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17/10/24

THE NATIONAL ASSEMBLY

.....  
THIRTEENTH PARLIAMENT – THIRD SESSION – 2024

.....  
PUBLIC INVESTMENTS COMMITTEE ON SOCIAL SERVICES,  
ADMINISTRATION AND AGRICULTURE ON THE  
CONSIDERATION OF THE AUDITOR GENERAL'S REPORTS ON  
THE FINANCIAL STATEMENTS OF SELECTED STATE  
CORPORATIONS

DIRECTORATE OF AUDIT, APPROPRIATIONS & GENERAL-PURPOSE  
COMMITTEES

CLERK'S CHAMBERS

PARLIAMENT BUILDINGS

NAIROBI

OCTOBER, 2024



## Table of Contents

<b><u>Table of Contents</u></b> .....	i
<b><u>List Of Abbreviations/Acronyms</u></b> .....	i
<b><u>CHAIRPERSON’S FOREWORD</u></b> .....	iv
<b><u>EXECUTIVE SUMMARY</u></b> .....	ivi
<b><u>CHAPTER ONE</u></b> .....	1
<b><u>1.0 PREFACE</u></b> .....	1
<b><u>1.1 Establishment and Mandate of the Committee</u></b> .....	1
<b><u>1.2 Committee Membership</u></b> .....	2
<b><u>1.3 Committee Secretariat</u></b> .....	3
<b><u>1.4 Committee Proceedings</u></b> .....	4
<b><u>1.5 General Committee Observations and Recommendations</u></b> .....	4
<b><u>2.0 EXAMINATION OF THE REPORT OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF THE NATIONAL SOCIAL SECURITY FUND (NSSF) FOR THE FINANCIAL YEAR 2019/2020</u></b> .....	7
<b><u>3.0 EXAMINATION OF THE REPORT OF THE AUDITOR-GENERAL ON THE AUDITED ACCOUNTS OF THE COMMUNICATION AUTHORITY OF KENYA FOR THE FINANCIAL YEARS 2017/018 AND 2018/2019</u></b> .....	41
<b><u>4.0 EXAMINATION OF THE REPORT OF THE AUDITOR-GENERAL ON THE ACCOUNTS OF THE CHILD WELFARE SOCIETY OF KENYA FOR THE FINANCIAL YEAR 2014/2015</u></b> .....	95
<b><u>5.0 EXAMINATION OF THE REPORT OF THE AUDITOR-GENERAL ON THE ACCOUNTS OF SACCO SOCIETIES REGULATORY AUTHORITY FOR THE FINANCIAL YEARS 2017/2018 – 2019/2020</u></b> .....	101

<b>6.0 EXAMINATION OF THE REPORT OF THE AUDITOR-GENERAL ON THE ACCOUNTS OF KENYA INSTITUTE FOR PUBLIC POLICY RESEARCH AND ANALYSIS FOR THE FINANCIAL YEARS 2014/2015 – 2017/2018.....</b>	<b>108</b>
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### **List of Abbreviations/Acronyms**

PIC-SSAA - Public Investments Committee on Social Services Administration and Agriculture

Ag. - Acting

AG - Attorney General

CEO - Chief Executive Officer

CS - Cabinet Secretary

DCI - Directorate of Criminal Investigations

DG - Director General

EACC - Ethics and Anti-Corruption Commission

FY - Financial Year

GoK - Government of Kenya

IAS - International Accounting Standards

ICT - Information, Communications & Technology

NSSF– National Social Security Fund

CAK – Communication Authority of Kenya

SASRA – Sacco Societies Regulatory Authority

KIPPRA - Kenya Institute for Public Policy Research and Analysis

CWSK - Child Welfare Society of Kenya



## CHAIRPERSON'S FOREWORD

The Public Investments Committee on Social Services, Administration and Agriculture is one of the six Watchdog Committees in the thirteenth Parliament that examines reports of the Auditor-General laid before the National Assembly to ensure efficiency and effectiveness in the use of public resources. The Committee is established pursuant to National Assembly Standing Order 206 B.

The Public Investment on Social Services, Administration and Agriculture, with regard to the agriculture, public administration, health, and social protection sectors; examines the reports and accounts of public investments, examine the reports of the Auditor-General on public investments; and in the context of the autonomy and efficiency of the public investments, examine whether the affairs of the public investments, are being managed in accordance with sound financial or business principles and prudent Commercial practices. This ensures implementation of *Article 229(8)* of the Constitution on reports laid before the House by the Auditor- General.

In examining the accounts of the Auditor General, the Committee invited accounting officers in each of the State Corporations under review adduce evidence before it.

There are more than four hundred (400) State Corporations undertaking different mandates in their respective sectors. Due to this large number, the previous Public Investments Committees had been unable to conclude examination of the accounts of the Auditor General of these State Corporations.

Considering the workload and the backlog, the National Assembly resolved to amend the standing orders by splitting the Public Investment Committee into three Committees, Public Investments Committee on Social Services, Administration and Agriculture (PIC-SSAA) being one of them.

The Committee (PIC-SSAA) with a view to clear the backlog in examining the reports of the Auditor General, embarked on the process of inviting the accounting officers for the State Corporations under its mandate to adduce evidence before it.

This report contains observations, findings and recommendations arising from examination of reports of the Auditor-General for five (5) state corporations for different financial years. The

report is structured as follows:

- i) general observations to each of the cross-cutting queries;
- ii) recommendations to each of the cross-cutting queries;
- iii) audit queries identified by the Auditor General in his audit reports of each state corporation.
- iv) management responses to each of the queries;


- v) Committee observations/ findings on each query; and
- vi) Committee recommendations to each query raised

In this report, the Committee makes policy recommendations and at the same time recommends specific actions against specific officers. It further recommends further investigations of certain matters by competent investigative agencies such as the EACC and the DCI.

The Committee appreciates the Offices of the Speaker and the Clerk of the National Assembly for the support accorded to it to fulfil its Constitutional mandate. The Committee further extends its appreciation to the Office of the Auditor- General for the services they offered to the Committee during the entire period.

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

On behalf of the Public Investments Committee on Social Services, Administration and Agriculture and pursuant to National Assembly Standing Order 199(6), it is my pleasant duty and honour to present the 3<sup>rd</sup> Report of the Public Investments Committee on Social Services Administration and Agriculture on the examination of the Reports of the Auditor General on the Financial Statements of five (5) State Corporations.



HON. EMMANUEL WANGWE CBS, MP

**CHAIRPERSON – PUBLIC INVESTMENTS COMMITTEE ON SOCIAL SERVICES,  
ADMINISTRATION AND AGRICULTURE**

## **EXECUTIVE SUMMARY**

The 4<sup>th</sup> Report of the Public Investments Committee on Social Services, Administration and Agriculture contains the Committee examination of five (5) State Corporations.

In its examination and scrutiny of the audited financial statements of the various State Corporations, the Committee primary approach was to elicit background information as to why particular course of financial and/or management actions were or were not taken. This was done with the relevant laws in mind including, the Constitution, the Public Finance Management Act, 2012 and the attendant Regulations, the Public Audit Act, 2015, the State Corporations Act, and the Public Procurement & Asset Disposal Act, 2015.

The preface of the report contains preliminaries on the establishment of the Committee, its Membership and Secretariat, mandate and the guiding principles governing the Committee while undertaking its mandate.

Part two of the report contains the Committee general observations / findings on cross cutting issues, and its recommendations.

Part three of the report contains reports of the specific State Corporations, Committee Observations, findings and finally, Committee recommendations on the State Corporations

## **CHAPTER ONE**

### **1.0 PREFACE**

#### **1.1 Establishment and Mandate of the Committee**

1. The Public Investments Committee is established under the National Assembly Standing Order (S.O.) 206B and is responsible for the examination of the working of public investments based on their audited reports and accounts. It is mandated to –
  - i) examine the reports and accounts of public investments;
  - ii) examine the reports, if any, of the Auditor General on public investments; and
  - iii) Examine, in the context of the autonomy and efficiency of public investments, whether the affairs of the public investments are being managed in accordance with sound financial or business principles and prudent commercial practices.
2. The Committee, in considering the audited accounts of State Corporations, was guided by the Constitution of Kenya and the following statutes and regulations in carrying out its mandate;
  - i) The Public Finance Management Act, 2012;
  - ii) The Public Audit Act, 2015;
  - iii) The State Corporations Act, 1986;
  - iv) The Public Procurement and Assets Disposal Act, 2015;
  - v) The National Assembly Standing Orders; and
  - vi) The National Assembly (Powers and Privileges) Act, 2017.

### Committee Membership

3. The Committee membership comprises -

S/No	Member's Name	Constituency	Party
1.	Hon. Emmanuel Wangwe, MP CBS– <b>Chairperson</b>	Navakholo	ODM
2.	Hon. Caleb Amisi Luyai, MP- <b>Vice Chairperson</b>	Saboti	ODM
3.	Hon. Ferdinand Kevin Wanyonyi, MP	Kwanza	FORD-K
4.	Hon. Martin Peters Owino, MP	Ndhiwa	ODM
5.	Hon. Mary Wamaua Njoroge, MP	Maragua	UDA
6.	Hon. Nixon Nicholas Ngikor Ngikolong, MP	Turkana East	Jubilee
7.	Hon. (Dr.) Peter Francis Masara, MP	Suna West	ODM
8.	Hon. Abdi Jehow Fatuma,MP	Wajir	ODM
9.	Hon. Bernard Kibor Kitur, MP	Nandi Hills	UDA
10.	Hon Elijah Njore Njoroge Kururia, MP	Gatundu North	Independent
11.	Hon. Geoffrey Wandeto Mwangi, MP	Tetu	UDA
12.	Hon. Bishop Emeritus (Dr.) Jackson Kipkemoi Kosgei, MP	Nominated	UDA
13.	Hon. Joshua Kivinda Kimilu, MP	Kaiti	WDM
14.	Hon. Michael Wambugu Wainaina, MP	Othaya	UDA
15.	Hon. Paul Nabuin Ekwom, MP	Turkana North	ODM



### 1.3 Committee Secretariat

4. The following members of the Secretariat facilitated the Committee:

Mr. Aden Abdullahi

#### **Principal Clerk Assistant I-Head of Secretariat**

Ms. Christine Mariita

**Clerk Assistant III**

Ms. Mercy Kinyua

**Legal Counsel II**

Mr. Enock Manwa

**Clerk Assistant III**

Mr. Thomas Ogwel

**Fiscal Analyst I**

Ms. Esther Kariuki

**Hansard Officer III**

Mr. Wesley Abugah

**Research Officer III**

Mr. Moses Esamai

**Audio Officer**

Ms. Maryan Gabow

**Communication Officer III**

Mr. Stanley Langat

**Senior Sergeant-At-Arms**

Mr Yakub Ahmed

**Media Relations Officer II**

#### **1.4 Committee Proceedings**

5. In its inquiry into whether the affairs of public investments are managed in accordance with sound business principles and prudent commercial practices, the Committee received both oral and written evidence from Chief Executive Officers of various State Corporations.
6. To produce this report, the Committee held seventeen (17) sittings in which it examined the evidence adduced by the accounting officers of the five (5) State Corporations.
7. The recommendations are found under various sections of the report on each of the State Corporations examined.
8. The recommendations on the issues raised by the Auditor General for the various State Corporations are found under appropriate sections of the report for each of the State Corporations covered.
9. These observations and recommendations, if considered and implemented, will enhance accountability, effectiveness, transparency, efficiency, prudent management, commercial viability and value for money in State Corporations and the public investments sector as a whole.

#### **2.0 General Committee Observations and Recommendations**

##### **2.1 Lack of Possession and ownership documents on land and buildings.**

10. The Committee observed and noted with concern that Child welfare Society of Kenya and the National Social Security Fund do not have Title documents for land. Further, although Kenya Institute for Public Policy, Research and Analysis has a title deed for its land, it faces limitations due to fencing done by the department of veterinary services thus obstructing access. Therefore due to lack access and hence inability by the institute to take full possession of the land, it has not been possible to undertake developments in the said land.
11. In addition, Child Welfare Society of Kenya had some of its land parcels illegally grabbed by private developers and others have cases of ownership disputes in court.

#### **Committee Recommendations**

12. The Committee recommended that –
  - i. Within three (3) upon adoption of this report, the Accounting Officers should liaise with the Cabinet Secretaries for the respective State Corporations, , Ministry of Land, Public Works Housing and Urban Development and the National Land Commission and fast-track the process of acquiring title deeds, resolve disputes between state corporations and ensure legal actions are taken against private individuals who have illegally acquired public land.

- ii. Within two (2) months upon adoption of this report, the Cabinet Secretary for Land, Housing and Urban Development and the Chairman, National Land Commission should put caveats on all the parcels of State Corporations land that are in private hands and report back to the National Assembly.
- iii. Within six (6) months upon adoption of this report, the Accounting Officers through the National Land Commission should prioritize and expedite resolving ownership issues surrounding parcels of land belonging to his/her State Corporations and report its status back to the National Assembly.
- iv. The National Assembly should enact a law prescribing that all public land ownership documents should centrally be held under the custody of the National Treasury for safekeeping.

#### **Delay in availing documents to the Auditor-General**

- 13. The Committee observed that some accounting officers did not avail complete and reconciled financial and accounting records/documentation in time for audit review and verification during the audit exercise leading to unnecessary queries. This is contrary to the provisions of Article 226 of the Constitution and Section 68(2) of the PFM Act 2012 which requires that the financial and accounting records are presented within three (3) months after the close of the financial year. Section 62 of the public Audit Act of 2015 obligates accounting officers to provide required documents for audit failure to which they be sanctioned.

#### **Committee Recommendations**

- 14. The Committee recommended that –

- i. Accounting officers should always comply with the provisions of Section 68(2) of the Public Finance Management Act of 2012 by submitting all the required information for audit within the stipulated timelines.
- ii. The Accounting Officer who fails to provide required information for audit pursuant to Section 62(1) of the Public Audit Act, CAP 412B should be prosecuted for the offence pursuant to Section 62(2) of the Public Audit Act CAP412B.

#### **Poor Governance and weak internal controls**

##### **Delay in appointments of Board of Directors**

- 15. The Committee observed that some State Corporations were operating without properly constituted Board of Directors for too long. The anomaly was attributed to delays by the appointing authority to fill up vacancies once they arise. For example, Sacco Societies Regulatory Authority did not have a substantive Chairman from 6<sup>th</sup> February, 2017 to 20<sup>th</sup> September, 2018. Further, other institutions like the Communications Authority of Kenya, National Social Security Fund had senior officers in acting capacities for longer periods of

time than the prescribed six months as per section 34 of the Public Service Commission Act CAP 185 citing lack of properly constituted Board of Directors to approve the recruitments.

16. The absence of substantive holders of those charged with governance posed various operational challenges in the strategic management of the organization and thus poor governance.

#### **Committee Recommendations**

17. The Committee recommended that –

- i. Within three months upon adoption of this report, the Inspector-general, Inspectorate of State Corporations with the help of the National Assembly should initiate the process of amending the State Corporations Act to make it clear that no entity should be allowed to make any financial commitment without a properly constituted Board of Directors.
- ii. The Committee reprimands the appointing authorities for the delays in constituting or failing to fill the existing vacancies in the Boards of various State Corporations promptly.

#### **Matters pending in Court**

18. The Committee observed that a number of litigations concerning ownership of land of State Corporations and other legal matters have been pending before the courts of law for inordinately long despite resolutions of the House through previous PIC reports calling for the expeditious conclusion of the cases.

#### **Committee Recommendations**

19. The Committee recommended that –

- i. Within three months upon adoption of this report, the inspector-General, inspectorate of State Corporations should carry out a review of all entities with pending Court cases, prepare a comprehensive status report and submit it to the National Assembly with a copy to the Attorney General who will initiate the process of fast-tracking the conclusion of the cases within reasonable time.
- ii. The Accounting Officers should strive to embrace Alternative Dispute resolution Mechanisms in the resolution of disputes before going to court.

#### **Delayed Accountability of Imprest.**

20. The Committee noted that some State Corporations were in breach of Section 71 of the Public Finance Management Act CAP 412A and the attendant regulations that require surrender of imposts within seven days upon conclusion of the assignment for which the said imprest was issued.

### **Committee recommendations**

21. The Committee recommended that –

- i. The Accounting Officers should ensure that imprest advanced to officers is surrendered within the stipulated period of seven (7) days after return to the work station in accordance with section 93 of the Public Finance Management (National Government) Regulations, 2015.
- ii. Within six months of the adoption of this report, the Accounting Officers who will have failed to take necessary steps to ensure that all outstanding imprests within their jurisdictions are recovered from the due date should be surcharged the full amount due. The Accounting Officer should submit a status report with evidence of recovery to the Auditor-General for audit and reporting.

### **Under funding/ low Budgetary disbursements**

- i) The Committee noted with concern, instances where state corporations that relied on exchequer appropriations were under-funded or had low budgetary disbursements despite their budgets being initially approved. Consequently, this resulted in effects on the planned activities that impacted negatively on the service delivery to the public/beneficiaries due to limitation in the financial capabilities of the said institutions.

### **Committee recommendations**

22. The Committee recommends that the Cabinet Secretary National Treasury endeavors to allocate and disburse adequate funds as appropriated to the state corporations funded by the National Government. The Cabinet Secretary National Treasury should ensure at all times that the budgets are realistic, achievable and always adhere to annual work plans, procurement plans and revenue collection capabilities of the respective corporations in compliance with Regulation 44(2) of the PFM (National Government) Regulations, 2015

## **2.0 EXAMINATION OF THE REPORT OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF THE NATIONAL SOCIAL SECURITY FUND (NSSF) FOR THE FINANCIAL YEAR 2019/2020.**

Mr. David Mwangangi, the Ag. Managing Trustee was accompanied by Mr. Moses Cheseto (Ag. P & L), Ms. Marietta Mutinda (Ag. Finance Manager), Ms. Rosemary Oluoch (Ag. MSCM), Ms. Joan Nyaberi (Ag. SEEH (R&A)), Mr. Evans Ombui (Ag. MRC), Mr. Obed Mbuvi (Ag. MPM) Dr. Christopher Khisa (Manager Corporate Communications), Mr. Peter Muiruri (Manager, Property Development) appeared before the Committee to adduce evidence on the Audited accounts of the National Social Security Fund (NSSF)-for the Financial Year 2019/2020.



## 1.0 Cash and Cash Equivalents

23. The Committee heard that, examination of the Fund's bank reconciliation statements as at 30<sup>th</sup> June, 2020 revealed several outstanding balances for receipts in bank statements not in cashbooks, payments in cashbooks not in bank statements and payments in bank statements not in cash books, as follows:

Nature of Outstanding Balances		Amount (Kshs)	Additional Audit Observation
1.	Receipts in Bank Statements not in Cashbooks	79,998,275	Some receipts included in the balance have been outstanding since July, 2014.
2.	Receipts in Cashbooks not in Bank Statements Kshs.127,877,988	127,877,988	Some receipts included in the balance have been outstanding since July, 2014.
3.	Payments in Bank Statement not in Cashbooks	134,335,976	Some payments included in the balance have been outstanding since 2012.

24. Management did not explain why the old outstanding balances had not been investigated and cleared from the respective bank accounts and cashbooks as applicable.
25. In view of the unreconciled balances, the accuracy and completeness of the cash and bank balance totaling Kshs.65,797,015 reflected in the statement of net assets available for benefits as at 30<sup>th</sup> June, 2020 could not be confirmed.

### Management Response

26. The Management informed the Committee that, the Fund's bank reconciliation statements indicated outstanding receipts in bank not in cashbooks amounting to Kshs 79, 998,275, with some relating to periods before July 2014. The cashbooks have since been updated as per the Appendix provided on postings to the cashbooks which is available for verification.
27. The Fund investigated the outstanding receipts in cashbook not in bank statement amounting Kshs 127,877,988 and established that they were mis postings between cashbooks. The correct entries have since been posted to correct the cashbooks and clear the items from the bank reconciliation reports as per Appendix attached and the JVs passed in the affected cashbooks.
28. Out of Kshs 134, 335,976 payments in bank not in cashbook is an amount of kshs 100,000,000 which was an error in the balances in the legacy standalone systems where a transfer of funds between accounts was posted in a wrong cashbook. The wrong balances were migrated but discovered when reconciling migrated balances to SAP system. The

correct adjustments were passed in the cashbook. The Balance of Kshs 34, 335,976 relate to erroneous debits in the bank statement by the bank which have since been corrected. The journal voucher adjusting the balances and the list of wrong debits which were reversed by the bank as attached. All the documents are available for verification by the auditor.

29. In 2012, the Fund deployed a SAP ERP as its accounting system that saw it move from CRIS (cash Receipting Information System) that was more of manual system. Balances from the old cashbooks were uploaded to ERP of which cut-off date was October 2012. This meant that, any transaction before this date was factored in the balances.
30. The Fund funds both benefits and expenditure accounts through transfers from income collection accounts. These transfers are in multiples of millions for control purposes and ease of identification. All payments to merchants / Vendors are paid from expenditure account and from Benefits account in case of Claims by members (Benefits) and not from income account.
31. In 2012, an amount of Kes 100 million was posted in SAP Cashbook by Debiting expenditure account and crediting Income account. This in essence meant that expenditure account was funded with Kshs. 100 million of which it was erroneous posting as there was no actual Funds that were transferred to expenditure account for that particular date (July, 2011). This transaction overstated the expenditure cashbook balance while understating income cashbook. As a result, the above transaction was treated as erroneous and reversed by debiting income account and crediting the expenditure account by 100 million as per the extract of bank statement provided to the Committee.

#### **Further, submissions by the Auditor General**

32. The Auditor-General submitted the details on the composition of the amount of Kshs. 134,335,976 on payments in the bank statement not in cashbook. The queried amount was initially Kshs. 184,335,976 to which the accounting officer explained an amount of Kshs. 50 million leaving the balance of Kshs. 134,335,976 outstanding in the final Auditor-General's report for the financial year ended 30<sup>th</sup> June, 2020.

#### **Committee observations**

##### **The Committee observed that –**

- i. The Committee noted with concern the unsatisfactory explanation given by the accounting officer for the Kshs. 100 million payments in the bank statement not in cashbook out of the Kshs. 134,335,976 queried in the audit report.
- ii. Further, the Committee observed that the amount of Kshs. 134,335,976 on payments in the bank statement not in cashbook arose mainly from two bank accounts; the KCB Main Expenditure Account A/C No. 1107 110 165 with a figure of Kshs. 100,079,830 and the contribution Account A/C No. 01003002837701 at NBK with a figure of Kshs. 84,141,215. The accounting officer was able to give explanation on a figure of Kshs. 50 million

transferred from NBK revenue account to NBK staff mortgage account leaving the balance of Kshs. 134,335,976 outstanding as an audit issue in the Auditor-General's report. It is unlikely therefore that a payment made by the bank and not reflected in the cash book could be as a result of NSSF internal system's error.

- iii. The explanation by the accounting officer that in 2012, an amount of Kshs. 100 million was an erroneous posting in SAP Cashbook by debiting expenditure account and crediting Income account which in essence meant that expenditure account was funded with Kshs.100 million thus misleading and misrepresentation of facts to the Committee. The question was about a payment made by the bank that the NSSF had not posted in their cashbook and not about erroneous postings discovered in the cashbook by the Fund.
- iv. Arising from the above observations the Committee had requested the Auditor-General to do a forensic audit on the Kshs. 100 million that appeared suspicious based on the accounting officer's submissions and was waiting for the forensic Audit report.
- v. The accounting officer had taken a long time to clear outstanding reconciling items. The then Accounting officer(s) for the duration that the reconciling items have been outstanding have been in breach of Regulation 90 (3) of the PFM (National Government) Regulations 2015, that states that the accounting Officers shall ensure any discrepancies noted during bank reconciliation exercise, are investigated immediately and appropriate action taken including updating the relevant cash books.

### **Committee recommendations**

#### **The Committee recommends that –**

- i. Within the current audit cycle and by 31<sup>st</sup> December, 2024 as stipulated in Article 229 (4) of the Constitution of Kenya 2010, the Auditor-General should submit the forensic Audit report as requested by the Public Investment Committee on social services, Administration and Agriculture through the Clerk of the National Assembly.
- ii. The Committee reprimands the then accounting officer(s) and any other officer(s) responsible for preparing bank reconciliation for breach of Regulation 90 (3) of the PFM (National Government) Regulation, 2015.

### **2.0 Fixed Deposits Held to Maturity**

33. The Committee heard that, the statement of assets available for benefits reflects fixed deposits held to maturity totaling Kshs.8,852,705,000 as at 30<sup>th</sup> June, 2020. The balance includes deposits totaling 223,155,587 held in two banks, namely; Chase Bank and Imperial Bank, as analyzed below:

Deposit Status	Name of Bank and Deposit Amount		
	Imperial Bank Kshs.	Chase Bank Kshs	Total Kshs.

Holding		259,500,000	70,000,000	329,500,000
Received	2018/2019	26,691,232	52,970,671	79,661,903
	2017/2018	26,682,507	-	26,682,507
Balance		206,126,259	17,029,328	223,155,587

34. However, in the year under review, the banks were under statutory management by the Central Bank of Kenya. As a result, the ratio of recoverable deposits in the balance totaling Kshs.223,155,587 held in the two banks as at 30<sup>th</sup> June, 2020 could not be confirmed. In view of the uncertainty, the aggregate fixed deposits balance totaling Kshs.8,852,705,000 as at 30<sup>th</sup> June, 2020 may not be fairly stated.

#### Management response

35. The management informed the Committee that, the Fund placed Kshs. 329,500,000 in fixed deposits being Kshs. 259,500,000 in Imperial Bank and Kshs. 70,000,000 in Chase Bank.
36. These two banks at the time of investment were regulated by Central Bank of Kenya (CBK) and Capital Markets Authority (CMA), a fact that was relied upon by the Fund's Fund Managers. However, these two banks were placed under statutory management by CBK, exposing the Fund's investment of Kshs. 329,500,000 to risk of recovery. The Fund has made effort to recover the investment and so far, Kshs. 108,174,427.28 has been recovered i.e., Kshs. 54,985,345.78 from Imperial Bank and Kshs. 53,189,081.40 from Chase Bank as follows:

Bank		Imperial Bank	Chase Bank	Total
Amount Invested		259,500,000.00	70,000,000.00	329,500,000.00
Amount recovered				
Received	2018/2019	26,691,232.15	52,970,671.10	79,661,903.25
	2017/2018	26,682,507.95	-	26,682,507.95
	2019/2020	1,454,460.14	218,410.40	1,672,870.54
	2020/2021	157,145.54	-	157,145.54
Total amount recovered		54,985,345.78	53,189,081.50	108,174,427.28
Balance outstanding		204,514,654.22	16,810,918.50	221,325,572.72

37. The Fund Managers conducted due diligence before making the investments, adhering to the requirements and guidelines stated in the Investment Policy Statement. Further, the Fund reviewed the Investment Policy to limit placement of deposits to Tier I and Tier II Banks.

38. In addition, the Fund, in collaboration with its Custodians and Fund Managers, has submitted claims to the KDIC (Kenya Deposit Insurance Corporation) and is actively pursuing recovery of the outstanding amounts. A recent communication from the KDIC, dated 21<sup>st</sup> June, 2023 assures that they will process the claims in accordance with the applicable law. However, disbursements have been temporarily halted due to an ongoing court case. Disbursements will resume once the case has been determined.

### **Committee observations**

#### **The Committee observed that –**

- i. The Public Investment Committee in its 24<sup>th</sup> PIC report had discussed the matter and recommended that the National Assembly, through the Departmental Committee on Finance and National Planning should develop a requirement / a regulation demanding that the regulators consult/ share information on areas of investments to enable state enterprises invest from a point of information.
- ii. The recoverability of the balance of KSh.666, 900,000 on Investments in Corporate Bonds from Imperial Bank and Chase Bank as queried by the Auditor-General in the report for the year ended 30<sup>th</sup> June, 2019 and as captured in the 24<sup>th</sup> PIC report, has not been disclosed.
- iii. NSSF did not disclose in their submissions, the status of Kshs.204,514,654.22 deposits outstanding from Imperial bank after KCB acquired the assets and liabilities of the former bank. Similarly, recoverability of Kshs. 16,810,918.50 outstanding from Chase Bank was not disclosed.
- iv. Although the two investment institutions were regulated by Capital Market Authority and Central Bank of Kenya, the KDIC (Kenya Deposit Insurance Corporation) had taken long to compensate the investors (NSSF) in unclear circumstances and hence possible loss of investment.
- v. The Fund failed to disclose the details of the court case that allegedly halted disbursements and was awaiting court's determination.
- vi. The Board approval for the investment was not submitted to the Committee for review therefore, the then Fund investments managers did not conduct due diligence before investing public funds.

### **Committee recommendations**

#### **The Committee recommends that –**

- i. Within three months upon adoption of this report, EACC should investigate whether there were any NSSF officers and / or investments fund managers or bank managers who were negligent on the investment process and any breach of the law or regulations on the part of the concerned NSSF officers. If any officer is found culpable, he/she should be held



personally liable for the financial loss, DPP should initiate a legal process to recover the amount so lost with interest from the concerned officer(s) at the prevailing CBK rates.

- ii. Within three months upon adoption of this report, KDIC (Kenya Deposit Insurance Corporation) should submit to the Committee a comprehensive status report on the how the NSSF investments with the two collapsed institutions has been recovered and any other state corporations affected by the collapse.
- iii. Within three months upon adoption of this report, the accounting officer for NSSF should submit to the Committee a comprehensive status report on the Kshs.204,514,654.22 deposits outstanding from Imperial bank and Kshs. 16,810,918.50 outstanding from Chase Bank.. Further, within the same period the Accounting Officer for NSSF should submit to the Committee a comprehensive status report on the Kshs. 666, 900,000 on Investments in Corporate Bonds from Imperial Bank and Chase Bank. The reports must be supported with certified documentary evidence from the parties concerned.
- iv. Within three months upon adoption of this report, the National Assembly, should initiate enactment of a law or amend the existing laws that would compel and hold managements of investment banks/institutions, deposit taking institutions, commercial banks and similar institutions or those who occasion collapse of such institutions to be held personally liable for the loss and hence recovery of losses be made from their personal property or those held by proxy if proved to be proceeds of the activities associated with collapsed institutions.

### **3.0 Rent Debtors**

39. The Committee heard that, the statement of assets available for benefits reflects rent debtors totaling Kshs.770,109,437 as at 30<sup>th</sup> June, 2020. Note 37 (iii) to the financial statements highlights contingent rental income totaling Kshs.30,681,000 collected by various property agents from the Fund's tenants in Nairobi at Bruce House, Hazina Trade Centre, View Park Towers and Nyayo Estate. However, the collections had not been remitted to the Fund as at 30<sup>th</sup> June, 2020. Although management demonstrated new internal controls intended to prevent agents from withholding receipts collected from the Fund's tenants, there was no clarity on how the withheld rental income totaling Kshs.30,681,000 would be recovered.
40. In addition, note 37(vi) indicates that a tenant named Kenya College of Medicine with offices at both Hazina Trade Centre and View Park Towers presented fake banking slips totaling Kshs.9,327,627 purporting these to have been transacted for rent payments. Rental records indicated that Management recovered Kshs.201,550 after selling-off the tenant's assets. However, additional measures, if any, taken to recover the balance amounting to Kshs.9,126,077 were not disclosed.
41. In the absence of sufficient information, the amount of recoverable rent and debtors could not be confirmed.

### **Management response**

42. The management informed the Committee that, the amount of Kshs.30,681,000.00 relate to outstanding rent, service charge and parking fees in respect of Bruce House Nairobi that was collected by M/s Milligan & Company Ltd, who was the Fund's property management agent but failed to remit the amount to the Fund back in 1997.
43. The Fund filed a suit for recovery of Kshs. 30,681,000 from Milligan & Company Ltd under HCCC No.8659 of 1997 NSSF Board of Trustees Vs Milligan & Company Ltd through Okoth & Kiplagat Advocates. Judgment for the case was entered for Kshs. 27 million out of which the judgment debtor paid Kshs. 1.5 million.
44. It, however, proved difficult to recover the balance on account of the passing on of Kassim Owango, the Director of Milligan & Company Limited after which Milligan & Company Limited went out of business and is no longer in existence. Efforts to trace the assets of the company as well as those of the directors were unsuccessful. Management has since requested the Board of Trustees to approve write-off of the outstanding balance owed by Milligan & Company Ltd and its directors on account of being long outstanding and the unfeasible chances of recoverability of the debt.
45. The amount Kshs. 9,327,627 relate to rent owed by Kenya College of Medicine for space occupied at Hazina and View Park Towers. Kenya College of Medicine presented fake cash deposit slips to the Fund. The Fund sued against the defendant who was a tenant at both Hazina & View Park towers for default of rent payments and issuing of fake banking slips amounting to Kshs. 9,327,627.00 via HCCC No 706 of 2012 Board of trustee NSSF –Vs- College of Medicine & Related Studies. The matter was dismissed on May,2018. To avoid such losses ever happening in the future, the Fund introduced strong controls whereby all rent is now paid directly to the Fund's bank accounts and strict procedures of verifying any bank advice presented by tenants before issuing receipts.

### **Committee observations**

#### **The Committee observed that –**

- i. The Fund management had not instituted strong internal controls to safeguard the Fund Assets against loss.
- ii. The presentation of fake banking slips amounting to Kshs. 9,327,627 as rent by the proprietors of Kenya College of Medicine for space occupied at Hazina and View Park Towers was fraudulent and criminal on the part of tenant. However, the management or its agents failed to do due diligence when receipting the amount.
- iii. The loss of Kshs. 9,327,627 is attributable to weakness in controls set out in Regulation 90 of the PFM (National Government )Regulations 2015 on preparation of bank

reconciliation. The loss might also be linked to the issue raised by the Auditor-General in this report on delayed resolution of reconciling items by the Fund finance department.

- iv. The loss of rental income totaling Kshs.30,681,000 collected by Milligan & Company Limited from the Fund's tenants in Nairobi at Bruce House, Hazina Trade Centre, View Park Towers and Nyayo Estate might be attributable to poorly drawn agreements whose loop holes were exploited by the agents.
- v. The Management produced before the Committee a decree issued in Nairobi HCCC 859 of 1997 NSSF vs Milligan & Company Ltd dated 6<sup>th</sup> November 1997 arising from a consent judgment where Judgment was entered in favour of NSSF against Milligan Company Ltd for a sum of Kshs. 15,000,000 and the amount was to be paid in three equal monthly instalments of 5,000,000 each with effect from 15<sup>th</sup> November 1997 and on or before the fifteenth day of each subsequent month.

#### **Committee recommendations**

##### **The Committee recommends that –**

Within three months upon adoption of this report, EACC should carry out investigation into the two matters on Kenya College of Medicine and Milligan & Company Limited with a view to establishing whether there was any breach of the law or regulations on the part of the concerned NSSF officers who occasioned or aided in occasioning the loss of Kshs.40,008,627. Further, establish whether the amounts could be recovered from the estates of the proprietors of Kenya College of Medicine and Milligan & Company Limited. If any officer is found culpable, he/she should be held personally liable for the loss and the DPP should institute legal proceedings against the culpable officers.

#### **4.0 Payables and Accruals**

- 46. The Committee heard that, the statement of net assets available for benefits reflects payables and accruals totaling Kshs.1,829,344,143 as at 30<sup>th</sup> June, 2020 which in turn include Kshs.320,002,494 owed to various vendors, as disclosed in Note 32 to the financial statements. Examination of the payables ledger indicated that payables totaling Kshs.258,854,938 outstanding since 2012 were not supported by invoice receipt vouchers in the electronic (SAP) accounting system.
- 47. No explanation was provided by Management why the respective vendors had not presented, or been asked to present, invoices to the Fund for payment. Further Management did not explain whether the respective owners of the payables totaling Kshs.258,854,938 were notified of the balances and a report made to the Unclaimed Assets Authority as prescribed in Section 19 and Section 20 of the Unclaimed Assets Act No. 40 of 2011, respectively. As a result, the propriety of the payables totaling Kshs.258,854,938 could not be confirmed.

48. In view of these anomalies, the payables and accruals balance totaling Kshs.1,829,344,143 as at 30 June, 2020 may not be fairly stated.

#### **Management response**

49. The management informed the Committee that, the amount of Kshs 258,854,938 was the balance of the GR/IR (Goods Receipt/ Invoice Receipt) account as at 30<sup>th</sup> June, 2020. GR/IR is a clearing account in the Fund's ledger which is posted when items (goods, assets, services) procured are received awaiting invoicing by vendors.

50. The accounting entries are as follows: -

When items/services are received/accepted:

Dr. Asset/Expense/Stores  
Cr. GR/IR Clearing account

On receipt of the invoice from vendors:

Dr. GR/IR Clearing account  
Cr. Vendor with the invoiced amount.

When vendor is paid:

Dr. Vendor  
CR. Bank

51. Because the items/assets/services have been received and accepted but the vendor is yet to invoice, the balance in the GR/IR Clearing account is added to the vendor balances when reporting.

52. At the reporting date, this account contained a few items which emanated from the changeover of systems from legacy systems to SAP. Key to note, the balance of Kshs. 258,854,938 is an account balance as at the reporting date. Not all the items making up the balance had problems but only a few which have since been investigated and adjusted.

#### **Committee observations**

##### **The Committee observed that –**

- i. The Committee noted with concern that payables amounting to Kshs.258,854,938 had been outstanding since 2012 because they were not supported with invoice receipt vouchers in the electronic (SAP) accounting system. This was despite the Fund having received the goods, accepted and recorded in their financial records. It is unlikely that the suppliers made the deliveries and were not interested in receiving payments in that respect. The anomaly may expose the fund to fictitious claims or other financial exposures due to unsupported and delayed payments.

- ii. The accounting officer indicated that not all the items making up the balance had problems but only a few which have since been investigated and adjusted. There was no explanation as to why the respective vendors had not presented, or been asked to present their invoices to the Fund for payment until and after being questioned by the auditors.
- iii. Although the management submitted that they conducted investigations in to the payables, the accounting officer failed to submit to the committee the report on the findings of the investigation they had conducted.
- iv. The management did not explain whether the respective payees of the payables totaling Kshs.258,854,938 were notified of the balances and a report made to the Unclaimed Financial Assets Authority as prescribed in Section 19 and Section 20 of the Unclaimed Financial Assets Act, CAP 494.

### **Committee recommendations**

#### **The Committee recommends that –**

- i. Within three months upon adoption of this report, EACC should carry out investigation into the payables totaling Kshs.258,854,938 that were not supported with invoice receipt vouchers in the electronic (SAP) accounting system. The investigation should be conducted with a view to establish whether they were genuine supplies to the entity and whether the claims are valid. If any officer is found culpable for any malpractice, he/she should be held personally liable for the loss of public funds, and should be surcharged the amount in question at the prevailing CBK rates.
- ii. Within three months upon adoption of this report, the Accounting Officer for NSSF should submit to the Public Investment Committee on Social Services, Administration and Agriculture through the Clerk of the National Assembly, a comprehensive status report on the investigation conducted as per their submission to the Committee during deliberations detailing the adjustments made and evidence of eventual settlement of the dues. The report must be supported with certified documentary evidence from the parties concerned.

### **Other Matter**

#### **1.0 Budgetary Control and Performance**

##### **1.1 Revenue**

- 53. The Committee heard that, the statement of comparison and actual amounts indicates that the Fund's revenue budget for the year under review amounted to Kshs.27,980,566,000 and actual revenue Kshs.20,524,649,681 resulting to a shortfall of Kshs.7,455,916,319 or 27% of the revenue budget as indicated in the Appendix to the audit report.



54. Management attributed the revenue shortfall to reduced economic activities in the third and fourth quarters of the financial year due to effects of Covid-19 pandemic. The significant revenue shortfall totaling to Kshs.7,455,916,319 implied that funding for programmes and activities planned for the year may have been constrained.

#### Management response

55. The management informed the Committee that, the Fund's revenue performance is as analyzed below: -

Revenue:	Budget	Actual	Variance	%
Ordinary revenue:				
Contribution	19,069,065,000	14,732,571,428	(4,336,493,572)	(23)
Dividend income	2,900,000,000	2,685,340,385	(214,659,615)	(7)
Interest income	14,883,000,000	16,007,272,579	1,124,272,579	8
Rent income	1,218,225,000	1,221,339,395	3,114,395	0
TPS interest income	657,500,000	473,625,548	(183,874,452)	(28)
Realized gain on investments	670,000,000	(50,669,212)	(720,669,212)	(108)
Other income	60,000,000	83,337,900	23,337,900	39%
Total ordinary revenue	39,457,790,000	35,152,818,023	(4,304,971,977)	11%
Valuation of Investments:				
Unrealized gain on investments	(6,918,724,000)	(10,194,619,584)	(3,275,895,584)	(47)
Total revenue	32,539,066,000	24,958,198,438	(7,580,867,562)	(23)

56. The Fund's budget amounted to Kshs. 39.5 billion, Kshs. 19.02-billion-member contribution and Kshs. 20.34 billion investment income. The Fund realized Kshs. 20.42 billion from investment income which is 100% performance. During the COVID-19 pandemic, the Fund implemented a robust diversification strategy. To mitigate the impact of the volatile stock market, investments were strategically allocated towards fixed income securities. The exceptional performance of these securities effectively counterbalanced the downturn experienced in the stock market.
57. As a long-term investor, the Fund follows a value/impact investing approach. This means that it remains unaffected by short-term market fluctuations as it focuses on the broader, long-term position of its investments. The Fund recognizes that short-term market oscillations are temporary, and does not waver in its commitment to investments with strong underlying market fundamentals. These fundamentals remain solid and resilient despite the temporary variations experienced in the short term.
58. The Fund was able to collect 77% of the member contribution budget despite the many job losses and salary reductions which instantly reduced contributions resulting to variance of 23 % under performance.

59. Despite the difficulties occasioned by the pandemic, overall, the Fund was able to achieve 77% of its revenue target, which is a fair performance.

#### **Committee observations**

##### **The Committee observed that –**

- i. The shortfall of Kshs.7,455,916,319 or 27% of the revenue budget affected the planned activities and impacted negatively on the service delivery to the public/beneficiaries.
- ii. The management submission that during the COVID-19 pandemic, the Fund implemented a robust diversification strategy is not supported by any evidence. Despite the diversification, the Fund performed dismally on both realized and unrealized gains on investments.
- iii. Further, the Committee observed that, if this position holds that as a long-term investor, the Fund follows a value/impact investing approach which means that it remains unaffected by short-term market fluctuations as it focuses on the broader, long-term position of its investments, then the proceeds from investments would not have been negatively affected as observed in the audit query.
- iv. Also arising from the foregoing, the Committee observed that the Funds' investments were not hedged against market volatility effects such as the Covid-19 pandemic which was only a short-term phenomenon during the period under review.
- v. The investment manager and other financial advisors did not do due diligence while investing public funds.

#### **Committee Recommendation**

##### **The Committee recommends that –**

The Accounting Officer should ensure at all times that the budgets are realistic, achievable and always adhere to annual work plans, procurement plans and revenue collection schedules in compliance with Regulation 44(2) of the PFM (National Government) Regulations, 2015.

#### **1.2 Expenditure**

60. The Committee heard that, the statement of comparison of budget and actual amounts further indicates that the Fund had budgeted to spend Kshs.7,222,469,000 in the year under review but spent Kshs.5,942,306,669 resulting to an under-expenditure of Kshs.1,280,162,331 as tabulated in the following table:

	Item	Budget	Actual	Over/Under (-)	Over/Under (-)
		Kshs.	Kshs.	Kshs.	%
1	Staff Costs	4,663,192,000	3,820,005,857	-843,186,143	18
2	General Administrative Costs	1,812,777,000	1,570,733,413	-242,043,587	13
3	Investment Management Expenses	746,500,000	534,883,716	-211,616,284	28
	Total	7,222,469,000	5,925,622,986	-1,296,846,014	18

61. Management explained that under-expenditure totaling Kshs.843,186,143 incurred on staff costs resulted from delay in recruitment of senior management and in implementation of a Collective Bargaining Agreement signed with staff, and delay in effecting inflation adjustments on employee emoluments.
62. The variance in investment management expenses amounting to Kshs.211,616,284 or 28% was explained as having been occasioned by low activity in the money and capital markets.
63. The under-expenditure totaling Kshs.1,296,846,014 implied that the Fund may have scaled-down on implementation of the programmes and activities planned for the year. Therefore, some of the Fund's goals and objectives set for the year may not have been achieved.

#### **Management response**

64. The management informed the Committee that, there was delay in concluding negotiations for CBA with union staff which has subsequently been concluded and implemented 2020/2021 financial year. The recruitment of senior staff remains pending because of government circulars freezing recruitment and conclusion of a job evaluation exercise which has been concluded now. These two are the cause for the low absorption of staff cost as planned. The Fund continues to optimize its available human resource to meet its strategic goals.
65. Suppressed economy and market affected the investment activities of the Fund forcing the Fund to adopt a cautious approach resulting to the under absorption of investment management expenses.

Budget line	Budget	Actual	Variance	%	Explanation
Management investment expense	746,500,000	534,883,716	211,616,284	28%	Positive variance is attributed to reduced performance activity in market since the cost is based on performance of the respective service providers in the market.
Compensation of employees	4,663,192,000	3,820,005,857	843,186,143	18%	There was an overall decrease on staff expense mainly due to delay in recruitment of senior management as well as delayed implementation of CBA and inflation adjustment on employee emoluments.
Trustee' Emoluments	45,500,000	39,505,364	5,994,636	13%	under absorption of budget is due to reduced activity occasioned by Covid-19 which reduced meetings in the second half of the year.
Travelling Costs	179,951,000	144,475,247	35,475,753	20%	Positive variance was occasioned by reduced compliance activities in 3rd and 4th quarter of the year due to Covid-19, otherwise if all planned activities were undertaken it would have been 100% absorption.
Transport Costs	82,500,000	36,397,546	46,102,454	56%	
Rent Expense	310,442,000	288,515,246	21,926,754	7%	the slight under absorption was occasioned by delayed signing of lease agreements which had been planned to take effect in the year.
Printing, Stationery and Photocopying	47,610,000	28,246,829	19,363,171	41%	Positive variance was occasioned by reduced compliance activities in 3rd and 4th quarter of the year due to Covid-19, otherwise if all planned activities were undertaken it would have been 100% absorption.
Postage, Telephone and Internet Expenses	109,677,000	78,391,575	31,285,425	29%	
Electricity, Water, Security and Conservancy	91,603,000	74,532,793	17,070,207	19%	
Training Expenses	125,500,000	67,910,485	57,589,515	46%	
Repairs and Maintenance	196,470,000	152,843,671	43,626,329	22%	
Hospitality Material and services	3,530,000	2,717,139	812,861	23%	
Consultancy and Professional Expense	50,000,000	32,627,980	17,372,020	35%	over absorption of the legal expenses is attributed to delayed in finalization of legal claims in previous years which were finalized and paid in the year
Legal Expense	50,000,000	102,089,190	-52,089,190	-104%	
Audit Fees	8,000,000	8,000,000	0	0%	This cost has been maintained as provision payable to Auditor General
SS Policy Development	50,000,000	135,060	49,864,940	100%	Positive variance was occasioned by reduced activities geared to unlocking the NSSF Act in the year due to Covid-19, otherwise if all planned activities

					were undertaken it would have very high absorption
General Insurance	54,000,000	20,866,893	33,133,107	61%	under absorption is attributable to delayed in delivery of Motor vehicles and other ICT related asset in the year as well as reduced insurance fees due to disposal of some assets during the year.
AGM Expenses	20,000,000	2,884,538	17,115,462	86%	Positive variance was occasioned by government guidelines on social distance which meant no physical meetings in the year due to Covid-19, otherwise if all planned activities were undertaken it would have very high absorption
ISO Expenses	35,000,000	24,805,720	10,194,280	29%	Positive variance was occasioned by reduced activities geared to recertification and implementation of new standard in the year due to Covid-19, otherwise if all planned activities were undertaken it would have very high absorption
Advertising and Publicity	35,000,000	35,225,113	-225,113	-1%	Positive variance was occasioned by reduced marketing and social investment activities geared to improving the organization image and marketing in the year due to Covid-19, otherwise if all planned activities were undertaken it would have very high absorption
Marketing expense	60,000,000	30,648,104	29,351,896	49%	
Corporate Social Responsibility	22,500,000	21,833,927	666,073	3%	
Finance Expense	10,000,000	25,888,569	-15,888,569	-159%	over absorption of finance charges is attributed to high bank charges which we are negotiating with the bank to reduce the cost
Other Administrative Expense	84,645,000	106,217,525	-21,572,525	-25%	over absorption of other administrative costs is attributed to activities not affected by Covid-19 like software licenses.
Depreciation & amortization	140,849,000	245,974,901	-105,125,901	-75%	over absorption of is attributed to completion of operational asset under constructions projects which were transferred to complete assets and depreciation took effect
Provision	-	16,683,683			it was not envisaged that the provision of doubtful debts will increase.
Total	7,222,469,000	5,942,306,671	1,280,162,329	18%	

## **Committee observations**

### **The Committee observed that –**

- i) The under-expenditure on some budget items affected the planned activities and impacted negatively on the service delivery to the public/beneficiaries.
- ii) The Committee was concerned that while explaining the underperformance on various budget items, the NSSF management cited COVID-19 pandemic effects. If this was the cause, then the explanation of over-expenditure of Kshs. 21,572,525 on other Administrative Expense that was attributed to activities not affected by Covid-19 like software licenses was invalid. This is because in the same submission, the NSSF management attributed under-absorption on General Insurance to delayed delivery of Motor vehicles and other ICT related asset in the year, thus no commensurate increase in software licenses was expected.
- iii) Similarly, the Committee observed that, despite majority of budget items being under-absorbed, finance expense was over absorbed by Kshs. 15,888,569(159%) which was attributed to high bank charges. This could have arisen out of increased bank activities/ transactions yet the Fund reported reduced activities in the period and thus suspicious.

## **Committee Recommendation**

### **The Committee recommends that –**

- i) The Committee reprimands the Accounting Officer for failing to ensure that at all times the budgets are realistic, achievable and always adhere to annual work plans, procurement plans and revenue collection schedules in compliance with Regulation 44(2) of the PFM (National Government) Regulations, 2015.
- ii) Within three months upon adoption of this report, the Accounting Officer for NSSF should submit to the Auditor-General a tabulation of the bank charges summing up to the Kshs.15,888,569 and the corresponding bank statements for audit review. The Auditor-General shall within the subsequent audit cycle submit a comprehensive report on their findings to the Committee.

## **2.0 Prior Year Issues**

- 66. The Committee heard that, the audit report for the year ended 30<sup>th</sup> June, 2019 raised several unsatisfactory issues in regard to balances reflected in the financial statements, lawfulness and effectiveness in use of resources and effectiveness of internal controls, risk management and governance.



67. The report of Management on progress made in resolving the issues indicates that activities intended to resolve some of the issues were ongoing as at 30<sup>th</sup> June, 2020. However, the report does not provide disclosures on several issues raised in the audit report.

68. The actual status of all the issues shall be determined after they are discussed by the National Assembly.

#### **Management response**

69. The management informed the Committee that, the updated report of management on progress made in resolving audit issues is available for audit verification.

#### **Committee observations**

##### **The Committee observed that –**

- i) The Committee observed that the accounting officer did not adequately respond to this audit query.
- ii) The Accounting officer was in breach of the Section 81(3) of the PFM Act CAP, 412A which states that the accounting officer shall prepare the financial statements in a form that complies with the relevant accounting standards prescribed and published by the Accounting Standards Board from time to time
- iii) In addition the Accounting Officer contravened Section 31 (1) (a) of the Public Audit Act, CAP 412B that states that, within three months after Parliament or the County Assembly has debated and considered the final report of the Auditor General and made recommendations, a State Organ or a public entity that had been audited shall, as a preliminary step, submit a report on how it has addressed the recommendations and findings of the previous year's audit.

#### **Committee Recommendation**

##### **The Committee recommends that –**

The Committee reprimands the then and the current Accounting Officers for breach of Section 81(3) of the PFM Act, CAP 412A and Section 31 (1) (a) of the Public Audit Act CAP 412B.

#### **Report on Lawfulness and Effectiveness in Use of Public Resources**

##### **1.0 Non-Performing Investment Property**

70. The Committee heard that, fixed assets records indicated that among the properties owned by the Fund as at 30<sup>th</sup> June, 2020 was Hazina Plaza-Polana Mombasa which, as indicated at Note 29 to the financial statements, had a net book value of Kshs.530,000,000. The records

indicated that the property was purchased in October, 1994 at Kshs.450,000,000 on a sale-and lease basis but had since been revalued. It was first leased to M/s. Azania Hotels Limited for use as a hotel which, however, closed in April, 2001 while indebted to the Fund for rent arrears totaling Kshs.239,500,000.

71. A private investigator was engaged to trace assets held by M/s Azania Hotels Limited or its Directors with a view to sue for their disposal. Case HCC No.59A of 2004 was thereafter filed at Mombasa to recover the arrears. However, in the year under review, management did not provide an update on the matter and as a result, it was not possible to confirm whether the arrears were recovered.
72. The records indicated that in April 2010, the Board of Trustees approved lease of the property to Techno Holdings Limited for a period of 10 years but the tenant defaulted on rent totaling Kshs.23,490,800. The Fund sued for recovery of the amount and sought authority of the Court to cancel the tenancy but sub-tenants at the property demanded compensation for expenditures totaling Kshs.123,000,000 they claimed to have spent on refurbishments and renovations of the property.
73. The Court on 18<sup>th</sup> March, 2019 allowed the Fund to evict the lessee and the sub-tenants who thereafter reportedly removed furniture and décor items they claimed to own. As a result, the property was reportedly left in a rundown condition. It is not certain whether management has taken legal action against the evictees.
74. In view of the foregoing, the Fund may not have obtained value for money from its investment in the property that cost Kshs.450,000,000 in 1994. Further, the recurrent rent arrears imply that the Fund may not have managed the investment in a prudent way.

#### **Management response**

75. The management informed the Committee that, the Board of Trustees approved the refurbishment of the property on a phased basis to take advantage of rent. The refurbishment is scheduled to commence in 2023/2024 financial year. The board minutes approving refurbishment of the property for audit verification were attached.
76. The case NSSF vs Techno Holdings Limited for the default of rent totaling Kes 23,490,800 is still in court. The correspondences and other documents on the matter as requested for audit verification was attached.

#### **Committee Observations**

- i) The matter had been discussed in the previous PIC 22<sup>nd</sup> and 23<sup>rd</sup> reports and the Committee observed that;
  - a The Fund did not involve the State Department of Public Works when contracting M/s Techno Holdings Ltd to renovate the building. The scope of renovations was not

documented and agreed anywhere thus opening a loophole for the tenant to arm-twist the Fund on the cost of renovations.

- b The drafting of the lease agreement with M/s Techno Holdings Ltd was poorly done thus exposing the Fund to loss of money i.e., two and half year rent free. The lease that was provided by the management had missing pages.
- c NSSF won the court case relating to the ownership of Hazina Towers.

**Further, the Committee observed that;**

- ii) The property was purchased by the Board of Trustees in 1992 at Kshs.450,000,000 and had a net book value of Kshs.530,000,000 as at 30<sup>th</sup> June 2020.
- iii) The building was advertised for sale on 3<sup>rd</sup> September, 2009 at Kshs.300 million reserved price but the bids received were below the reserve price. It was not clear why the reserve price was placed too low yet land on which the hotel is situated had appreciated in value over time. The basis upon which the reserve price was determined was not provided to the Committee for review and the devaluation of the property was skewed to favour a certain bidder.
- iv) The valuation report from the ministry of lands, public works, housing and urban development as at the time of advertisement was not provided for audit.

**Committee Recommendation**

**The Committee recommends that –**

Within three months upon adoption of this report, EACC should investigate whether there were any economic crimes perpetuated by the Fund officers in the procurement by inflating the purchase price and purported disposal process of the building by devaluing the property. The investigation should also cover how the leases were negotiated and why payment of rent was deferred for a period of two and half years. If any officer is found culpable for the loss in lease/rental fee, he/she should be held personally liable for the loss, DPP should initiate a legal process to recover the amount so lost with interest from the concerned officer at the prevailing CBK rates.

**2.0 Status of Hazina Trade Centre Construction Project**

- 77. The Committee heard that, records provided for audit indicated that construction works on Hazina Trade Centre in Nairobi Central Business District continued in the year under review. The project entailed the elevation of the existing building into a 36-floor tower and was awarded to M/S China Jiangxi. The project was later scaled-down to 15 (fifteen) floors at a reduced contract sum of Kshs.4,095,862,434. Therefore, its scope was reduced by 21 floors

equivalent to 58% of the original contract whereas the cost was reduced by Kshs.2,619,355,754 or 39%.

78. The project has had a number of completion date extensions with the most recent set for December, 2020 which however, lapsed before the works were completed. As at the time of audit, eleven (11) certificates valued at Kshs.3,704,883,770 in aggregate, or 83% of contract sum, had been paid. However, physical inspection of the project indicated that the works were only eighty percent (80%) complete. Therefore, there was risk of the project exceeding its budgeted cost amounting to Kshs.4,095,862,434.
79. Further review of the project's records indicated that the contractor filed compensation claims valued at Kshs.871,697,124 citing idle time arising from work stoppages. Expenditure records indicated that payments totaling Kshs.653,772,843 were made in respect of the claim. However, no plausible explanations were provided by Management for the stoppages which resulted in ineffective use of public resources.

#### **Management response**

80. The management informed the Committee that, the Hazina Trade Center is Multi-storey commercial development with parking's in four basements, shops in ground and two mezzanine floors and twin office towers comprising of 15 floors. The plot is located within the City Centre between Monrovia and Moktar Daddah Streets on land measuring 1.121 acres. Contract was awarded to M/s. China Jiangxi International for a Contract Sum of Kshs. 6,715,218,188.00.
81. The project delayed due to litigation by then tenant Nakumatt Holdings Limited. This long delay led to the Board of Trustees making a decision to restructure the project and reduce the scope to 15 floors. The State Department of Public Works (SDPW) was engaged to supervise the project and estimate the cost of completing the building within the revised scope. The SDPW presented an estimate of KES 4,095,862,434.00 for the revised scope.
82. The contractor presented a claim for cost of extended preliminaries due to the lost time. The SDPW was directed by the Public Investments Committee of the National Assembly to evaluate the claim and present a report which they did. In their report, the SDPW determined that KES 871,697,124.00 was contractually payable to cover the costs incurred by the contractor during the delays. This was presented to the PIC which adopted the report by SDPW and directed that the Fund pays the amount as determined by SDPW. The Fund has since paid the claim in full.
83. The project was completed on 24th September, 2021 and a Certificate of Practical Completion was dully issued. The Defects Liability period was concluded and all the defects identified were attended to culminating in a Certificate of Making Good Defects being issued on 6th June, 2022.

84. As at end March 2023, the office tower has been 51% taken with further commitments for most of the remaining space in various stages of engagement.

**Further submissions by the Contractor-China Jiangxi**

85. The contractor provided the Committee with the following additional information;

- i. The contractual agreement between **China Jiangxi International** and the National Social Security Fund for the construction of the Hazina Trade Centre located in the Nairobi CBD.
- ii. The letter from the National Social Security Fund that instructed them to scale down the floors from 36 floors to 15 floors at a reduced contract sum of Kshs 4,095,862,434.00.
- iii. The total amount of money received from the National Social security Fund with respect to Hazina Trade centre.
- iv. The contractor stated that Hazina Trade centre was completed and handed over on 24<sup>th</sup> September, 2021. The building is currently under NSSF occupation and Management.
- v. The contractor explained the circumstances surrounding compensation claims valued at KES 871,697,124 where he cited idle time arising from work stoppages and the subsequent receipt of Kshs. 653,772,843.
- vi. The construction of the new tower entailed strengthening of existing columns inside Nakumatt Ltds' leased spaces. The claim arose from the inability to obtain working space to carry out column strengthening from Nakumatt Ltd who was the anchor tenant at Hazina Trade Centre resulting to stoppage of the works as the construction of tower had to await column strengthening to be carried out before works on the tower could proceed any further. The delays in obtaining working spaces inside Nakumatt resulted to loss of time as we awaited to be granted access to carry out column strengthening. The Ministry of public works evaluated the claim and recommended KES 871,697,124 as compensation. On 4th August 2020 NSSF confirmed the evaluated financial claim and commenced to honour it.

**Committee Inspection visit to Hazina Trade Centre**

86. The Committee visited the Hazina Trade centre on 30<sup>th</sup> August, 2024 on a fact finding and familiarization mission.

87. The management informed the Committee that;

- i. The Hazina Trade Center project was delayed for various reasons key being litigation by the sole tenant, Nakumatt Holdings which prevented the contractor from accessing portions

of the site to carry out column strengthening. This long delay led to the Board of Trustees making a decision to restructure the project and reduce the scope to 15 floors. The State Department of Public Works (SDPW) was engaged to supervise the project and estimate the cost of completing the building within the revised scope. The SDPW presented an estimate of **Kshs. 4,095,862,434.00** for the revised scope down from **Kshs. 6,715,218,188**. This was formalized in **Variation Order No. 1** which set the revised scope and cost.

- ii. The contractor presented a claim for cost of extended preliminaries due to the lost time. The SDPW was directed by the Public Investments Committee of the National Assembly to evaluate the claim and present a report which they did. In their report, the SDPW determined that **Kshs. 871,697,124.00** was contractually payable to cover the costs incurred by the contractor during the delays (extended preliminaries) up to that point in time, i.e. 15<sup>th</sup> March 2018. The Fund sought the opinion of the State Law Office on the legality of the claim and the AG responded that according to the contract, the contractor had the right to claim the amounts claimed under **compensation event clauses**. **Variation Order No. 2** was prepared and executed formalizing the amount that was agreed between the Fund and the Contractor and approved by the SDPW and Project Consultants. This amount was paid in four equal installments of **Kshs. 271,924,281.05**.
- iii. In 2020, the project encountered further delays due to Covid19 Lockdown which led to disruptions to the global supply chains and working environment. The disruption in manufacturing and shipping led to significant delays in procurement of imported materials. The shortened workdays and reduced manning levels due to Social Distancing further delayed execution of the works.
- iv. The project was completed on 24<sup>th</sup> September, 2021 and a **Certificate of Practical Completion** was duly issued. The Defects Liability period was concluded and all the defects identified were attended to culminating in a **Certificate of Making Good Defects** being issued on 6<sup>th</sup> June, 2022. A **Final Account** was prepared and approved by the State Department of Public Works and the **Final Certificate No. 25** was paid to the contractor at the conclusion of the contract.
- v. As at end September 2023, the office tower has been 67% let with further commitments for most of the remaining space in various stages of completion.

### **Committee Observations**

#### **The Committee observed that –**

- (i) The issue has been discussed in the previous PIC 19<sup>th</sup>, 22<sup>nd</sup>, 23<sup>rd</sup> and 24<sup>th</sup> reports with a recommendation for the Auditor-General conducts a forensic audit and then subsequently EACC and DCI takes up the matter for further investigation whose reports had not yet been submitted to the National Assembly.



- (ii) The project was completed at a total cost of approximately Kshs.8 billion. The amount comprised of Kshs. 2.6 billion for the original 8 floors building that was to be extended to 36 floors and the new contract price of Kshs. 5.4 billion for the extension of 15 more floors.
- (iii)The initial extension works of 36 floors was estimated to cost the Fund Kshs. 6,715,218,188 which was later scaled down to 15 floors. The State Department for Public Works estimated the scaled down works to cost Kshs. 4,095,862,434.00. This was formalized in Variation Order No. 1 which set the revised scope and cost. The varied scope of works for 15 floors and the revised cost of Kshs. 4,095,862,434.00 were not commensurate.
- (iv)The members during, the project visit noted that the base of the building columns were not strengthened except for clamping/jacketing the columns which served little or no purpose with strength of the pillars base and thus a nugatory cost. The Committee also noted that without strengthening the base the building could not have held 36 more floors. The Fund management might and the involved structural engineers did not do due diligence and the technical advice offered was misleading.
- (v) The Fund had not involved the state department for Public works during the design phase to offer technical expertise. There the management failed to place responsibilities for monitoring and implementation of the projects to entities with the technical capacities to implement in order to avoid unnecessary terminations and variations of project cost.
- (vi)The building also attracted extra Kshs. 1.4 billion to cater for penalties for delay or idle time occasioned during the push and pull between NSSF and management of defunct Nakumatt supermarket.
- (vii) The building was not fully occupied despite its completion.
- (viii) Hazina Trade Centre was one of the Fund's Mega projects worth substantive amounts of taxpayers' money which ought to have been initiated upon the management carrying out a feasibility study and drawing an implementation plan to execute the project.
- (ix)The NSSF did not seek technical advice from the State Department of Public Works when commencing and during implementation of the project; public works only came in as project managers in June 2017. Had NSSF sought the services of State Department of Public Works at the onset of the project, NSSF would not have faced the delays and the unnecessary costs through court cases.
- (x) The varied scope of works at a contract price of Kshs. 4,095,862,434.00 included provision sums of Kshs. 902,550,000. The provisions included an amount of Kshs. 250,000,000 for fluctuations and a similar amount for contingencies. The balance of Kshs.402,550,000 being other provisions. There was no explanation as to how these amounts were expended and how the fluctuations and contingencies were quantified as works done and paid for.

- (xi) The contractor took over/possession of the site before ascertaining that the necessary preliminary arrangements had been made to enable smooth implementation of the project including notification of the tenant on the building-Nakumatt Holdings of the expected disturbance, inconveniences and interferences with their normal operations . This would have enabled flow of the project from commencement to commissioning without resulting delay and idle time that the contractor later charged with penalties citing idle labour and equipment's.

### **Committee Recommendations**

#### **The Committee recommends that –**

- i. Within the current audit cycle and by 31<sup>st</sup> December, 2024 as stipulated in Article 229 (4) of the Constitution of Kenya 2010, the Auditor-General should carry out a forensic audit on the whole project from the initial contract for the eight floors to the new contract for 15 floors with a view to establishing the total cost of the project and the value for money and submit a report to the Committee. The report should include reasons or justifications for reduction in scope and whether the related cost reductions are commensurate.
- ii. Within the subsequent three months upon submission of the forensic audit report and depending on the outcome of the audit, the EACC should conduct an investigation on the then management, the then Board of NSSF and the Contractor-China Jiangxi International with a view to establish whether there was fraud relating to the contract of works on the completion of Hazina Trade Centre. Further, the EACC should investigate the basis upon which the contractor made claims for delayed works yet they were party to it since they took possession of the site without first ascertaining whether there were any obstacles, legal or otherwise that could hinder their execution of the contract. If any person is found culpable, he/she should be held personally liable for the loss, DPP should initiate a legal process to recover the amount so lost with interest from the concerned officer at the prevailing CBK rates.

### **3.0 Ineffective Management of Debtors and Investments**

88. The Committee heard that, examination of debtor and investments records indicated that the Fund had, over the years, incurred losses on receivables (debtors) and investments. For instance, note 23 to the financial statements reflects receivables and prepayments totaling Kshs.3,793,927,167 which include long outstanding debts totaling Kshs.28,720,772, that had, as at 30 June, 2020, remained unpaid for more than ten (10) years. In addition, provisions made for bad and doubtful debts amounted to Kshs.105,102,269.
89. Similarly, the statement of net assets available for benefits reflects corporate bonds totaling Kshs.1,399,604,882 which Note 20 to the financial statements indicates is net of doubtful bonds provisions totaling Kshs.666,900,000 made in respect of FXD Chase Bank 2015 bonds at Kshs.534,700,000 and Imperial Bank 5.25-year FXD bonds at Kshs.132,200,000.

90. The loss provisions totaling 772,002,269 and the losses incurred on the leased-out property cited in this report suggest that the Fund's debt management and investment policies may not be properly established to attain fair returns on contributors' funds.

### **Management response**

91. The Committee was informed that, out of the queried amount of Kshs 105,102,269, Kshs. 28,720,772 relate to long outstanding debts which have proved difficult to collect. Management has recommended write-off from the Fund's books. The balance of Kshs. 76,381,497 relate to unpaid cheque issued by employers to NSSF. The Fund has a robust mechanism of recovering these amounts including prosecuting employers who issue bad cheques. However, following a recent court ruling which reversed an earlier law which criminalized issuance of bad cheques, the Fund has stopped use of cheques as a mode of payment for member contribution, rent and any other payments to NSSF starting 1<sup>st</sup>, July 2023. Meanwhile, the Fund will continue pursuing payment of all outstanding debts together with penalties resulting from bounced cheques.
92. The Fund continues to experience an overall exposure of Kshs. 666.9 million in Imperial and Chase banks. Imperial and Chase Bank issued corporate bonds valued at Kshs. 2.0 billion and Kshs. 4.822 billion, respectively. In the same circumstances as detailed above, the Fund invested in the issued corporate bonds and was holding Kshs. 132.2 million and 534.7 million of the total bonds issued by the two banks respectively. At the time, the Fund's total corporate bonds holdings was Kshs. 8.996 billion and thus the exposure in the two banks accounted for 7% of the total holdings. From the deal of purchase of Chase Bank by SBM, bondholders are part of the 25% who remained out of the deal.
93. On 16<sup>th</sup> April, 2021 CBK sent out a circular authorizing KDIC to liquidate the remaining 25% of assets in Chase Bank Limited. KDIC are yet to release information on the liquidation and a schedule on the next steps. This gives the Fund some hope to recover the outstanding amount invested in Chase bank corporate bonds from the liquidation proceeds. KDIC and CBK are yet to issue any pronouncement on the IBL Corporate Bond.

### **Committee Observations**

#### **The Committee observed that –**

- i. The Committee observed with concern that public entities including NSSF have continued to lose funds through poor investment decisions, exaggerated costs/prices and non-recovery of debts owing to them while at the same time they readily pay their creditors' claims with penalties on delayed payments and interest.
- ii. The Fund continues to experience an overall exposure of Kshs. 666.9 million in Imperial and Chase banks despite the two institutions being later acquired by Kenya Commercial bank and SBM bank respectively. In the latter chase bank case, the management indicates that

bondholders are part of the 25% who remained out of the deal. It is not clear how the banks were acquired and such ranking creditors were not involved in the acquisition deal and NSSF has not objected to any either through a court case or other regulators. At the same time it is not clear why KDIC and CBK are yet to issue any pronouncement on the investments and release information on the liquidation.

- iii. The Accounting officer failed to explain how and when the Imperial and Chase Bank issued corporate bonds were valued at Kshs. 2.0 billion and Kshs. 4.822 billion respectively and how much would be recoverable.
- iv. The Fund has continued to incur losses on the leased-out property as cited in the audit report suggesting that the Fund's debt management and investment policies are not properly established to attain fair returns on contributors' funds or there are individual beneficiaries to these schemes.
- v. The Accounting Officer failed to explain why the Fund opted to invest in such risky ventures rather than the more secure and guaranteed return investments like treasury bills and bonds. There was already a pronouncement and Treasury Circular No. 10 of 1992 which directed that State Corporations invest surplus funds in Treasury bills and bonds.
- vi. Despite having legal representation, through the Attorney General's office or the legal counsel employed by NSSF, the Fund has continued to lose funds on leased properties through failure by the lessees to honour the agreements.

### **Committee Recommendations**

#### **The Committee recommends that –**

Within three months upon adoption of this report, EACC should investigate the conduct of the then NSSF Managing Trustees, on the role they played occasioning the loss on investments, contravening Treasury Circular No. 10 of 1992 which directed that State Corporations invest surplus funds in Treasury bills and bonds, why the acquisition of the imperial banks and chase banks appeared skewed by avoiding responsibility to compensate the bondholders. EACC should submit a report to the Public Investment Committee on Social Services, Administration and Agriculture through the Clerk of the National Assembly. If any officer is found culpable, he/she should be held personally liable for the loss, DPP should initiate a legal process to recover the amount so lost with interest from the concerned officer (s) at the prevailing CBK rates.

### **Report on Effectiveness of Internal Controls, Risk Management and Governance**

#### **1.0 Weaknesses in Human Resource Management**

##### **1.1 Senior Managers in Acting Appointments**

- 94. The Committee heard that, as similarly reported in the previous year, the Senior management team in the year under review included seventeen (17) senior members of staff appointed on

acting capacity for long periods, some for as many six (6) years. Delay in advertising the respective posts or confirming the acting managers may have constrained their capacity to provide effective leadership of the Fund.

### **Management response**

95. The management informed the Committee that, the Fund continued to have officers on Acting Capacity even after lapse of six (6) months because:
96. The Board at some point was not fully constituted. This was the period between 2014 and 2016. In July 2014, the then Cabinet Secretary (CS) for Labour, Kazungu Kambi ejected COTU's Francis Atwoli and FKE's Jacqueline Mugo from the Board claiming that they had already served their terms. Consequently, the Board could not get quorum to conduct meetings. It was not until September 2016 that the two were reinstated through a court process.
97. Early 2015, Aden Mohamed's Chairmanship of the Board tenure expired and in February 2015 the CS Labour, Kazungu Kambi appointed Charity Kisotu as the new Chairperson of the Board. Soon after in the same month of February, the Employment and Labour Relations Court revoked her appointment and the Fund was in limbo again until 2016 when Kariithi Murimi took over the Chairmanship of the Board. In less than six months, Mr. Murimi resigned as the Chair of the Board and passed on shortly after his resignation. Subsequently, Hon. Ndambuki took over until 2018 and was succeeded by Dr. Karangi who served as the Chair of the Board until December, 2022 when the current Chair, Mr. Anthony Munyiri ascended to this position. The Organizational Review process started in December 2018.

### **Committee Observations**

#### **The Committee observed that –**

- i. In the period that the audit query highlights for senior members of staff being appointed on acting capacity for long periods, some for as many as six (6) years yet there was no vacuum in the board and therefor the management response is misplaced.
- ii. The Accounting Officer was in breach of section 34 (3) of the Public Service Commission Act, CAP 185 which requires that, an officer may be appointed in an acting capacity for a period not exceeding six months.

## Committee recommendations

### The Committee recommends that –

- i) The Committee reprimands the then Accounting Officers and the then PS for not adhering to the provisions of section 34 (3) of the Public Service Commission Act, CAP 185.
- ii) Within three months upon adoption of this report, the Inspector General State Corporations to surcharge and recover from the then Accounting Officer (s) monies paid as acting allowances beyond the stipulated period of six months.

### 1.2 Impending Retirement of a Large Proportion of Staff

98. The Committee heard that, review of employee records indicated that out of the Fund's one thousand, 1261) staff, 41% were about to retire after serving their respective terms. As a result, the Fund's prospects for maintaining a stable, experienced workforce that would enable it to attain its goals and objectives may be at risk.

### Management response

99. The management informed the Committee that, the Board of Trustees in 2018 made a resolution for the Fund to carry out organizational review leading to new organizational structure and a new grading structure which has been approved by the State Corporations Advisory Committee and Public Service Commission and is in process of implementation. The adverts for the vacant positions and more to be advertised in 2023/2024 financial year are as follows;

#### External

NO.	JOB ADVERTISEMENT	DATE OF ADVERTISEMENT
1.	Senior Positions	26th January, 2015
2.	Information Technology Manager	21st November, 2017
3.	General Managers (Various)	23rd December, 2021
4.	Various Positions	29th December, 2021
6.	Regional Managers	10th February, 2023
8.	Managing Trustee	27th February, 2023

#### Internal

NO.	JOB ADVERTISEMENT	DATE OF ADVERTISEMENT
1.	Branch Manager - Lodwar	1st March, 2017
2.	Branch Manager -5 positions	5th February, 2021



3.	Branch Manager – 8 positions	1st July, 2021
4.	Regional Manager	12th February, 2021
5.	Regional Manager-2 positions	8th November, 2022

### **Committee Observations**

#### **The Committee observed that –**

The Funds has poor succession planning strategies resulting to 41% of the its staff nearing retirement. This may lead to unstable, inexperienced workforce that would not enable it to attain its goals and objectives.

### **Committee Recommendations**

#### **The Committee recommends that –**

- i) The Committee reprimands the then Accounting Officers for not adhering to section 14 H of the Public Service Commission, Human Resource Policy and Procedure on proper succession management.
- ii) Within three months upon adoption of this report, the Accounting officer should submit approved Human resource instruments and the strategies in place to seal the staffing deficits in line with the Fund budget and SRC approvals.

### **2.0 Inadequate Documentation of Expenditure**

100. The Committee heard that, examination of payment records indicated that there was no standard format for printed payment vouchers. Although postings and approvals were done online in the Fund's accounting software, physical vouchers filed included memos for internal as well as staff payments and invoices and delivery notes for supplies, all of which were stamped severally to denote various approvals. Further, the vouchers were not serially numbered.
101. As a result, audit trails on accounts charged were hard to follow and therefore control on recording of expenditure was not properly established.

### **Management response**

102. The management informed the Committee that, the Fund's strategy is to implement a paperless system to increase efficiency and well as a cost reduction measure. The benefit payment process is now completely automated. The next phase is to digitize all payment processes as well as integrate with banks for seamless and paperless collection of revenue and reconciliation. The SSPAS and SAP system that the Fund has Implemented have internally generated numbers which define whether an entry is an accounting document, controlling or Funds management. These document numbers constitute the serialization because they are unique for every transaction and provide all the necessary audit trail.

## **Committee observations**

### **The Committee observed that –**

- i) The observation made by the auditor-General points to a weak internal control that could be exploited by those in authority to perpetuate fraud.
- ii) The Fund's strategy to go paperless in order to increase efficiency as well as a cost reduction measure is a positive move in ensuring that public funds are utilized in an effective, efficient and economical way. However, proper security features and regular back up is paramount since the collapse of the system will affect business continuity otherwise it is a risky venture.
- iii) The Accounting Officer indicated that the next phase is to digitize all payment processes as well as integrate with banks for seamless and paperless collection of revenue and reconciliation. If the systems were procured in 2012 yet in 2020 they were still not performing the purported or aspired functionalities, then the system has failed and the NSSF may not have gotten value for money.
- iv) The nature of services offered by the NSSF were sensitive and their financial documents should have been handled with caution and care.
- v) The Committee observed that the payment vouchers provided by the NSSF were not serialized for proper accountability and audit trail and thus the responses provided did not fully address the queries raised.

## **Committee recommendations**

### **The Committee recommends that –**

- i. Within three months upon adoption of this report, the Accounting Officer should submit a report on security measures and internal controls that are put in place to safeguard the ICT equipment, the SSPAS and SAP system already in place to warrant data, information and resources including public funds security to the Public Investment Committee on Social Services, Administration and Agriculture through the Clerk of the National Assembly.
- ii. Within three months upon adoption of this report, the Auditor-General should undertake an ICT systems audit on the SSPAS and SAP system with a view to assessing its functionality, controls in place and security of the public funds if the NSSF were to go paperless and onboard all its accounting operations in to the systems. The report to be submitted to the Public Investment Committee on Social Services, Administration and Agriculture through the Clerk of the National Assembly.

### **3.0 Delay in Accounting for Members Contributions xxx**

The Committee heard that, examination of records on contributions made by members indicated that contributions in transit not posted to individual members' accounts as at 30<sup>th</sup> June, 2020 amounted to Kshs.439,000,000 denoting an increase of Kshs.149,000,000 or 51% from Kshs.290,000,000 reported as at 30<sup>th</sup> June, 2019. No plausible explanation was provided by Management for the large increase in the balance and the reasons for delay in posting the contributions to the credit of the respective members' accounts. The delay suggested that internal control on accounting for contributions was weak and therefore, the risk of misstatement of the balances may have been high.

#### **Management response**

103. The management informed the Committee that, the amount of Kshs. 439 million was the balance of contributions remitted to NSSF by employers that was still domiciled in employer ledger accounts as at 30<sup>th</sup> June, 2020. Posting of employee/member accounts could not be done at the point of payment because of missing NSSF numbers even though other details are provided by employers to enable the Fund post member accounts at a later date. Updating of member accounts is a continuous operational activity on submission of proper data. Out of the Kshs 439 million, Kshs 157 million has been updated to members' accounts. The Fund continues to encourage its members to actively be checking their statements for correctness and updating via online platforms

#### **Committee observations**

##### **The Committee observed that –**

- i. The NSSF boasts of implementing SSPAS and SAP system as a strategy to go paperless and that benefit payment process is now completely automated. The accounting officer has also indicated that other details are provided by employers to enable the Fund post member accounts at a later date but the delay is due to missing NSSF numbers. If the contributions list has the unique personal data like the ID Number and the personal Number, then the delay is a mere laxity on the part of the responsible NSSF staff.
- ii. The delay in identifying the beneficiaries may lead to retirees missing out on their retirement benefits despite them contributing for decades.
- iii. The un-accounted for Members Contributions continue to earn investment incomes that cannot be attributed to any beneficiary nor retraced to the time of contribution. It will hard for the NSSF to identify the beneficiary and match them to their respective benefits and the related earning from it. The incomes might be utilized by the fund to run its day to day operations at the expense of the beneficiaries.

## **Committee Recommendations**

### **The Committee recommends that –**

104. Within three months upon adoption of this report, EACC should investigate how the un-accounted for members contributions are treated and invested. Also establish where the investment incomes arising from the contributions are banked and whether NSSF has an approved bank account where such funds are transferred awaiting assignment to the respective contributors and are only drawn from the account after identification of the beneficiary. EACC shall submit the report to the Committee. If any officer is found culpable for any loss, illegality or irregularity, DPP should initiate a legal process to recover the amount so lost with interest from the concerned officer at the prevailing CBK rates.

### **4.0 Ineffective Accounting Software systems**

105. The Committee heard that, In the year 2012, the Fund procured two software systems identified as SAP Enterprise Resource Management Programme (SAP ERP) and Social Security and Pension Administration System (SSPAS). The systems were intended to enable the Fund optimize its functional processes and improve operational effectiveness.
106. The SSPAS was expected to provide an integrated platform that supports the Fund's core functions namely registration, collections and benefit payment. The SAP system was to facilitate the Fund's finance and accounting functions by providing transparency and accountability in executing processes.
107. Review of the functionality of the two systems revealed the following inadequacies:
  - i. Records on the Fund's Tenant Purchase Scheme (TPS) are still updated upon submission of physical payment records by tenants at the Head Office since the Scheme is not integrated with the Fund's banking system to automatically update records upon payment. No satisfactory explanation was provided why the Finance Department would not improve customer experience by integrating the software systems with mobile-phone payment technologies.
  - ii. Financial statements are still prepared manually because the SAP system does not independently generate double entry accounting balances. Because of the high number of transactions, the risk of errors and misstatements is high. In addition, SAP system expenditure schedules do not include payee names. As a result, the schedules do not provide a proper audit trail as they are not matched to payment vouchers or other relevant records. The SAP Loan Module is not configured to provide analytical reports on unpaid cheques.

108. In view of these shortcomings, value for money may not have been obtained on the investments made in the two systems.

### **Management response**

109. The management informed the Committee, that the Fund has integrated with banks for TPS payments using MPESA, through USSD \*303# which is already operational. This system was demonstrated and tested by auditors during audit verification.

110. SAP ERP system generates a trial balance and other reports which are used for financial reporting by the Fund. However, the Fund is currently searching for a system that can handle the last mile reporting processes which conform to the templates issued by the Public Sector Accounting Standards Board.

111. The system is able to give a unique identification No. whenever a reversal of a dishonored cheque is posted.

### **Committee observations**

#### **The Committee observed that –**

- i. The issue of the Ineffective Accounting Software systems had continued to attract an audit query from the Auditor-General in the reports for the financial years ending 30<sup>th</sup> June, 2018, 30<sup>th</sup> June, 2019 and now in this year 2019/2020 on its ineffectiveness and lack of security features.
- ii. Further, the systems have continued to attract more costs for improvement of functionality, for example in the audit report of 2019/2020, the Auditor-General reported that KSh.167,945,837 and KSh.29,914,248 were incurred on Social Security and Pensions Administration System (SSPAS) Reimplementation and the SAP Additional modules respectively. The modules were meant for production of financial statements by the Fund. However, the system could still not generate financial statements as expected of an end-to-end system.
- iii. The NSSF did not get value for money from the two systems and the expenditure was nugatory.
- iv. The system continues to attract license fees yet its functionality is questionable.
- v. Proper feasibility study was not done before the SSPAS and SAP systems were procured.
- vi. There was professional negligence in procuring a system that was not able to do the job that was intended to. The competency of the Fund's IT department in coming up with the required specifications is in doubt and as a result, the Fund is losing money for no services rendered.

## **Committee Recommendations**

### **The Committee recommends that –**

- i. The Committee reprimands the then accounting officer and any other officer who was involved in the procurement process for the non-functional systems.
- ii. Within three months upon adoption of this report, EACC to investigate the procurement process of the two systems SSPAS and SAP with a view to establishing whether there were any economic crimes perpetrated by the Fund officers in the procurement process. Further EACC should provide a comprehensive report on the subsequent costs inform of annual license fees and costs of improvement to the systems, deficiencies in the systems functionality and officers who may have been involved in initiating the procurement of the weak system. The reports should be submitted to the Public Investment Committee on Social Services, Administration and Agriculture through the Clerk of the National Assembly. If any officer is found culpable, he/she should be held personally liable for the loss, DPP should initiate a legal process to recover the amount so lost with interest from the concerned officer at the prevailing CBK rates.

### **3.0 EXAMINATION OF THE REPORT OF THE AUDITOR-GENERAL ON THE AUDITED ACCOUNTS OF THE COMMUNICATION AUTHORITY OF KENYA FOR THE FINANCIAL YEAR 2017/2018.**

**Mr. David Mugonyi the Director General, Communication Authority of Kenya (CAK) was accompanied by Mr. Dominic Ooko (Ag. Dir. Finance) and Ms. Lydia Chelangat (Legal Officer) ,appeared before the Committee to adduce evidence on the Audited accounts of the Communication Authority of Kenya (CAK)for the Financial year 2017/2018 AND 2018/2019**

#### **FINANCIAL YEAR 2017/2018**

##### **1.0 Cash and cash Equivalents**

112. The Committee heard that the statement of financial position as at 30<sup>th</sup> June 2018 shows a balance of Kshs. 12,903,177,000 as Cash and Cash equivalents comprising Currents accounts of Kshs. 148,135,000, Short term deposits of Kshs. 12,055.042,000 and Treasury bills of Kshs. 700,000,000. The current accounts balance of Kshs. 148,135,000 as reflected on note 16 to the financial statements has been explained to include a letter of credit balance of Kshs. 46,385,767 held at Kenya Commercial Bank. However, no documentation was provided for audit verification in support of the existence of this letter of credit as at 30<sup>th</sup> June, 2018. Further, Bank reconciliations of currents account reveal the following.



### 1.1 Kenya Commercial Bank Account

113. The initial bank reconciliation statement for the month of June, 2018 reflects a figure of Kshs. 122,747,815.97 as the balance per cash book while the amount in the amended bank reconciliation statement reflects the balance for cash book as Kshs. 82,262,074 resulting in a movement of Kshs. 40,485,742 arising from transactions purportedly effected in July, 2018 but included in the accounting records of June, 2018 which is an inappropriate treatment. Documents to support the Kshs 40,485,742 were not made available for audit verification.

#### Management response

114. The management informed the Committee that the audit observation regarding the difference between the KCB bank balance and cashbook balance is acknowledged. The transactions causing the difference were recorded in the next financial year 2018/19 in the initial bank reconciliation submitted for audit.

115. The total balance in the cashbooks as of 30<sup>th</sup> June, 2018 was Kshs. 148,134,796. This balance comprises of the following;

Account Named	Balance
KCB Current account	128,647,841.39
Citibank Kshs.	15,023,195.92
Citibank USD	3,953,389.25
Cooperative Bank Kshs	510,371.62
Total	148,134,796.00

116. Regarding the documentation of the letter of credit, it was intended for acquiring spare parts for the radio spectrum management system contract CCK/LA/071/032/2014. The authority has submitted the letter of credit.

#### Committee Observation

##### The Committee observed that –

- i. The authority contravened the provisions of Regulation 90 (3) of the PFM (National Government) Regulations, 2015 which requires that a monthly bank reconciliation to be undertaken and any discrepancies noted should be investigated promptly and appropriate action taken including updating relevant cash books.
- ii. The authority failed to provide supporting documentation of the difference between the initial bank reconciliation and the amended bank reconciliation of Kshs. 40,485,742. This was in breach of section 62 of the Public Audit, Act CAP 412B for failing to provide supporting documentation.

- iii. The submission by the management that the transactions causing the difference were recorded in the next financial year 2018/19 in the initial bank reconciliation submitted for audit is unsatisfactory since errors in the financial statements can not be corrected by adjusting subsequent financial year bank reconciliations. Bank reconciliations are subsidiary records that supports balance in the financial statements but not source documents.

### **Committee Recommendations**

#### **The Committee recommends that –**

- i. Within three months upon adoption of this report, the Accounting Officer of the authority should provide supporting documentation of the difference between the initial bank reconciliation and the amended bank reconciliation of Kshs. 40,485,742 to the Auditor-General for audit and reporting in the subsequent audit cycle.
- ii. The Committee reprimands the then Accounting Officer for breach of Regulation 90 of the PFM (National Government) Regulations, 2015 and section 62 of the Public Audit, Act CAP 412B for failing to provide supporting documentation of the difference between the initial bank reconciliation and the amended bank reconciliation of Kshs. 40,485,742.
- iii. The Accounting Officer should at all times ensure that the provisions of Regulation 90 of the PFM (National Government) Regulations, 2015 are strictly adhered to in order to curb any incidence of unexplained bank reconciliation variances.

### **1.2 Citibank N.A Bank account**

117. The Committee heard that the Bank Reconciliation statement for the month of June, 2018 reflects a figure of Kshs. 41,825,299.96 as the balance per cash book while the amount in the Financial statement is Kshs. 15,023,000 resulting in a difference of Kshs. 26,802,299.96. Even though the management has explained the difference as unrepresented payment, no supporting documents were provided for audit verification to support the payment.
118. Under this circumstance, it has not been possible to confirm the accuracy, validity and existence of the Citibank account balance of Kshs. 148,135,000 as at 30<sup>th</sup> June, 2018.

### **Management response**

119. The management informed the Committee that, the difference between the Citibank cashbook and the financial statements is attributed to an unrepresented payment of Kshs. 26,802,104.04. This payment was actually made at the close of the financial year 2017/2018 but paid out on 3<sup>rd</sup> July, 2017. The updated Citibank cashbook and reconciliation for the month of June, 2018 was submitted and the PAYE Voucher Chq No. 2088 paid on 3<sup>rd</sup> July, 2018 and bank statement was attached.

## **Committee observations**

### **The Committee observed that–**

- i. The authority contravened the provisions of PFM (National Government) Regulations 90 (3) which requires that a monthly bank reconciliation to be undertaken and any discrepancies noted should be investigated promptly and appropriate action taken including updating relevant cash books.
- ii. The authority failed to provide supporting documentation of the difference between the cash book and the amount in the Financial statement of Kshs.26,892,299.96. This was in breach of section 62 of the Public Audit, Act CAP 412B for failing to provide supporting documentation.

## **Committee Recommendations**

### **The Committee recommends that –**

- i. The Accounting Officer should at all times ensure that the provisions of Regulation 90 of the PFM (National Government) Regulations, 2015 are strictly adhered to in order to curb any incidence of unexplained bank reconciliation variances.
- ii. Within three months upon adoption of this report, the Accounting Officer of the authority should provide supporting documentation of the difference between the initial bank reconciliation and the amended bank reconciliation of Kshs.26,892,299.96 to the Auditor-General for audit and reporting in the subsequent audit cycle.
- iii. The Committee reprimands the then Accounting Officer for breach of Regulation 90 of the PFM (National Government) Regulations, 2015 and section 62 of the Public Audit, Act CAP 412B for failing to provide supporting documentation of the difference between the initial bank reconciliation and the amended bank reconciliation of Kshs.26,892,299.96.

## **2.0 Property, Plant and Equipment**

120. The Committee heard that, the statement of financial position as at 30<sup>th</sup> June , 2018 indicates a balance of Kshs. 2,980,782,000 as Property, Plant, and Equipment. Note 20 to the financial statements reflects an adjustment of Kshs. 208,208,000. However, the movement of an adjustment of Kshs. 202,091,084 under capital work in progress where only Kshs. 45,973,342 was traceable to intangible assets while the balance of Kshs 156,118,462 could not be supported by actual asset transfers to the other asset categories on the assets movement schedule.
121. In addition, adjustments of Kshs. 2,638,140 and Kshs. 3,417,716 under freehold land and buildings and civil works respectively had no supporting documents produced for audit verification.

122. Further, freehold land includes additions totaling Kshs.41,788,000 for which procurement and ownership documents were not provided for audit review.

123. Consequently, the accuracy of the property, plant and equipment balance of Kshs.2,980,782,000 as at 30<sup>th</sup> June, 2018 could not be ascertained.

#### Management response

124. The management informed the Committee that, in the fiscal year 2017/2018, Works-in-Progress classified under Property, Plant & Equipment were completed, totaling Kshs. 202,091,804. These completed works were subsequently capitalized to the respective Asset Categories.

A summary of the assets and adjustments is provided below;

Asset category	Description	Total
Land	Kitale Station Boundary Wall	41,788,300
Repairs Buildings	Kitale Station Boundary Wall	26,485
Commercial Buildings	CA HQ Refurbishment	111,919,277
WIP Buildings	CA HQ Refurbishment	2,384,399
ICT Regulatory Systems	Numbering Management System	33,184,842
General Office Software	RFID File Management System	12,788,500
	<b><i>W.I.P (PPE) Completed &amp; Capitalized/ Expensed</i></b>	<b>202,091,804</b>
Land	Tratiz Enterprises	2,639,140
Commercial Buildings	AUA Industria	3,477,114
	PPE Adjustments	6,116,254
<b>Total PPE capitalized and adjustments</b>		<b>208,208,058</b>

125. Ms. Widescope Construction contract, which is the documentation for the Kitale Station Boundary Wall amounting to Kshs. 41,788,000. The transaction was erroneously posted to Land instead of Civil works. The title deed of Kitale is provided.

126. The Ledger corrections amounting to Kshs. 6,116,254 in the fixed assets register were effected to correct overstatements to the assets and supplier ledger accounts due to erroneous double posting of retention invoices that the suppliers submitted for payment after completion of the defects liability period. The corrections were reversals of accounting entries that never resulted in double payment.

127. In the case of Land – Kshs. 2,639,140, the adjustment was effected to correct erroneous double posting of retention invoices.

128. The conclusion of the contract, the supplier raised additional invoice dated 30/06/2018 Invoice No. 031214-04 of Kshs. 2,639,140.15 for the payment of retention that was erroneously posted again, hence overstating the Asset and ledger balance by Kshs 2,639,140 as at FY2015/16.

129. In FY 2017/18, correction in the general ledger was effected to correct the overstatement of assets and supplier balances as listed below;

Date	Invoice	Amount
09/03/16	02/03/15-0	742,972.45
09/03/16	100415-4	735,954.80
09/03/16	TPI/15/05	714,798.90
09/03/16	TPI/24/06	445,414.00
	<b>Total</b>	<b>2,639,140.00</b>

130. The Buildings of Kshs. 3,477,116, the correction was for double posting of retention invoices to AUA Industria Limited as indicated below;

Date	Invoice	Amount
30/6/18	5431	3,477,116.00

131. At the conclusion of the contract, the supplier raised additional invoice for the retention that was erroneously posted again, hence overstating the Asset and ledger balance by Kshs. 3,477,116 as at FY2016/17. In FY 2017/18 correction in the general ledger of the overstatement of assets and supplier balances was effected.

### **Committee observations**

#### **The Committee observed that –**

The authority did not avail supporting documentation for audit on the adjustments of Kshs.2,638,140 and Kshs. 3,417,716 under freehold land and buildings and civil works.

- i. The authority failed to submit to the Auditor-General the ownership documents for its freehold land additions totaling to Kshs. 41,788,000.
- ii. That authority has a weak internal audit system that was not able to identify errors or erroneous double posting in the books of account which lead to misrepresentation of the financial position of the authority.
- iii. A review of the note 20 to the financial statements revealed that a transfer of Kshs. 202,092,000 from the work in progress was done. However the corresponding movement to the respective class of completed asset could not be traced and therefore the financial statements were misstated and not reflecting a true and fair view.

### **Committee recommendations**

#### **The Committee recommends that –**

- i. The then Accounting Officer failed to provide the required information for audit pursuant to Section 62(1) of the Public Audit Act, 2015 and the DPP should prosecute the responsible officer in accordance with section 62(2) of the Public Audit Act CAP 412B.
- ii. Within three (3) months upon adoption of this report, the Accounting Officer, Communication Authority should submit detailed response to the Auditor-General on how the corrections in the general ledger was effected to align the overstatement of assets and the documentary evidence to proof the adjustments of Kshs. 2,638,140 and Kshs. 3,417,716 under freehold land and buildings and civil works respectively. The Auditor-General Should review the evidence and report the status in the subsequent audit cycle.

### **3.0 Employee Costs-Salaries and Wages**

132. The Committee heard that that, the statement of financial performance and note 9 to the financial statements reflect an amount of Kshs.1,140,209,000 in respect of employee costs. However, monthly analysis of employee costs gives a total sum of Kshs.1,142,962,219 resulting in an unexplained and unreconciled variance of Kshs.2,753,219.
133. In addition, bonus payments amounting to Kshs. 9,589,055 made to staff for various reasons for which the basis of payments and the authority for payments listed below were not made available for audit review;



Name of Bonus	Month	Amount (Kshs)
Lump Sum Payments	July 2017	6,274,140
Long Service Award	June 2018	1,040,375
Long Service Award	March 2018	2,274,540
Total		9,589,055

134. Consequently, the accuracy of employee costs of Kshs. 1,140,209,000 for the year ended 30<sup>th</sup> June, 2018 could not be confirmed.

#### **Management response**

135. The management informed the Committee that, the cause of the variance in the payroll was due to long service awards paid in payroll but charged to staff welfare vote.

#### ***Payroll Analysis explanations***

	Amount in (Kshs.)	Remarks
Total	1,142,962,219	Payroll schedule provided
Amount as per financial statements	1,140,209,000	Employee costs in the financial statements
Variance	2,753,219	The variance of Kshs. 2,753,219.90 was paid through payroll but charged to staff welfare budget vote

136. The lump sum payments were paid according to HCA policy clause 4.7.2 that Employees who have reached the maximum of their salary scales, with positive appraisal ratings, may

be awarded a lump sum performance related bonus, equivalent to one or more annual increments, but not exceeding (3) increments per year.

#### **Committee observations**

##### **The Committee observed that –**

- i. The authority did not avail for audit the approval and the reasons for the payment of bonuses to staff amounting to Kshs. 9,589,055. The authority was in breach of section 62 (1)(c) of Public Audit Act, 2015 which requires that a person shall not without justification fail to provide information within reasonable time that is required under the Act.
- ii. The CAK Human Resource and Capital Policy manual clause 4.7.2 referred to in the management submission on merit increments states that employees who have reached the maximum of their salary scales with positive appraisal ratings may be awarded a lumpsum performance bonuses equivalent to one or more annual increment but not more than three per year was invalid in the circumstances. The Officers in question were paid a lumpsum equivalent to annual increment multiplied by twelve instead of at most three. This resulted in to an overpayment of the bonus by Kshs. 4,705,605

#### **Committee recommendations**

##### **The Committee recommends that –**

- i. Within three months upon adoption of this report, the Inspector General State Corporations should recover the overpayment of Kshs. 4,705,605 from the board members and accounting officer who authorized the payment and the paying officers who paid the amount irregularly in accordance with the law.
- ii. The Committee reprimands the Accounting Officer and recommends that the accounting officer should at all times ensure that the provisions of section 62 (1) (c) are strictly adhered to by providing information to Auditor-General within reasonable time required under the Act.

#### **4.0 Unsupported General Expenditure**

137. The Committee heard that, the statement of financial performance as at 30<sup>th</sup> June, 2018 shows a figure of Kshs.2,631,195,000 as general expenses included in the general expenses are expenditures amounting to Kshs.157,164,356 which were not supported by any documentary evidence. The expenditure lines are as detailed below;

	Amount
Training	23,744,235
Enforcement	615,960
Computer Software Maintenance	57,543,215
Corporate affairs	18,314,285
Consumer affairs	54,117,773
Medical	2,828,888
Total	157,164,356

138. Under the circumstances, the accuracy and propriety of the general expenses of Kshs. 2,631,195,000 as at 30 June 2018 could not be ascertained.

#### Management response

139. The management informed the Committee that, the copies of the payments voucher and documentary evidence is provided below;

Category	Payee	Amount	Annex
<b>Medical Expenses</b>	MP.Shah	620,642.00	<b>8A</b>
	MP.Shah	760,237.00	<b>8A</b>
	Christian Medical College and Hospital	834,400.00	<b>8A</b>
	Nairobi Hospital	612,810.00	<b>8A</b>

Category	Payee	Amount	Annex
	<b>Total</b>	<b>2,828,089.00</b>	
<b>Computer Soft Ware</b>	Access Kenya Group Limited	1,783,619.18	<b>8B</b>
	Access Kenya Group Limited	1,783,619.18	<b>8B</b>
	Access Kenya Group Limited	1,783,619.18	<b>8B</b>
	Access Kenya Group Limited	1,783,619.18	<b>8B</b>
	Access Kenya Group Limited	7,134,476.82	<b>8B</b>
	Techsource Point Limited	9,429,706.80	<b>8B</b>
	Liquid Telecommunications Kenya Limited	6,418,860.00	<b>8B</b>
	Liquid Telecommunications Kenya Limited	6,418,860.00	<b>8B</b>
	Liquid Telecommunications Kenya Limited	6,418,860.00	<b>8B</b>
	Access Kenya Group Limited	7,936,844.00	<b>8B</b>
	Adcc International East Africa Limited	4,940,000.00	<b>8B</b>

Category	Payee	Amount	Annex
	Oracle Engineering Limited	1,771,988.84	8B
	<b>Total</b>	<b>57,543,073.18</b>	
<b>Training</b>	African Advanced Level Telecommunications Institute	5,000,000.00	8C
	African Advanced Level Telecommunications Institute	1,861,898.93	8C
	Phowad Solutions Limited	3,780,000.00	8C
	May House Consulting Group	2,520,000.00	8C
	Dual Dimension Consulting Limited	2,340,000.00	8C
	Dual Dimension Consulting Limited	2,880,000.00	8C
	May House Consulting Group	2,750,000.00	8C
	Institute Of Certified Public Accountants Of Kenya	2,600,000.00	8C
	<b>Total</b>	<b>23,731,898.93</b>	

Category	Payee	Amount	Annex
<b>Consumer Affairs</b>	Swirl Event Solutions Limited	18,999,757.40	<b>8D</b>
	Swirl Event Solutions Limited	18,300,274.65	<b>8D</b>
	Transcend Media Group	8,302,331.75	<b>8D</b>
	African Advanced Level Telecommunications Institute	7,000,000.00	<b>8D</b>
	Ashdown Limited	687,500.00	<b>8D</b>
	Brillium Enterprises	465,000.00	<b>8D</b>
	Awam General Enterprises	290,000.00	<b>8D</b>
	<b>Total</b>	<b>54,044,863.80</b>	
<b>Corporate Affairs</b>	Kyaka Hotel	308,600.00	<b>8E</b>
	International Telecommunications Union	5,170,000.00	<b>8E</b>
	Unicore Limited	12,834,124.80	<b>8E</b>
	<b>Total</b>	<b>18,312,724.80</b>	<b>8E</b>



## **Committee Observations**

### **The Committee observed that –**

- i. The authority did not avail documentary evidence to support the expenditures amounting to Kshs. 157,164,356. The expenditures lacked payment vouchers raising concerns about the transparency and accountability of the expenses incurred under general expenses.
- ii. The authority was in breach of section 62 (1)(c) of Public Audit Act, 2015 which requires that a person shall not without justification fail to provide information within reasonable time that is required under the Act.

## **Committee recommendations**

### **The Committee recommends that –**

Within three months upon adoption of this report, the Accounting Officer, Communication Authority of Kenya should submit to the Auditor-General the payment vouchers to support the payment of Kshs. 157,164,356 under general expenses. The Auditor-General Should review the evidence and report the status in the subsequent audit cycle.

## **4.0 Payment received in advance**

140. The Committee heard that, the statement of financial position as at 30<sup>th</sup> June, 2018 reflects a figure of Kshs.26,479,000 as payments received in advance comprising Kshs.20,501,000 (annual frequency license fees) and Kshs5,987,000 (annual operating fees). However, the following anomalies were noted under payments in advance.
141. A sample of 17 payments received in advance comprising Kshs.12,347,261 were compared to invoices and total amount of invoices for the 17 users was found to be Kshs.26,743,677 resulting to an unexplained and unsupported variance of Kshs. 14,396,415 which was not explained or supported. If the error level were to be extrapolated to the population of Kshs. 26,479,000 then, the expected resultant variance would be Kshs. 30,873,460. Consequently, it was not possible to confirm the accuracy of the payments received in advance of Kshs. 26,479,000.
  - a) The breakdown of annual operating fee license amount Kshs. 5,978,000 contained negative entries totalling Kshs. 802,975 for which no valid explanation or reconciliation was provided for audit scrutiny.
  - b) The breakdown of Kshs. 20,501,000 reflected as annual frequency license fees had an unexplained opening balance of Kshs. 14,375,000. No breakdown was provided for this balance and hence could not match to the billing and utilization during the year.

- c) Invoices raised in the month of June 2018 amounting to Kshs. 1,286,373 in respect of annual frequency license and Kshs. 3,009,976 in respect of annual operating license included in the payments in advance were not provided for audit verification.

### **Management response**

142. The management informed the Committee that the payments received in advance refers to fees paid to the authority before its due in the next financial year, hence recognized as liability in the current financial year and allocated to invoices in the next FY 2018/19.
143. In June every year, the Authority embarks on generating invoices for the subsequent financial year and dispatching invoices early so that licenses can receive invoices early enough and make payments as soon as possible and especially from 1st July of the commencing financial year. In this regard, some of the licensees normally make payments immediately they receive the invoices in the month of June hence resulting in Advance income.
144. In some Instances, invoices/letters issued to new clients say in the fourth quarter of the year, shall have amounts payable for the financial year duly prorated in the offer letter, and the amounts for next one full year is also disclosed to the applicant in the letter.
145. In a number of instances, the applicant adds up the two amounts and pays the full sum. The amount relating to the subsequent year is the recognized as advance income. This therefore explains why amounts recognized in advance account may be different from the invoiced amounts since only income related to the financial year is recognized for the year due and the rest of the amounts becomes advanced income (pre-payments).

### **Committee Observations**

#### **The Committee observed that –**

- i. The Committee could not confirm the accuracy of the advance payments where after a sample analysis revealed significant variances between the payments received in advance and the corresponding invoices, which indicated potential errors or inconsistencies in the billing and accounting processes.
- ii. The Committee noted that the negative entries found in the breakdown of annual operating fee license amount, lack valid explanations or reconciliations, which further cast doubt on the reliability of the financial data.
- iii. The invoices raised in the month of June 2018 in respect of annual frequency license amounting to Kshs. 1,286,373 and annual operating license amounting to Kshs. 3,009,976 included in the payments in advance were not provided for audit verification.

## **Committee recommendations**

### **The Committee recommends that –**

- i. The Committee reprimands the then Accounting officer for contravening the provisions of Section 68(2) of the Public Finance Management Act of 2012 for failing to submit all the required information for audit within the stipulated timelines.
- ii. Within three months upon adoption of this report, the Accounting Officer, Communication Authority of Keya should submit to the Auditor-General a reconciliation of payments received in advance comprising of Kshs.20,501,000 (annual frequency license fees) and Kshs5,987,000 (annual operating fees) and the corresponding invoices and breakdown to correct the anomalies. The Auditor-General Should review the evidence and report the status in the subsequent audit cycle.

## **6.0 Revenue from Non-Exchange Transactions**

146. The Committee heard that the statement of financial performance as at 30<sup>th</sup> June, 2018 reflects a figure of Kshs.7,620,184,000 as revenue from non-exchange transactions. Examination of schedules provided reveal the following;

### **6.1 Annual frequency license Fees-Advance income**

147. The annual frequency license fees of Kshs.6,223,152,000 is an amount of Kshs.7,220,500 described as advance income 2016/2017 (Ref ADVNC 16/17 Kshs. 5,776,047 and Kshs. 1,444,593 dated 1<sup>st</sup> July, 2017). However, no documentation was provided to show that the amount of Kshs. 7,220,500 was included under liabilities as payment in advance in the financial year 2016/2017. Without the confirmation, it is not possible to confirm the accuracy of Annual frequency income of Kshs. 6,223,152,000.

### **Management response**

148. The management informed the Committee that, prior to July 2017, invoices relating to the F/Y 2017/18 had been issued and clients made payments, which formed part of the advance income in the F/Y 2016/17. As at financial year 2017/18, this advance income was reversed so that this income is accounted for during the year that it related of 2017/18.

## **Committee Observations**

### **The Committee observed that –**

An amount of Kshs.7,220,500 described as advance income in 2016/2017 was not included under liabilities leading to the understatement of the liabilities thus raising concerns about the accuracy and completeness of the financial reporting.

### **Committee recommendations**

#### **The Committee recommends that –**

- i. The Committee reprimands the then Accounting officer and the then officers in the accounting departments involved in preparation and review of financial statements for failing to adhere to the requirements of International Public Sector Accounting Standards as prescribed in the PFM Act, Cap 412A and Regulation 221 of the PFM (National Government) regulations, 2015.
- ii. Within three months upon adoption of this report, the Accounting Officer, Communication Authority of Kenya should submit to the Auditor-General all information relating to Kshs.7,220,500 described as advance income in 2016/2017 which was not included under liabilities that resulted to understatement of the liabilities. The Auditor-General Should review the evidence and report the status in the subsequent audit cycle.

## **6.2 Annual operating license Fees-Invoice to Kenya Towers**

149. The Committee heard that, the annual operating license fees of Kshs1,392,103,000 is an amount of Kshs17,156,188 (Ref N171706 dated 3.7.2017) being a duplicate of Invoice Ref N171706 dated 1.7.2017. No credit note issued to reverse one of the invoices to Kenya Towers. Consequently, the annual operating license fees of Kshs.1,392,103,000 is overstated and therefore the accuracy and completeness could not be ascertained.

### **Management response**

150. The management informed the Committee that, invoice no. N171706 of Kshs.17,156,188 was issued to Kenya Towers Limited. It was captured twice on 1st July 2017 and on 3rd July 2017. An entry to reverse this double capture was provided.

## **Committee observations**

### **The Committee observed that –**

- i. The authority erroneously issued Kshs17,156,188 (Ref N171706 dated 3.7.2017) which was duplicate of Invoice Ref N171706 dated 1.7.2017. the attendant supporting documents to explain how the error was corrected as verified by the Committee were inadequate. The issue of double invoicing and whether the invoices were honoured by Kenya Towers were not addressed in the response.
- ii. The fact that the Authority issued duplicated invoices no. N171706 of Kshs.17,156,188 on 1st July 2017 and on 3rd July 2017 is a pointer to weak internal controls in the authority's financial management systems.

## **Committee recommendations**

### **The Committee recommends that –**

- i. Within three months upon the adoption of this report, the EACC should investigate the circumstances surrounding the issuance of duplicate invoices amounting to Kshs17,156,188 (Ref N171706 dated 3.7.2017) which was duplicate of Invoice Ref N171706 dated 1.7.2017. Should any person be found culpable, the Director of Public Prosecutions to take the necessary legal action.
- ii. Within three months upon adoption of this report, the Accounting Officer, Communication Authority of Kenya should submit to the Auditor-General an evidence of the credit note which reversed one of the duplicate invoices (Ref N171706 dated 3.7.2017 or 1.7.2017). The Auditor-General Should review the evidence and report the status in the subsequent audit cycle.

## **7.0 Receivables from Exchange Transactions**

151. The Committee heard that, the statement of financial position as at 30<sup>th</sup> June, 2018 reflects a figure of Kshs.561,321,000 as receivables from exchange transactions. Although the breakdown of the balance as at year end was provided, the comparative figure as at the end of the previous year or the opening balances were not provided and hence it was not possible to work out the repayments and new issues during the year as well as identification of the non-performing advance which includes an amount of Kshs. 421,088,580 referred as CCK property loan.
152. In addition, the balance of other receivables as disclosed on note 18 to the financial statements of Kshs. 543,834,000 include car insurance of Kshs. 339,744 medical recoveries of Kshs. 877,760 salary advances of Kshs. 361,793, fire and mortgage of Kshs. 6,355 AA subscriptions of Kshs. 102,079 and other debtors of Kshs. 92,402 all of which had no supporting breakdown provided for audit verification.

153. Further, other receivables amount of Kshs. 543,833,807 includes an amount of out of which Kshs. 4,194,364 in respect of imprest issued to officers who hold more than one imprest.

154. Under the circumstances, the accuracy and validity of receivables from exchange transactions balance of Kshs. 561,321,000 as at 30 June 2018 could not be confirmed.

### Management response

155. The imprests were surrendered in the subsequent periods. The summary of outstanding imprests is indicated below in table below;

156. The employee loans are maintained and recovered in payroll. There are no defaults. Employee Advance/loan schedule indicating the opening balance, new issues and repayments has been provided.

#### Summary of outstanding imprest

<b>Summary Staff Debtors as at 30th June 2018</b>	
Particulars	Amount
Standing/office imprest	127,882.31
Staff/accountable imprest	4,440,704.69
Travel imprest	6,665,583.51
Training imprest	1,017,244.19
Board imprest	1,288,824.30
<b>Total</b>	<b>13,540,239.00</b>

157. The comparative figure as at the end of the previous year indicating the opening balances as well as repayments and new issues during the financial year.

158. CCK property loan Kshs. 421,008,580 are running loans and all staff loans are performing since recoveries are under payroll check off plans.

159. Other receivables as disclosed on Note (18) in the financial statements of Kshs. 543,834,000 which include car insurance of Kshs. 339,744, medical recoveries Kshs. 877,760, salary advances of Kshs. 361,793 and fire mortgage of Kshs. 6,355, AA subscriptions of Kshs. 102,079 and other debtors of Kshs. 92,402. The advances are performing since recoveries are under payroll check off plans.



160. Other receivables amount of Kshs. 543,833,807 indicated that it includes an amount of Kshs. 4,194,364 in respect of imprest issues to officers who hold more than one imprest. In certain circumstances, an officer holds both subsistence allowance and accountable imprest.

#### **Committee observations**

##### **The Committee observed that –**

- i. The authority failed to provide supporting breakdown for audit verification receivables of Kshs. 339,744 under insurance, medical recoveries of Kshs. 877,760, salary advances of Kshs.361,793, fire and mortgage of Kshs.6,355, Appropriation in Aid subscriptions of Kshs.102,079 and other debtors of Kshs.92,402.
- ii. The then Accounting Officer failed to enforce the provision of the Regulation 93(5) of the PFM (National Government) Regulations, 2015 that prescribes that imprest surrender be made within 7 days.
- iii. The evidence submitted to the Committee on how imprest amounting to Kshs. 4,194,364 did not indicate how the imprest was recovered in the payroll. The response was also inadequate to address the audit query imprest issued to officers who hold more than one imprest contrary to Regulation 93 of the PFM (National Government) Regulations, 2015.

#### **Committee Recommendation**

##### **The Committee recommends that –**

Within three months upon adoption of this report, the Accounting Officer to provide evidence of the alleged recovery of imprest of Kshs. 4,194,364 in accordance with Regulation 93(6) of PFM (National Government) Regulations, 2015. The evidence of recovery should be submitted to the National Assembly and the Auditor General for verification and reporting in the subsequent audit cycle.

#### **8.0 Trade and Other Payables**

161. The Committee heard that, the statement of financial position as at 30<sup>th</sup> June, 2018 reflects a figure of Kshs.897,145,000 as Trade and other payables from exchange transactions in respect of which the following issues were noted:

- a) Included in this amount is trade payables figure of Kshs. 691,358,000 of which an amount of Kshs. 19,229,547 as reflected as Asset Deposit Compensation for which the supporting documents were provided for audit review does not demonstrate how the amounts is payable yet it is an insurance claim and the corresponding asset that was being cleared has not been eliminated/disposed on the asset's movement schedule of the financial statements.

- b) Included in the trade payable amount of Kshs. 691,358,000 is an amount of Kshs. 14,830,327 payables to Commissioner of Income Tax and an amount of Kshs. 17,426,704 payables to Commissioner of VAT which were not supported with relevant documents in form of returns of assessment to or from Kenya Revenue Authority.
- c) Suppliers' statement duly reconciled to the creditor balance as per accounting records were not provided for audit verification especially for suppliers with balances above Kshs. 10,000,000 which totalled to Kshs. 482,761,016.
- d) The trade and other payables balance of Kshs. 897,145,000 includes unpaid employee remittances of Kshs. 43,938,594 for which detailed breakdown had unexplained debit balances totalling Kshs. 12,960,750 as shown below:

Name	Amount
KCB pension-seconded staff	11,304
HELB	537
COTU College	20,850
SACCO shares	6,383,480
NSSF	2,620,500
Communication Workers Union	72,612
CCK pension scheme	3,711,805
Old Mutual	42,860
ICEA	9,055
SACCO Instant Loan	82,634
Communication Special savings	5,113
<b>Total</b>	<b>12,960,750</b>

162. Consequently, the accuracy and validity of the trade and other payables balance of Kshs. 691,358,000 as at 30<sup>th</sup> June, 2018 could not be ascertained.

### **Management response**

163. The management informed the Committee that, the amount of Kshs. 19,229,547 refers to compensation by Toyota Kenya for the damage of the antennae of Monitoring vehicle. The amount was recorded as a deposit since it shall be applied to the costs charged by the equipment manufacturer upon repair of the antennae.
164. The Authority is required under VAT act section (19) and Income Tax Act section 35 to deduct and remit taxes to the Kenya revenue Authority. For those purposes, the Authority deducts the said taxes as required and remits the same to KRA. The Authority files returns and payment as per the guidelines provided for by KRA and the tax laws.
165. The employee's remittances and the balance that gives the balance of 43,938,594 as well as the opening balances of Kshs. 71,451,392 were settled in subsequent periods.

### **Committee observations**

#### **The Committee observed that –**

- i. An amount of Kshs. 19,229,547 reflected as Asset Deposit Compensation within the trade payables, lacked supporting documentation. Additionally the authority failed to demonstrate how it categorized insurance claim as a payable and the evidence indicating the elimination or disposal of the corresponding asset related to this compensation on the asset movement schedule.
- ii. An amount of Kshs. 14,830,327 payables to Commissioner of Income Tax and an amount of Kshs. 17,426,704 payables to Commissioner of VAT were not supported with relevant documents in form of returns of assessment to or from Kenya Revenue Authority.
- iii. The authority breached Section 19 (4) of the employment Act, 2007 which states that an employer who deducts an amount from an employee's remuneration in accordance with subsection (1)(a),(f),(g) and (h) shall pay the amount so deducted in accordance with the time period and other requirements specified in the law.
- iv. The unexplained debit balances totalling Kshs. 12,960,750 included in the unpaid employee remittances of Kshs. 43,938,594 implied that some institutions were overpaid by the authority when remitting statutory deductions. This points to a weakness in the authority's financial records.

### **Committee recommendations**

#### **The Committee recommends –**

- i. Within three months upon adoption of this report, the Accounting Officer, Communication Authority of Kenya should submit to the Committee the evidence of recovery of the claim

Kshs.19,229,547 and how it was eventually paid to the company that repaired the damaged antennae of Monitoring vehicle.

- ii. The Committee reprimands the then Accounting Officer for violating Section 19 (4) of the employment Act, 2007 which requires that an employer who deducts an amount from an employee's remuneration in accordance with subsection (1)(a),(f),(g) and (h) shall pay the amount so deducted in accordance with the time period and other requirements specified in the law.
- iii. Within three months upon adoption of this report, the Accounting Officer, Communication Authority of Kenya should submit to the Committee the evidence and justification on how the Authority overpaid other entities the amount totaling Kshs. 12,960,750.
- iv. The Committee on Implementation should fast-track the process of implementing the Committee recommendations and report to the National Assembly on the status.

## **9.0 Remuneration of Directors**

166. The Committee heard that, the statement of financial performance as at 30<sup>th</sup> June, 2018 reflects a figure of Kshs.53,995,000 in respect of remuneration to directors. The amount includes broadband allowance totaling Kshs.3,362,333 paid to Directors on a monthly basis whose basis was not provided for audit verifications and in addition the payment was not in line with State Corporations Act and Mwongozo guidelines.

167. In consequence, the accountability and propriety of the expenditure of Kshs. 3,362,333 could not be confirmed.

### **Management response**

168. The management informed the Committee that, the Board approved the provision of working tools for both staff and Board to enable them to effectively perform their duties.

### **Committee observations**

#### **The Committee observed that –**

The broadband allowance totalling to Kshs.3,362,333 paid to the Board of Directors although supported with HCA Circular no. 1'B' of 2014 dated 13<sup>th</sup> February, 2014 there was no evidence of approval for such by the Salaries and Remuneration Commission nor State Corporations Act and Mwongozo guidelines. The allowance is therefore irregular and recoverable.

## **Committee recommendations**

### **The Committee recommends that –**

Within three months upon adoption of this report, the Inspector General Inspectorate of state corporations should surcharge (with interest at the prevailing CBK rates) the then accounting officer and the then Board of Directors for the irregular expenditure of Kshs.3,362,333 and provide documentary evidence on the recovery/surcharge.

### **10.0 Unauthorised Employee Costs**

169. The Committee heard that, the statement of financial performance as at 30<sup>th</sup> June, 2018 reflects a figure of Kshs.1,140,209,000 as employee costs. Included in this amount is a figure of travel and other allowances of Kshs.117,310,000 and Housing benefits and other allowances of Kshs. 123,979,000 which was spent and there was no budgetary allocation as no budget approvals by the full Board meeting were produced for audit verification.

170. The statements of financial performance and note 9 of the financial statements reflects contribution to pensions and medical actual expenditure of Kshs. 89,807,000 although the budgetary allocation was of Kshs. 64,100,000 resulting in over expenditure of Kshs. 25,707,000 for which no budgetary re-allocation and approvals by the full Board were made available for audit review.

171. In view of the foregoing, the accuracy, legality and propriety of the expenditure could not be confirmed.

### **Management response**

172. The amount was within the approved budget and the itemized budget and board extract was provided.

### **Committee observations**

#### **The Committee observed that –**

- i. The expenditure of Kshs.117,310,000 on travel and other allowances and Kshs.123,979,000 on Housing benefits and other allowances was incurred contrary to Section 12 of the State Corporations Act which provides that no corporation shall without the prior approval in writing of the Minister and the Treasury incur any expenditure for which provision has not been made in annual estimates.
- ii. The response provided by the accounting officer and the attendant appendix were unsatisfactory since the budget is given as block figures and not itemized as queried by the Auditor-General thus its inclusion and approval could not be confirmed.

## **Committee Recommendations**

### **The Committee recommends that –**

The Committee reprimands the then Accounting Officer and recommends that the accounting officer must all times adhere to the provisions of section 12 of the State Corporations Act Corporations Act, Cap 446 which requires the Accounting Officer to seek prior approval in writing of the Minister and the National Treasury in incurring any expenditure for which provision has not been made in annual estimates.

### **11.0 Other Income**

173. The Committee heard that, the statement of financial performance as at 30<sup>th</sup> June, 2018 reflects a figure of Kshs.4,093,000 in respect of other income out of which Kshs. 4,093,000 relate to staff rent. However, no documentation was provided to support the rentals income from the staff such as the rental agreements and even the detailed breakdown of who paid what amounts.

174. Under the circumstances, it was not possible to confirm the accuracy and propriety of other incomes of Kshs. 4,163,000 as at 30<sup>th</sup> June 2018.

### **Management response**

175. The management informed the Committee that, the authority has staff quarters which house staff. Staff members who are housed in the Authority's residential houses pay a monthly rent as required. The authority schedule of the rent income received together with the sample house allocation letters has been provided.

## **Committee observations**

### **The Committee observed that –**

- i. The Accounting Officer did not submit the signed staff tenancy lease agreements, the details and the amounts paid by the tenants occupying the authority's houses.
- ii. The management failed to adequately address the audit query raised. The breakdown of who paid what amounts as per the respective employee payslips were not provided.

## **Committee recommendations**

### **The Committee recommends that –**

Within three months upon adoption of this report the Accounting Officer should submit the signed tenancy lease agreements and the details of all the tenants residing at the authority's houses to the Auditor- General and the National Assembly. The Auditor-General should audit and report in the subsequent audit cycle.

## 12.0 Budget

176. The Committee heard that, the figures of approved budget presented for audit compared to the amounts reflected in the statement of comparison of budget and actual amounts had variances in some account balances as highlighted below:

Account Balance	Amount of Budget as reflected in the Statement of Comparison of Budget and Actual (Kshs.)	Amount reflected in the Approved Budget (Kshs.)	Variance (Kshs)
Employee costs/personal emoluments	1,155,238,000	388,01,14000	14,900,000
General expenses/operating and administrative expenses	2,463,449,000	2,471,849,000	8,400,000)
	Overall difference		6,500,000

### Management response

177. The management informed the Committee that, the actual expenses of Kshs.3.771 billion shillings exceeded the approved budget of Kshs.3.618 billion shillings. This was because the budget amount did not include an allowance for bad debts, which are debts that are unlikely to be collected. The bad debts provision for that year was Kshs.702.8 million shillings. When this amount is deducted from the actual expenses (Kshs. 3.771 billion – Kshs. 702.8 million), the resulting figure of 3.069 billion shillings is within the approved budget Kshs. 3.618 billion.

### Committee observations

#### Committee observed that –

- i. The Authority relied on unrealistic projections of revenue and expenditure and this has resulted its actual expenses to exceed the approved budgetary allocation.
- ii. The assertion by the authority that the budget amount did not include an allowance for bad debts is inaccurate. This is because the provision for bad debts is not a budget item.



## **Committee Recommendation**

### **The Committee recommends that –**

- i. The Accounting Officer should ensure at all times that the budgets are realistic and achievable and always adhere to annual work plans, procurement plans and revenue collection schedules.
- ii. The Committee cites the then Accounting Officer for incompetency.

### **13.0 Prior Year Issues**

178. The following prior year issues were brought forward by the Auditor-General as issues raised in the previous years but were yet to be addressed by the management of CAK as at the time of the audit and reporting. The Committee upheld the management submissions, Committee observations and recommendation made thereon in the 23<sup>rd</sup> PIC report having deliberated on the same prior year issues and the Accounting Officer having affirmed on record to stand with the responses submitted then, the Committee observations and recommendation made thereon.

### **13.1 Irregular Procurement Methods**

### **13.2 Event Management Services**

179. The Committee heard that, as disclosed in Note 12 to the financial statements the general expenses figure. The figure of Kshs 1,969,111,000 includes an amount of Kshs 95,408,000 in respect of consumer affairs. The figure of Kshs 95,408,000 also includes Kshs 13,302,560 being cost of event management services during the Authority's ICT forum held on 11 November 2016 whose service provider was identified through request for quotations method of procurement yet the tender amount exceeded the allowable threshold of Kshs 2 million. This is contrary to the Public Procurement and Asset Disposal Act, 2015. In addition, no signed formal contract between the Authority and the service provider was availed for audit review.
180. Further, the figure of Kshs. 95,408,000 includes an amount of Kshs.20,130,998 paid to another firm in respect of event management services to Kikao Kikuu in Busia without a signed contract agreement contrary to section 44(1)(f) of the Public Procurement and Asset Disposal Act 2015 which requires an accounting officer to approve and sign all contracts of the procuring entity.

181. In the circumstances, it has not been possible to confirm the propriety of expenditure totaling Kshs.33,433,557 for the year ended 30 June 2017.

#### **Management response**

182. The management informed the Committee that the Communications Authority of Kenya through its procurement plan of 2016/217 planned to carry out ICT Consumer education forums in Bungoma, Makueni, Nyeri, Busia and Baringo Counties. For each of the forums, the Authority required the services of an event manager. Event management and related services had been reserved for Youth, Women, and persons with disabilities "reservations" as PPADA means exclusive preference to procure goods, works and services set aside to a defined target group within a specified threshold or region.
183. In November 2016, the Authority commenced its ICT Consumer education forum in Bungoma County. At that time, the Authority had not prequalified/registered firms to participate in Access to Government Procurement opportunities. Therefore, the Authority invited bids from 10 firms that had been registered by The National Treasury as disadvantaged groups in the category of youth women and persons with disabilities as per the provision of Public Procurement and Assets Disposal Act Section 157 (17) "*The National Treasury shall operationalize a preference and reservations secretariat to be responsible for the implementation of the preferences and reservations under this Act which shall be responsible for (a) Registration, prequalification and certification of the persons, categories of persons or groups as provided for in under Part XII.*"
184. The tender for event management was therefore tendered using The National Treasury list of firms registered under disadvantaged group of Youth, Women and Persons with Disabilities and awarded to M/s Sum Decorators. The Authority issued purchase order 1637 to M/s Sum Decorators of Kshs. 13,302,560 after receiving their acceptance letter.
185. The purchase order in this instance was a formal contract bidding parties as it met the threshold of the Section 44(1)(f) and Section 135 (1) PPADA ACT 2015.
186. The Authority required the services of an event management for its County ICT Consumer forums in Busia and launch of its CSR activities in Bungoma County. An advertisement was placed in the Daily Nation on 25th November 2016 with a closing date of the tender being on 21st December 2016.
187. The bids were evaluated and M/s Unicore was awarded one of the (7) seven blocks that were being tendered to provide event management and related services. The awarded blocks had Busia and Bungoma Counties as some of the regions to be covered by the firm and as such the firm was engaged to provide event management and related during the ICT consumer education forum in Busia and launch of the CSR activities in Bungoma Counties.

188. Upon acceptance of the offer, which had terms and conditions of engagement, the Authority issued two purchase orders to M/s Unicore which were signed by the Director General as per PPADA Section 135 (1) which states “The existence of a contract shall be confirmed through the signature of a contract document incorporating all agreements between the parties and such contract shall be signed by the accounting officer or an officer authorized in writing by the accounting officer of the procuring entity and the successful tenderer.”

189. These were (one) time jobs, with specific deliverables and single tranche payment upon certification of delivery hence the Authority issued a purchase orders which specified the terms and conditions of contract binding on both parties.

#### **Committee Observation**

##### **The Committee observed that –**

The Communications Authority of Kenya had time to advertise for this tender but failed to do it thereby stifling competition.

#### **Committee Recommendation**

##### **The Committee recommends that –**

The then Director General of the Communications Authority of Kenya should be reprimanded for breaking the procurement law

### **13.3 Design, Printing, Supply and Delivery of Branded Items**

190. The Committee heard that, the general expenses figure of Kshs. 1,969,111,000 includes an amount of Kshs.95,408,000 in respect of consumer affairs under note 12 to the financial statements. The amount of Kshs.95,408,000 also includes Kshs. 11,977,070 for the design, printing, supply and delivery of branded give away including umbrellas and spiral notebooks by three firms identified through request for quotations instead of open tendering method for a contract of such magnitude.

191. However, available information revealed that on 21 June 2017, all the three firms which were awarded the tender were notified further changes affecting their contracts from one off supply to a framework contract/agreement. The change to the framework contract was done contrary to section 114(1) of the Public Procurement and Asset Disposal Act 2015, which provides that a framework contract can only be entered into through open tender and when the required quantity of goods, works or non-consultancy services cannot be determined at the time of entering into the agreement.

192. Consequently, the Authority is in breach of the law and the propriety of expenditure totaling Kshs. 11,977,070 for the year ended 30 June 2017 could not be confirmed.

#### **Management response**

193. Management informed the Committee that during the financial year 2015/2016, the Authority planned to implement a service delivery improvement campaign to revamp service delivery within the Authority. This involved rebranding of Authority's service charter and undertaking both internal and external launch. One of the activities involved was printing and supply of branded giveaway which included umbrellas and spiral notebooks.
194. Through open tender, the Authority registered firms owned by youth, women and person with disabilities in readiness to participate under Access to Government Procurement opportunities (AGPO) as and when required.
195. The tender for supply of branded giveaways had been reserved for tender by the disadvantaged groups as shown in the procurement plan for 2015/2016. In this regard, the Authority invited bids for design and supply of branded giveaways from the list of the ten (10) registered suppliers in the category of design and printing of corporate materials.
196. This complied with the Public Procurement and Assets Disposal Act 71 (1) which provides that the head of procurement function shall maintain and continuously update lists of registered suppliers, contractors and consultants in various specific categories of goods, works or services according to its procurement needs. The lists shall be applied on the alternative procurement methods as specified and appropriate.
197. The alternative method of procurement used was restricted whereby exclusive preference to procure branded give aways was set for competitive tendering by youth women and persons with disabilities. The value was within threshold for Category A as per Threshold Matrix of Public Procurement and asset disposal Regulation 2006.
198. The change from one-time supply to framework agreement was informed by the fact that the Authority could not determine the required quantities of the giveaways at the time of entering into the of agreement for supply of giveaway that were needed for various corporate and consumer forums. However, the recommendation to enter into framework agreement was not implemented. The Authority only issued the orders for the one-time delivery.
199. The indicated expenditure of Kshs. 11,977,070 for tender for design, printing and supply of branded items was not correct. This is because the quantity was changed in consultation with the user department because there was an error in the quantities of the umbrellas and spiral notebooks (10,000 instead of 1,000). This was in compliance with Section 162(2) Public Procurement and Assets Disposal Act 2015 which discourages overstocking of items.

### **Committee observations**

#### **The Committee observed that –**

- i. The tendering process should have been open rather than request for quotation in a tender involving such magnitudes of money.
- ii. The explanation offered was not satisfactory.

### **Committee Recommendation**

#### **The Committee recommends that –**

The then Director General of the Communications Authority of Kenya should be reprimanded for breaking the procurement law.

### **13.4 Unclear Excessive Procurement of Brochures**

200. The Committee heard that, as disclosed in note 12 to the statement's financial statements, the general expenses figure of Kshs. 1,969,111,000 includes an amount of Kshs.95,408,000. The amount of Kshs.95,408,000 also includes Kshs. 13,862,670 in respect of a contract for supply of various brochures awarded to a firm on 4 November 2015 at a contract sum of Kshs.7,675,538 for a period of one year, with a performance bond of 5% equivalent to Kshs.383,776.88. However, available information indicate that on 5 April 2016 and 13 October, 2016 the Authority wrote to the above supplier to quote and supply additional brochures worth Kshs. 9,292,500 and Kshs.5,683,485 through direct payment.
201. The supplier was subsequently paid for the additional brochures vide Payment Voucher. No.s VB/C/2006/12/14958 dated 18 August 2016 and VB/C/2006/12/13271 dated 23 December 2016 respectively. This was contrary to section 106(2)(b) of the Public Procurement and Asset Disposal Act 2015 which requires that the request shall be given to as many persons as necessary to ensure effective competition and shall be given to at least three persons, unless that is not possible.
202. A physical visit to the store one year later in December 2017, revealed that a total of 139,250 child online brochures worth Kshs. 12,323,625 were still lying in store unutilized.
203. In the circumstances, it has not been possible to confirm the propriety of expenditure totalling Kshs. 13,862,670 for the year ended 30 June 2017 and that the Authority was in breach of the Law.

## **Management response**

204. Management informed the Committee that the Authority planned to procure printing and packaging services of its corporate and consumer education materials with a budget estimate of Kshs 47,339,379 as reflected in its 2015/2016 procurement plan.
205. On 24th July 2015, the Authority advertised for printing and packaging of its corporate and consumer education brochures, fliers and posters with a closing date of 12th August 2015. The tender was reserved for Youth, Women and Persons with disabilities. The Corporate and consumer education brochures, fliers and posters were to be printed as and when required during the contract period of one (1) year as indicated in the tender document (invitation to tender).
206. The tender attracted 62 firms and upon evaluation, the firm that offered the most competitive price for each category. M/s iBrand Ltd was awarded printing of the material at a total cost of Ksh 7,675,537.50. The contract Clause 4 A (Ceiling) stated that (i) For the services rendered pursuant to Clause 1 (a) of this contract, the client shall pay the supplier a total sum of Kshs 7,675,537.50 inclusive of taxes (ii) For the services rendered pursuant to clause 1 (b) of this contract, the client shall pay the supplier a sum based on the unit rates contained in the annex upon printing, packaging and delivery of the same as and when ordered. The award for design and printing of brochures was therefore through an open tender and not direct procurement method.
207. On 5th April 2016 and 13th October 2016, the authority requested M/s iBrand Limited to supply additional brochures worth Kshs.9,292,500 and Kshs.5,683,485. This was in line with the contract entered to by the two parties. Clause 1 (b) of the contract which stated that "The supplier shall also print and package any other corporate and consumer education brochures, fliers and posters of specifications similar to those specified in the Annex as and when required."
208. The Child online brochures were printed to be used for the child on-line campaign that had been scheduled. However, the consumer outreach events were postponed by (one) year due to the electioneering period.
209. The brochures are distributed through the following distribution channels. The Authority increased distribution to (2) new regional offices in Kisumu and Nyeri, Kenya National Libraries, E-resource centres and County Government offices.



### **Committee observations**

#### **The Committee observed that –**

- i. This was a term contract
- ii. Clause 4 A of the contract was couched in such terms as to allow whoever that has been awarded the contract can do further printing and be paid at unit cost. This clause was exploited by the CAK to allow supply of additional brochures and therefore there was no breach. However, this open-ended contract may be subject to abuse.
- iii. The auditors were not given all documentation during audit hence reason of raising the query.
- iv. Distribution of child online brochures was suspended during the electioneering period hence the reason why stocks were still in the store

### **Committee Recommendation**

#### **The Committee recommends that –**

- i. The CAK should avoid entering into open-ended contracts.
- ii. The National Assembly should amend the procurement law to restrict open ended contracts to specific figure

### **13.5 Supply of Computers to Schools and E-Resource Centers**

210. The Committee heard that, included in the general expenses figure of Kshs. 1,969,111,000 under note 12 is an amount of Kshs.95,886,000 in respect of universal service obligation. The amount of Kshs.95,886,000 also includes Kshs.58,577,271 paid to a firm for supply of computers to schools and E-resources centres out of which Kshs.55,035,471 was for the supply and installation of computers, Kshs.2,934,800 for annual computer hardware maintenance and Kshs.607,000 for annual renewal fees for anti-virus for a period of two (2) years and three (3) months.
211. However, examination of available records revealed that the supplier attached a manufacturer authorization letter which had a disclaimer on the warranty of the products in place of the Standard Manufacturer's Authorization form/letter specified in the tender documents where the Quality of the Product is guaranteed by the manufacturer.
212. Although the management explained that they intended to award the tender to more than one bidder as a way of extending the opportunities to women, youth and persons with disabilities in order to minimize the risk of any possible setback to the entire project in the event that a



single bidder experienced challenges that may affect the delivery of goods and services, the maximum number of lots that were to be awarded to any one bidder were three (3) out of the total five (5) lots. However, this was not the case as the above supplier was awarded all the five(5) lots.

213. Consequently, the Authority is in breach of the law and the propriety of expenditure of Kshs. 58,577,271 for the year ended 30 June 2017 could not be confirmed.

#### **Management response**

214. Management informed the Committee that in its tendering process, the Authority uses the standard tender developed by Public Procurement Regulatory Authority. All the standard tender documents have standard forms which all bidders must complete and submit as part of bidder's compliant to tendering process.
215. One of the forms is Manufacturers Authorization Form (Standard for attached for ease of reference). The Manufacturers Authorization Form was one of the forms that bidders had to submit during the tendering process as a documentary evidence of their eligibility to tender and that goods are from the eligible source. The tender document gave a sample format of the Manufacturer's Authorization letter but it was not mandatory that it had to match the sample word by word since manufacturers might have different formats of their Authorization letter. The purpose of the sample was to highlight on the basic requirements that were to be contained in the template.
216. The 303rd TC deferred the paper for re-evaluation citing reasons for value for money if the tender was awarded to one firm the Authority was to save Kshs. 2.1million. The re-evaluation was done and presented to the TC in its 304th sitting for adjudication. The TC awarded the tender to M/S Modern Integrated Business Solutions of P.O Box 78610-00507 Nairobi for the contract to supply, install and maintain computers and software at a total tender sum of Kshs 58,577,271.68, being Kshs 55,035,471.68 for supply and installation of computers, Kshs 2,934,800 for annual computer hardware maintenance and Kshs 607,000 being amount for annual renewal fees for anti-virus.
217. Notification letters to all participants was done vide letters dated 28th January 2016. The notification letters to the unsuccessful participants also detailed reasons for non-responsiveness of the bids. The Authority received a complaint through the Public Procurement Regulatory Authority vide letter dated 7th March 2016 requesting for assorted documents relating to the tender.
218. The Authority filed a response to the Public Procurement Regulatory Authority vide letter dated 16th March 2016. The documents were later returned back to the Authority and the Public Procurement Regulatory Authority never stopped the tender implementation process.
219. The computers were delivered and installed as per the contract specifications.

## **Committee Observations**

### **The Committee observed that–**

- i. The tender was awarded despite existence of a disclaimer.
- ii. On the supplier being awarded all the five (5) lots contrary to (3) lots specified in the invitation to tender, the response given was satisfactory.

### **Committee recommendation**

#### **The Committee recommends that –**

The query was adequately addressed and therefore resolved

### **13.6 Unaccounted for Expenditure**

220. The Committee heard that, included in the general expenses figure of Kshs.1,969,111,000 under note 12 is an amount of Kshs. 54,786,000 in respect of corporate social responsibility. The amount of Kshs 54, 786,000 also includes Kshs. 23,000,000 being sponsorship of the National Youth Talent Academy. The sponsorship was on furtherance of the 28 June 2012 agreement between the Authority and UNICEF Kenya to sponsor the National Youth Talent Academy boys' football team established by the government through the Ministry of Sports, Culture and Arts at a cost of Kshs. 17,763,250 per year for three years, with a commencement date of 28 June 2012. The agreement was later renewed on 9 May 2016 for a total sum of Kshs. 69,000,000 for a period of three years with effect from June 2016 to 2019 at Kshs. 23,000,000 per annum. However, the Kenya Academy of Sports has not submitted any returns and financial reports of the football club (Talanta) or accounted for the grants or the donations as per the agreement between the two parties.
221. Further, according to the agreement, the utilization of the funding was to be subjected to an annual external audit by the Auditor General. The Authority was also mandated to call at any time for any of the financial accounting and other project records maintained by Kenya Academy of Sports in pursuant to the agreement and subject the records to an audit process of its choice. However, no evidence to show that the financial records of Kenya Academy of Sports were subjected to any audit was availed for audit review.
222. In addition, it was noted on 13 December, 2016 the acting Director Corporate Services for Kenya Academy of Sports wrote to Director General Communication Authority of Kenya through letter Ref. No: KAS/A/13(21) requesting for a change in remittance of the second

instalment of Kshs.23,000,000 for the football club (Talanta), from the old account No. 0260500659 at Equity Bank as per the agreement to a new account at Jamii Bora Bank account No. 1001823633002. The request was honored on 20<sup>th</sup> January, 2017 without authority from the parent Ministry and the National Treasury.

223. Further, the Communications Authority of Kenya did not notify Kenya Academy of Sports and the Ministry of Sports, Culture and Arts of the transfer of the funds.

224. Consequently, it has not been possible to confirm the propriety of the expenditure totaling Kshs 23.000,00 transferred to Jamil Bora Bank for the year ended 30 June 2017.

### **Management response**

225. The management informed the Committee that the FC Talanta was initiated as a programme between cooperation of UNICEF, Kenya Secondary Schools Heads Association (KESSHA), and the Ministry of Sports, Culture and the Arts (Under the auspices the National Youth Talent Academy later transformed to Kenya Academy of Sports). UNICEF managed the programme and was responsible for the submission of the reports to the Authority as the sponsor. The initial contract was between UNICEF and the Authority in the period Year 2012- 2013.

226. The Kenya Academy of Sports, incorporated in year 2014, took over the management of the FC Talanta programme. Subsequently, the Authority signed the renewal of the sponsorship with the Kenya Academy of Sports in Year 2016.

227. FC Talanta was initially audited as a programme under UNICEF and later by Mwencha Certified Public Accountants upon takeover of the management of the programme by Kenya Academy of Sports. The Audit is currently undertaken by the Office of the Auditor General

228. The FC Talanta Board granted approval of engagement of another banking institution, Jamii Bora, in accordance with its mandate. The Management of FC Talanta availed to the Authority, Minutes of the Board reflecting the approval of engagement of Jamii Bora. Additionally, both parties revised the Cooperation Agreement to recognise the change of bank account details, as per the Article III clause (j) of the Agreement.

229. The Cabinet Secretary in the Ministry of Sports, Culture and the Arts was informed of the renewal of the Kshs 69,000,000 sponsorship and also invited to the occasion of the official announcement of the sponsorship renewal.

### **Committee Observations**

#### **The Committee observed that –**

- i. The accounts were audited by a private firm appointed by UNICEF;

- ii. Audited accounts by a private auditor not appointed by the Auditor General cannot be owned by the Auditor General; and
- iii. It was illegal under the PFM Act to open an account without a written permission from the National Treasury.

### **Committee Recommendations**

#### **The Committee recommends that –**

The Auditor General should re audit the accounts for the purposes of ownership pursuant to Section 23 of the Public Audit Act 2015.

#### **13.7 Director's expenses**

#### **13.8 Irregular Payments to Directors**

230. The Committee heard that, included in the directors' expenses figure of Kshs. 47,211,000 under note 10 is an amount of Kshs. 1,656,000 in respect of board welfare. The amount of Kshs. 1,656,000 also included Kshs. 1,200,000 being Christmas Shopping vouchers worth Kshs 100,000 to each Board director. The Universal Service Advisory Council members were also given Christmas shopping vouchers worth Kshs,900,000 which is included in note 12 under Universal Advisory Council of Kshs.47,261,000. The payment of Christmas shopping totalling Kshs.2,100,000 was made without parent Ministry and National Treasury approval. This was done contrary to provisions of circular ref OP/CAB9/21/2A/LII/43 dated 24 November 2004: Guidelines on terms and conditions of service annexe IV paragraph (i) at page 42 that provides that any other benefits that are not provided in annexe IV do not apply.

231. Consequently, the management was in breach of the Law and the propriety of expenditure totaling Kshs.2,100,000 for the year ended 30 June 2017 could not be confirmed and was not a proper charge to public resources.

#### **Management response**

232. Management informed the Committee that section 19 (2) (a) KICA Act 2012 gives the Board amandate to provide for the payment of the salaries, allowances and other charges in respect of the staff of the Authority and the members of the Board.

## **Committee Observations**

### **The Committee observed that –**

As much as the law allows the Board to prepare financial statements to remunerate themselves, however the SRC is mandated to under the Constitution of Kenya and the SRC act to determine/set such remunerations

## **Committee Recommendations**

### **The Committee recommends that –**

The Current Director General should surcharge those who were paid irregular allowances identified by the OAG.

### **13.9 Irregular Disposal of MacBook laptops and IPADS to Directors**

233. The Committee heard that, examination of available records revealed that Authority assets including MacBook laptops and iPads held by the former directors were un-procedurally disposed off to the individual directors. The nine (9) MacBook laptops with net book value of Kshs 466,551, nine (9) iPads with net book value of Kshs. 160,515, ten (10) iPads with net book value of Kshs.200 and fourteen (14) laptops with net book value of Kshs.280 all totalling Kshs.627,553 were offset with the directors' fees due to the former directors. Offsetting of said assets was done contrary to Section 164(3) of the Public Procurement and Asset Disposal Act 2015 which states that there shall be a technical report where appropriate by a relevant expert of the subject items for disposal that takes into account the real market price and in so doing the technical expert shall set up a reserve price which shall be the minimum acceptable price below real market value of the boarded items.

234. Consequently, the Authority was in breach of the law and the propriety of Kshs.627,546 for the year ended 30 June 2017 could not be confirmed.

### **Management response**

235. The management informed the Committee that the Board members challenged their ouster and the matter is pending in court hence it was not possible to recover the laptops and IPADS for disposal. As a caution, management provisioned the amount equivalent to the written down value awaiting the court determination. The assets would be reverted to the Financial Statements for the year ended 30<sup>th</sup> June, 2019.

## **Committee observations**

### **The Committee observed that –**

- i. The matter was still in Court
- ii. The explanation offered was satisfactory and query resolved.

## **14.0 Disputed Contract Payments**

236. The Committee heard that, as previously reported, on 29 November 2002, the Authority awarded the tender for the supply and installation of demountable office partitions to a firm at a contract sum of Kshs.45,195,200. The Authority also awarded the tender for the supply and installation of carpets and vertical window blinds on a sub-contract agreement with the first firm at a tender sum of Kshs. 12,619,846, resulting to a total contract sum of Kshs.57.865,046. Although the project was supposed to be completed on 14 July 2003, it was completed one year later on 23 June 2004. The payments to the contractor were based on work done as per the project quantity surveyor's, the Architect's valuations and the Architect's certificates. After the final payment of Kshs. 1,286,319.45 in September 2005, the contractor raised a dispute claiming Kshs. 1,277,961.90 being interest on delayed settlement of interim certificate No.6. The management has explained that the delay had been occasioned by a dispute over the material used by the contractor, which the project manager noted differed from those specified in the Bills of Quantities.
237. Further, on 5 December 2006, the contractor wrote to the Authority (Commission) claiming Kshs.51,378,300.40 in respect of purported losses and expenses incurred on the project due to delay of 45 days. The Authority disputed the claim and the contractor subsequently lodged an arbitration claim before an arbitrator.
238. Consequently, the Arbitrator ruled that the Authority was to pay Kshs.47, 284, 879.45 for the claims and costs of arbitration of Kshs. 2,783,370 all totalling Kshs.50, 068, 249.45. failure to which the amount shall attract simple interest at a rate of 18% per annum until payment is made in full. On 5 March 2015, the Board approved the release of Kshs.51, 860, 882.75 held in the Escrow account and undertook to pay other outstanding sums of money amounting to Kshs. 18, 103,040 all totalling Kshs. 69, 963, 922. 75. A review of the matter in February 2018 revealed an unchanged position.
239. In the circumstances, it has not been possible to confirm that Kshs. 69,963,922.75 is a proper charge to public resources.

## **Management response**

240. The Director General, CAK informed the Committee that the payment was done pursuant to an arbitration award dated 31st January 2014 in the Matter of the Arbitration Act, 1995 and in the Matter of an Arbitration between M/s Swarn Singh (Kenya) Limited and M/s



Communications Commission of Kenya pursuant to the agreement and conditions of contract for building works between the CCK and the Claimant dated 13<sup>th</sup> March, 2003.

241. The Communications Authority of Kenya as the successor of the Communications Commission of Kenya sought to set aside the Arbitral Award through High Court Miscellaneous Civil Cause No. 73 of 2014 which application was dismissed on 4th December 2014.
242. This meant that the Arbitral Award had a force in law just as a court judgment would. Non-payment would amount to contempt of court and therefore the Communications Authority of Kenya was obliged to comply with and settle the Arbitral Award. As such, the Kshs. 69,963,922.75 paid to settle duly issued arbitral award was therefore a proper charge to public funds.
243. The Authority requested the Ethics and Anti-Corruption Commission to investigate the entire contract to establish whether there was any impropriety. The Ethics and Anti-Corruption Commission (EACC) commenced the investigations into the matter on 16<sup>th</sup> September, 2015.

#### **Committee Observations**

##### **The Committee observed that –**

- i. This is a matter that had been taken to Court and ruled in favour of the contractor.
- ii. The arbitration was carried out by a Mr. Samuel Gituku. The Authority was not clear on how the arbitrator was chosen. The Authority paid the arbitration fees of Kshs. 2,783,370.
- iii. As at the time of compiling this report, the EACC was still investigating the matter.
- iv. The Committee was convinced that public money was lost

#### **Committee recommendations**

##### **The Committee recommends that –**

The EACC should expeditiously conclude investigating the matter and have it concluded within three months of adoption of this report.

#### **FINANCIAL YEAR 2018/2019**

##### **1.0 Unexplained Restated Comparative Balance**

244. The Committee heard that the financial statements presented for audit includes restated comparatives balances for 2018/2019 financial year as detailed below;



Particulars	Audited Financial Statements 2018. (Kshs)	Restated Financial Statements 2018	Variance (Kshs.)
<b>Statement of Financial Performance</b>			
License Fees	7,620,184,000	7,635,830,000	-15,646,000
Finance Income	1,298,357,000	1,297,301,000	1,056,000
Other Income	70,000	596,000	-526,000
Employee Costs	1,140,209,000	1,118,101,000	22,108,000
Remuneration of Directors	53,995,000	51,454,000	2,541,000
Depreciation and Amortization	376,498,000	459,636,000	-83,138,000
Repairs and Maintenance	204,835,000	271,357,000	-66,522,000
General Expenses	1,928,358,000	2,096,823,000	-168,465,000
Gain on sale Of Assets	783,000	774,000	9,000
Gain/Loss on foreign Exchange Transactions	3,413,000	-1,782,000	5,195,000
Bad Debts Recovered		86,639,000	-86,639,000
<b>Statement of Financial Position</b>			
Cash and cash equivalents	12,903,177,000	12,896,166,000	7,011,000
Receivables from non-exchange transactions	863,537,000	969,640,000	-106,103,000
Receivables from exchange transactions	574,798,000	574,792,000	6,000
Property, plant and equipment	2,980,782,000	3,040,148,000	-59,366,000
Intangible Assets	834,408,000	677,196,000	157,212,000
Provisional Dividend	4,068,151,000	3,890,870,000	177,281,000
Trade and Other Payables	897,145,000	1,054,018,000	-156,873,000
Payments received in advance	26,479,000	52,895,000	-26,416,000
Accumulated surplus	12,422,963,000	12,418,194,000	4,769,000

245. The reasons for the restatements and details of the adjustments were not provided for audit review. Further, the differences were not reconciled or explained.

246. Under the circumstanced, the accuracy and validity of the balances reflected in the financial statements for the year ended 30<sup>th</sup> June, 2019 could not be confirmed.

#### **Management response**

247. The management informed the Committee that, the restatement of financial statements for FY 2018 was necessitated by the Go-Live of the Oracle Enterprise Resource Planning (ERP) in December 2018. The previous system, SUN Systems, only contained two (2) modules for Ledger Accounting and Basic fixed Assets Register, additionally, there was no integration to Spectrum Management System (SMMS) and Payroll and it required extensive data clean-up.

248. The adoption of a new chart of accounts categorized financial accounts in a structured way to facilitate financial management and reporting, enabling better financial decision-making and improving financial reporting.
249. This was in line with the strategic direction of the Authority to automate its processes and there were several dependencies to successfully deliver the project including review of IT policies, acquisition of backup tools, Data warehousing, development of roles matrix e.t.c. The automation project commenced in 2017 finally going live in December 2018.
250. Data validation was one of the key milestones of the automation in order to ensure integrity of migrated data and to provide comparative figures for the financial year 2017-2018, noting that no data validation had been done for legacy data from the former KPTC in 1999. The vesting order under Legal Notice No. 158 dated November 15<sup>th</sup>, 1999 contained only a list of physical assets, contractual liabilities and employees.
251. The restatement was effected in compliance with IPSAS 3 paragraph 50 on retrospective restatements that states that “When it is impracticable to determine the cumulative effect, at the beginning of the current period, of an error on all prior periods, the entity shall restate the comparative information to correct the error prospectively from the earliest date practicable in FY 2018/19)
252. The restatement also enabled the Authority to have more insights into data e.g breakdown revenue from four (4) broad categories to over 60 revenue streams.

### **Committee Observation**

#### **The Committee observed that –**

- i. The authority did not provide for audit review the reasons for the restatements and details of the adjustments made to the financial statements leading to questions about the basis and accuracy of these adjustments.
- ii. The Authority did not avail complete and reconciled financial and accounting records/documentation in time for audit review and verification during the audit exercise contrary to the provisions of Article 226 of the Constitution and Section 68(2) of the PFM Act 2012 which requires that the financial and accounting records are presented within three (3) months after the close of the financial year.

## Committee Recommendations

### The Committee recommended that –

- i. Accounting officers should comply with the provisions of Section 68(2) of the Public Finance Management Act, CAP 412A by submitting all the required information for audit within the stipulated timelines.
- ii. The Committee reprimands the then Accounting Officer for breach of Regulation 90 of the PFM (National Government) Regulations, 2015 and section 62 of the Public Audit, Act CAP 412B for failing to provide complete and reconciled financial and accounting records/documentation in time.

## 2.0 Receivables from Non –Exchanges Transactions

253. The Committee heard that as disclosed in Note 19 to the financial statements, the statement of financial position reflects a balance of Kshs 1,112,216,000 under receivables from non-exchanges transactions as at 30<sup>th</sup> June, 2019. The following observations were made: -

### 2.1 Third Party Confirmation

254. During the year under review, a sample of 100 licensees were circularized but only four responded. However, three respondents confirmed balances which differed with those in the Authority's records detailed below:

Debtor	Balance of debtor as per Debtor listing (Kshs)	Balance as per debtor confirmation (Kshs)	Variance (Kshs)
Kenya Ports Authority	1,878,132	NIL	1,878,132
Telkom Kenya Ltd	732,039,294	775,602,175	43,562,881
Smart Application International Ltd	2,711,683	NIL	2,711,683
<b>Total</b>	<b>736,629,109</b>	<b>775,602,175</b>	

255. No reconciliations or explanations have been provided for the above variances. Consequently, it was not possible to confirm the accuracy and fair statement of the reported receivables balances from exchange transactions of Kshs. 1,112,216,000 as at 30<sup>th</sup> June, 2019.

### Management response

256. The management informed the Committee that, Kenya Ports Authority is a licensee with various services including Fixed Station Mobile Services, Portable Station Mobile Services

and Trunked Radio Network Services in respect of the frequency utilization fees for the assigned frequencies/licenses.

257. Telkom Kenya Limited (TKL) had frequency assignments for: Mobile Wireless Access Systems - Exclusive Assignment Bandwidth, Fixed Wireless Access Systems and Fixed Links. The Operating Licenses held included: Application Service Provider, Content Service Provider, Submarine Cable Landing Right and Network Facilities Provider – Tier 1 licenses. The amount declared by TKL amounting to Kshs. 775,602,175 includes 43,995,000 for USF.

258. Smart Applications International Ltd holds a Content Service Provider License. The licensee reported Nil balance due to disputed billing and a credit note was subsequently issued.

### **Committee observations**

#### **The Committee observed that –**

Out of a sample of 100 licensees that were circularized only four responded and out of the four (4) three respondents confirmed balances which differed with those in the Authority's records and no explanations were provided for the variances. This implies the authority's financial records and the resultant financial statements prepared from the said records may significantly be misstated and thus misleading to the users.

### **Committee Recommendations**

#### **The Committee recommends that –**

The Committee reprimands the then Accounting Officer for providing inaccurate information and therefore recommends that the cabinet Secretary apply sanctions to the Authority for providing inaccurate information to the users of financial statements regarding its receivables or related financial matters in accordance with section 204 (1) (c) of PFM Act, CAP 412A.

## **2.2 Unsupported and Long Outstanding Debts**

259. The Committee heard that receivables from non-exchange transactions balance of Kshs 1,112,216,000 is net of accumulated provision for bad and doubtful debts of Kshs. 1,176,170,000. However, included in the latter balance is an amount Kshs. 318,413,690 relating to old debts which have been outstanding for over 20 years. The balance further includes an unsupported amount of Kshs. 102,374,753 which has been outstanding from one of the security agencies. Although debts has been provided for, no documents were provided to indicate how the Authority has been following up on the recovery of the debts.

260. In view of the foregoing, the accuracy and validity of the provision for bad and doubtful debts amounting to Kshs. 1,176,170,000 as at 30<sup>th</sup> June, 2019 could not be confirmed.

## Management response

261. The management informed the Committee that, the old debts are mostly owed by Government institutions, amounting to Kshs. 301,366,271, and private institutions amounting Kshs. 17,047,419.00. Bringing the overall total debt to Kshs.318,413,690.
262. The debts lack sufficient documentation as they were vested to the Authority from the defunct Kenya Posts and Telecommunications Company in 1999 without data cleanup and verification.
263. The 23<sup>rd</sup> Public Investment Committee report dated July 2<sup>nd</sup>, 2020 recommended that the Authority should continue pursuing the long outstanding debts and this has realised Kshs. 29,925,649.
264. The 23<sup>rd</sup> Public Investment Committee report dated July 2<sup>nd</sup>, 2020 further recommended that CA should request The National Treasury to write off the debts that are not recoverable.
265. The Authority submitted request to The National Treasury to write-off debts amounting to Kshs. 86,638,973. On 11<sup>th</sup> October, 2023, CA held a meeting with the Acting Director/Accounting Services with regards to the matter. However, the matter is still pending.
266. The Authority has established a Debt Management Policy whose objectives include: establishing a functional debt recovery procedure and strategy for outstanding debts. The recovery of debts is supported by the Public Finance Management Act, 2012 Section 69 (1) on the amounts that can be written off by the Accounting Officer and procedures for write off.
267. The debt recovery measures include making follow up through withholding of new application services, type approvals, demand letters, emails, telephone calls, physical meetings, conducting field visits, accepting payment plans, and enforcement that includes license revocations.
268. The National Intelligence Service (NIS) owes the Authority Kshs. 102,969,953.30. The Authority has made follow up to NIS to demand payment for the outstanding frequency fees, which arose from frequency assignments.
269. However, The Ministry of ICT & Youth Affairs, in a letter dated 27<sup>th</sup> September, 2017 confirmed that The National Treasury had notified MOICTYA that the security agencies did not have budgetary allocations to cater for the frequency utilization.
270. The 23<sup>rd</sup> Public Investment Committee report dated July 2<sup>nd</sup>, 2020; the Committee recommended that the Government should exempt security agencies from paying for frequencies.

271. Further, on 6<sup>th</sup> December, 2023, NIS stated that they are exempted from paying fees as per the National Information and Communications Technology Policy of 2006 and further ICT policy guidelines of 2020.

#### **Committee observations**

##### **The Committee observed that –**

- i. The matter was discussed by the Public Investment Committee (PIC) of the National Assembly which, in its 23<sup>rd</sup> Report recommended that the Director General of CAK should continue pursuing the long outstanding debts with a view to recovering them and request the Cabinet Secretary for the National Treasury to write off only those debts that cannot be recovered.
- ii. The debts outstanding for over 20 years lack sufficient documentation as they were inherited from the defunct Kenya Posts and Telecommunications Company in 1999. However no evidence was adduced to show the actions take by the authority to establish their recoverability.
- iii. Debts amounting to Kshs. 301,366,271 were owed by Government institutions including security agencies.

#### **Committee recommendations**

##### **The Committee recommends that –**

- i. Within three months of adoption of this report, the Accounting Officer should provide a comprehensive report on the reasonable steps that have been taken to recover the debts and the losses before initiating the write off process on account of being irrecoverable.
- ii. Within three months of adoption of this report, the National Assembly to initiate amendments to Kenya Information and Communication CAP 411A to exempt the security agencies from paying frequencies fees.
- iii. Within three months upon adoption of this report, Communication Authority of Kenya to organize a roundtable meeting with the Cabinet Secretary National Treasury, Cabinet Secretary Information Communication and the Digital Economy and the National Assembly to deliberate on the matters regarding the long outstanding debts to security agencies.

### **3.0 Trade and Other Payables – Third Party Confirmation**

272. The Committee heard that, the statement of financial position reflects a balance of Kshs. 1,137,874,000 under trade and other payables which, as disclosed in Note 24 to the financial



statements, includes trade payables of Kshs. 268,414,000. The trade payables include an amount of Kshs. 4,178,830 owed to a construction company as at 30<sup>th</sup> June, 2019. However, confirmation from the construction company revealed that the Authority owed nothing as at 30<sup>th</sup> June 2019.

273. Under the circumstances, the accuracy, validity and property of the trade and other payables balance of Ksh. 1,137,874,000 as at 30 June,2019 could not be confirmed.

#### **Management response**

274. The Authority reconciled the Widescope Construction Limited account and noted that it had arisen from capture of the retention amount. This amount had already been captured when the initial invoice was submitted.

#### **Committee Observation**

##### **The Committee observed that –**

- i. Communication Authority of Kenya breached section 6.1 of its Finance Policies Manual which requires the authority to prepare and review monthly supplier statement reconciliations.
- ii. There discrepancy on the trade and other payable between Communication Authority of Kenya records and the Widescope Construction Limited records had resulted in the overstatement the payables and the corresponding expenditure by Kshs.4,178,830 thus did not show true and fair view to the users of financial statements hence misleading. This improper recording or double counting of transactions may be scheme to defraud the authority through fictitious transactions.

#### **Committee Recommendations**

##### **The Committee recommends that –**

The Committee reprimands the then Accounting Officer for contravening section 62 (1)(c) of Public Audit Act, CAP 412B.

#### **4.0 Revenue and Non - Exchange Transactions**

275. The Committee heard that, the statement of financial performances reflects an amount of Kshs. 8,525,314,000 being revenue from non-exchange transactions which, as disclosed in Note 6 to the financial statements, comprised of Kshs.7,111,816,000, Kshs. 1,410,445,000, Kshs. 2,995,000 and Kshs. 58,000 in respect to annual frequency license fees, annual operating license fees, application fees and approval and registration fees, respectively. However, it was observed that forty (40) annual operating licenses for various operators invoiced at a total of Kshs. 106,018,499 were not based on the most recent financial statements of the licensee.



276. Consequently, the accuracy and completeness of the reported revenue from non-exchange transactions of Kshs.8525314000 for the year ended 30<sup>th</sup> June, 2024 could not be confirmed.

#### **Management response**

277. The management informed the Committee that, prior to the Financial Year 2020/2021, billing was based on submitted audited financial statements but beginning FY 2020/21, billing of licensees is based on immediate past audited financial statements from the licensees before the commencement of the Financial Year. The deadline for this submission is set as 15<sup>th</sup> July of every year for their annual returns which also incorporates the audited financial statements

278. However, some licensees fail to submit their financials within the deadline. In the past years, the Authority billed based on the most recently available financials and issuance of adjusting Debit/Credit notes upon submission of the financial statements. Additionally, the Authority has implemented a system for tracking the non-submission of audited financial statements from licensees.

279. As an improvement action the Authority has proposed modification of the licence conditions to include penalties for late submission and revocation for non-submission of returns. The proposed amendments to KICA has been forwarded to the Ministry of Information Communications and Digital Economy.

#### **Committee observations**

##### **The Committee observed that;**

- i. Forty (40) annual operating licenses for various operators invoiced at a total of Kshs. 106,018,499 were not based on the most recent financial statements of the licensee. Therefore, the authority went against its own policy of using most recent audited financial statements as the basis of charging license fees which was unfair to both the licensees and the authority.
- ii. The authority's assertion that it has proposed modification of the licence conditions to include penalties for late submission and revocation for non-submission of returns was not supported by documentary evidence.

#### **Committee Recommendations**

##### **The Committee recommends that–**

- i. The Committee reprimands the then accounting Officer for breach of law by using an arbitrary basis of levying revenue from the licensees.

- ii. Within three months upon adoption of this report, the Accounting Officer Communication Authority of Kenya should come up with an approved billing policy for licenses in line with the governing laws and submit to the National Assembly and the Auditor-General for review.

## **5.0 General Expenses**

280. The Committee heard that, as disclosed in Note 14 to the financial statements, the statement of financial performances reflects an expenditure of Kshs. 1,962,978,000 in respect of general expenses. The following unsatisfactory issue were observed:

### **5.1. Unsupported Consultancy Services**

281. The expenditure of Kshs. 1,962,978,000 under general expenses includes an amount of Kshs. 229,073,000 in respect of consultancy fees. Examination of this account indicated that amount of Kshs. 14,750,000 and Kshs. 3,360,409 were paid for digital forensic and national addressing system and e-commerce trainings, respectively. However, documents supporting the procurement method used in the selection of the service providers were not provided for audit verification. Consequently, the accuracy and propriety of the expenditure of Kshs. 18,110,409 on consultancy for the year ended 30<sup>th</sup> June, 2019 could not be confirmed.

### **Management response**

282. The management informed the Committee that, the African Advanced Level Telecommunications Institute (AFRALTI) is an Inter-Governmental body established in 1993 to spearhead ICT development efforts mainly in English-speaking Africa. AFRALTI under its establishing agreement enjoys such privileges and immunities as are necessary for it to fulfil its purposes and carry out its functions.

283. The Government of Kenya is a member and the host of the AFRALTI, which is a designated UN centre of excellence in ICT training for Anglophone Africa. The Authority is the designated Government representative to AFRALTI, and as such meets the annual membership fee and other obligations as spelt out in the Intergovernmental Agreement as well as the host country agreement.

284. As part of its obligations as a member and the host of AFRALTI, the Authority is required to promote the uptake of specialised ICT capacity building programmes offered at the Institute in order to ensure the institution is self-sustaining.

285. In this regard, the AFRALTI Governing Council has regularly requested member countries to support the Institute by sending their staff to attend AFRALTI organised courses (See resolutions Nos 38 of the 50th Meeting of the AFRALTI Governing Council held in August 2015 in Victoria Falls, Zimbabwe; Resolution no 50 of the 51st Meeting of the AFRALTI Council held in Livingstone, Zambia, in March 2015; Resolution No 13 of the 53rd Meeting of the AFRALTI Governing Council held in February 2017 in Uganda.

286. Pursuant to the establishing Agreement of AFRALTI and Section 4(2)(f) of the Public Procurement and Assets Disposal Act, 2015, [PPAD], procurement activities relating to AFRALTI do not fall within the remit of the PPAD due to the multilateral nature of the agreement between the Government of the Republic of Kenya and other countries.

#### **Committee observations**

##### **The Committee observed that –**

An amount of Kshs.14,750,000 and Kshs.3,360,409 were paid for digital forensic and national addressing system and e-commerce trainings, respectively. However, documents supporting the procurement method used in the selection of the service providers were not provided for audit verification.

#### **Committee recommendations**

##### **The Committee recommends that –**

The Accounting Officer should at all times provide supporting relevant documentation for audit pursuant to section 62 of the Public Audit Act.

#### **5.2. Corporate Affairs**

287. The Committee heard that, the expenditure of Kshs. 1,962,980,000 under general expenses includes Kshs. 44,334,000 in respect of corporate affairs out of which an amount Kshs. 40,720,914 was paid as support for activities or sponsorship programmes that were not in the work plan for the Corporate Affairs Department. However, the selection criteria of the corporate affairs projects were not provided for audit review. Further, the amount of Kshs. 40,720,916 was miss-posted to corporate affairs as there is a separate corporate social responsibilities account under the general expenses.

288. In view of the foregoing, the accuracy and propriety of the corporate affairs expenditure of Kshs. 44,334,000 for the year ended 30<sup>th</sup> June, 2019 could not be confirmed.

#### **Management response**

289. The management informed the Committee that, out of the Kshs.40,720,916 in question, Kshs.40 million was in respect to a partnership with the Kenya Broadcasting Corporation (KBC) to acquire exclusive broadcasting rights for the 2019 African Cup of Nations (AFCON) held from 21<sup>st</sup> June to 19<sup>th</sup> July, 2019 in Cairo, Egypt. In return, the Authority was to harness the large viewership of the tournament to create awareness on its mandate across various platforms including KBC Channel 1, Radio Taifa and 12 other stations countrywide through targeted radio and television commercials.

290. In particular, the benefits accruing from the partnership included a total of 100 minutes of advertising during the tournament on KBC TV Channel 1, branding of the set during the official opening and closing ceremonies, 30 minutes of advertising air time on Radio Taifa and 12 other stations. The partnership was, therefore, purposely meant to access prime airtime on KBC TV Channel 1 and 13 FM radio platforms during the live broadcast of the tournament as indicated in the approval request to the Director General.
291. The Government of Kenya is a member and the host of the African Telecommunication Union (ATU), which is a specialized agency of the African Union, in the field of telecommunications. ATU provides a forum for stakeholders involved in ICT to formulate effective policies and strategies aimed at improving access to information infrastructure and services.
292. In addition, the Union represents the interests of its members at global decision-making conferences and promotes initiatives. The ATU Day which is marked on 7<sup>th</sup> December is an annual event that commemorates the founding of the ATU and is also observed to create awareness of the transformation brought by ICTs. Every year, the ATU leverages the day to encourage member states to undertake programmes to enhance the uptake of ICTs across the continent. In recognition of the importance of the day and as part of its member obligations to ATU, the Authority on 7<sup>th</sup> December 2017, ran a supplement in *The Standard* newspaper to showcase the milestones achieved in the ICT sector, particularly in ICT innovations, under the theme, '*Development of the Digital Economy and Impact of Services and Applications on Socio-Economic Development in Africa.*' In this regard, the Authority made a payment of Kshs. 720,916.
293. In light of the foregoing, the budget for the partnership was drawn from the advertising vote under the corporate affairs budget. The expenditure was, therefore, correctly charged under the corporate affairs budget. Thus, the associated entry was not a mis-posting. The activity was anticipated beforehand and the associated budgets provided for under the advertising vote. KBC is the national broadcaster and a fully owned Government enterprise.

### **Committee observations**

#### **The Committee observed that –**

- i. An amount Kshs. 40,720,914 paid as support for sponsorship and partnership programmes with the Kenya Broadcasting Corporation (KBC) to acquire exclusive broadcasting rights for the 2019 African Cup of Nations (AFCON) held from 21<sup>st</sup> June to 19<sup>th</sup> July 2019 in Cairo, Egypt was not in the work plan of the authority.
- ii. There was no selection criteria of the corporate affairs projects, which could lead to misallocation of public funds.

- iii. The explanation that the Kshs. 40,720,916 was miss-posted to corporate affairs account was misleading since this was an irregular reallocation of public funds contrary to section 43 (2) of the PFM Act, CAP 412A that prohibits state corporations to reallocate funds between programmes. Further, the expenditure contravenes section 12 of the State Corporations Act, CAP 446 by spending without budget for the item.

#### **Committee recommendations**

##### **The Committee recommends that –**

- i. The Committee reprimands the then Accounting Officer for breach of section 43 (2) of the PFM Act, CAP 412A that prohibits state corporations to reallocate funds between programmes and section 12 of the State Corporations Act, CAP 446 by spending without budget for the item.
- ii. The Accounting Officer must always ensure that he/she carries out a cost benefit analysis between the expected cost/outlay and the actual revenue to be generated by the authority to justify the decision to adopt a strategy or incur expenditure.

#### **6.0 Unresolved Prior Year Matters**

294. The Committee heard that, various prior year issues as detailed under progress on follow up of auditor's recommendations section of the financial statements remained unresolved as at 30<sup>th</sup> June, 2019. Management did not provide reasons for the delay in resolving the prior year audit issues.

#### **Management response**

295. The management failed to submit response for the unresolved prior year matters.

#### **Committee observations**

##### **The Committee observed that –**

- i. The Committee observed that the accounting officer did not respond to this audit query.
- ii. Further, the Accounting officer was in breach of the Section 81(3) of the PFM Act CAP, 412A which states that the accounting officer shall prepare the financial statements in a form that complies with the relevant accounting standards prescribed and published by the Accounting Standards Board from time to time
- iii. In addition, the Accounting Officer contravened Section 31 (1) (a) of the Public Audit Act, CAP 412B that states that, within three months after Parliament or the County Assembly has debated and considered the final report of the Auditor General and made recommendations, a State Organ or a public entity that had been audited shall, as a

preliminary step, submit a report on how it has addressed the recommendations and findings of the previous year's audit.

### **Committee Recommendations**

#### **The Committee recommends that –**

The Committee reprimands the Accounting Officer for breach of Section 81(3) of the PFM Act, CAP 412A and Section 31 (1) (a) of the Public Audit Act CAP 412B. The Accounting officer must always ensure adherence to laws, regulations, regulatory frameworks and policies in place.

#### **7.0 Employee Costs – Acting Allowances**

296. The Committee heard that, as disclosed in Note 10 to the Financial Statements, the statements of financial performance reflects and expenditure of Kshs.1,196,080,000 under employee costs. Examination of this account revealed that an amount of Kshs.15,000,000 was paid as acting allowances for 37 officers who have been in acting positions that fell vacant, with some dating far back as 2015. This is contrary to the Authority's Human Resource Management Policy and Labour laws which require one to serve in an acting capacity for periods not exceeding 6 months.

297. Consequently, the validity of the acting allowance payments amounting to Kshs.15,000,000 could not be confirmed.

#### **Management response**

298. The management informed the Committee that, the authority acknowledges that there were staff who acted for a period beyond the six (6) months. This was partly caused by the lack of a quorate Board for the financial year FY 2018/19 period. Additionally, the advertisement for filling vacant positions was contested resulting in protracted litigation and a court order under ELRC No. E161 of 2021 dated January 25<sup>th</sup> 2022. These factors further delayed the Authority from filling the positions.

299. The acting appointments were necessitated by vacant positions at higher levels that required acting appointments for continuity and execution of duties and due to the long process of recruitment it took a while to fill the positions. This has since been corrected by recruitments in 2021/2022 and 2022/2023.



### **Committee observations**

#### **The Committee observed that –**

The Accounting Officer breached Section 34 (3) of the Public Service Commission Act, CAP 185 which states that an officer may be appointed in an acting capacity for a period not exceeding six months.

### **Committee Recommendations**

#### **The Committee recommends that –**

- i. The Committee reprimands the then Accounting Officers for not adhering to the provisions of section 34 (3) of the Public Service Commission Act, CAP 185.
- ii. Within three months upon adoption of this report, the Inspector General State Corporations to surcharge and recover Kshs.15,000,000 (and any other subsequent amount paid) from the then Accounting Officer (s) paid as acting allowances beyond the stipulated period of six months.

### **8.0 Internal Audit-limitation of expertise**

300. The Committee heard that, the internal audit reports presented for audit review did not cover key areas like broadcasting, frequency, broadband and IT, which represents the core business of the authority. Due to the nature of the authority's business and being a technical sector the internal auditors appeared to be limited in the requisite technical expertise and may therefore not give adequate and useful reports to guide in the operation of the authority.

### **Management response**

301. The management failed to submit response for the matter on internal audit-limitation of expertise.

### **Committee Observation**

#### **The Committee observed that –**

- i. The Accounting Officer did not respond to this audit query.
- ii. The internal audit reports did not cover key areas of the authority's core business like broadcasting, frequency, broadband and IT, thus pointing to weaknesses in governance and internal controls.



## **Committee Recommendations**

### **The Committee recommends that –**

The Committee reprimands the then head of the internal for failing in executing the functions of the audit committee outlined in Regulation 175 of the PFM (National Government) Regulations, 2015.

### **3.0 EXAMINATION OF THE REPORT OF THE AUDITOR-GENERAL ON THE AUDITED ACCOUNTS OF THE CHILD WELFARE SOCIETY OF KENYA FOR THE FINANCIAL YEAR 2014/2015**

**Ms. Irine Mureithi CEO /Managing Trustee Child Welfare Society of Kenya (CWSK) was accompanied by Mr. Charles Maina (Finance), Ms. Lucy Boit (Finance), and Mr. Henry Kagondo (Finance) appeared before the Committee to adduce evidence on the Audited accounts of the Child Welfare Society of Kenya (CWSK) for the Financial year 2014/2015.**

#### **1.0 Property, Plant, and Equipment**

302. The Committee heard that the statement of financial position as at 30<sup>th</sup> June, 2015 reflected a property, plant, and equipment balance of Kshs. 1,528,128,787. Out of this, Kshs.1,209,060,340 related to land and buildings in various parts of the country. It was further reported that several parcels of land lacked ownership documents, with some still in the process of acquiring titles, while others were in court disputes or under recovery following illegal grabs. As a result, the accuracy of the property, plant, and equipment balance could not be confirmed.

#### **Management Response:**

303. The Management informed the Committee that they acknowledged the issue, explaining that efforts were ongoing to resolve ownership disputes and recover grabbed land. The Management further informed the Committee that the process of acquiring the necessary title deeds was underway, but legal proceedings and disputes had delayed the finalization.

#### **Committee Observations:**

##### **The Committee observed that –**

- i. Child welfare Society of Kenya (CWSK) does not possess ownership documents for sixteen (16) parcels of land located across the country.
- ii. The ownership of several parcels of land belonging to the Society have been grabbed while others are in are in court disputes.

## Committee Recommendations

### The Committee recommends that –

- i. Within three (3) upon adoption of this report, the Accounting Officer Child Welfare Society of Kenya should liaise with the Ministry of Lands, and the National Land Commission to ensure that they secure ownership documents for all the Society land and report back to the National Assembly.
- ii. Within three months upon adoption of this report, the Accounting Officer should expedite the conclusion of the court cases and fast-track the acquisition of title deeds and submit a status report to the Committee.

## 2.0 Budget and Budgetary Control (Revenue)

304. The Committee was informed that, Child Welfare Society of Kenya (CWSK) had budgeted to receive Kshs. 3,421,759,335 in revenue for the financial year. However, actual receipts amounted to Kshs. 810,490,248, resulting in a shortfall of Kshs. 2,611,269,087, or 76%. This shortfall was mainly due to the significant difference between the budgeted and received government grants for development and recurrent expenditure.

The table below shows the budgeted and actual revenue breakdown:

Source	Budget (Kshs.)	Actual (Kshs.)	Shortfall (Kshs.)	Variance %
Government Grants Development	2,700,000,000	400,000,000	(2,300,000,000)	(85%)
Government Grants - Recurrent	672,614,335	361,250,000	(311,364,335)	(46%)
Other Grants	45,523,000	45,232,861	(290,139)	(1%)
Other Income	3,622,000	4,007,387	385,387	11%
<b>Total</b>	<b>3,421,759,335</b>	<b>810,490,248</b>	<b>(2,611,269,087)</b>	<b>(76%)</b>

### Management responses

305. The management informed the Committee that, the revenue shortfall was due to a budgetary allocation shortfall. The management explained that the Child Welfare Society of Kenya (CWSK) had requested the entire budgeted amount, but only Ksh 810,490,248 was allocated. In response, the Trustees had increased their fundraising efforts.

### Committee observations

#### The Committee observed that –

Child Welfare Society of Kenya (CWSK) had reported a shortfall in receipts of Kshs. 2,611,269,087 translating to 76% of the budgeted revenue. The shortfall affected the planned activities and impacted negatively on service delivery to the public.

### Committee Recommendations

#### The Committee recommends that –

- i. The Accounting Officer must at all times ensure that the budgets are realistic, achievable and always adhere to annual work plans, procurement plans and revenue collection schedules in compliance with Regulation 44(2) of the PFM (National Government) Regulations, 2015.
- ii. The National Treasury should endeavour to always provide adequate funds to enable the society achieve its mandate.

### 3.0 Expenditure

306. The Committee heard that, CWSK had underspent of 46% on the approved budget, with actual recurrent expenditure amounting to Kshs. 362,648,756, compared to the budgeted Kshs. 672,614,335. In some program areas, such as child labor, emergency preparedness, and crisis pregnancy programs, there was no spending at all. Additionally, expenditures financed from grants and other income were underspent by Kshs. 4,652,209, or 9.4%.

The table below highlights the budgeted versus actual recurrent expenditure:

Programme/Activity	Budget (Kshs.)	Actual (Kshs.)	Underspending (Kshs.)	Underspending %
Capacity Building, Research, and Advocacy	40,000,000	6,684,216	33,315,784	(83%)
Child Labour, CSEC, Street Child Trafficking	18,225,800	-	18,225,800	(100%)
Education & Skills Development for Unreached Children	40,000,000	10,125,000	29,875,000	(75%)

<b>Programme/Activity</b>	<b>Budget (Kshs.)</b>	<b>Actual (Kshs.)</b>	<b>Underspending (Kshs.)</b>	<b>Underspending %</b>
Emergency Preparedness and Response	100,000,000	-	100,000,000	(100%)
Family Strengthening & Family Tracing	50,820,000	1,000,000	49,820,000	(98%)
Foster Care & Guardianship	50,820,000	7,919,430	42,900,570	(84%)
Adoption	19,140,000	3,072,361	16,067,639	(84%)
Operating Expenses	24,891,000	11,000,251	13,890,749	(56%)
Personnel Costs	251,500,000	269,816,464	(18,316,464)	7%
Crisis Pregnancy Adolescence & HIV/AIDS Programmes	6,622,963	-	6,622,963	(100%)
Temporary Places of Safety (Children's Homes)	70,594,572	53,031,034	17,563,538	(25%)
<b>Total</b>	<b>672,614,335</b>	<b>362,648,756</b>	<b>309,965,579</b>	<b>(46%)</b>

### **Management responses**

307. The management informed the Committee that underspending occurred because the exchequer had only released Ksh 362,649,759, against a budgeted amount of Ksh 672,614,335, leaving a balance of Ksh 309,965,578.

### **Committee Observations**

#### **The Committee observed that –**

- i. The management response that the society received disbursements of Kshs. 362,649,759 is misleading since under receipts the society had reflected Ksh. 810,490,248 as the actual receipts. Therefore the under-absorption of Kshs. 309,965,578 is not satisfactorily explained.

308. Child Welfare Society of Kenya (CWSK) had under-absorbed Kshs. 309,965,578 of the disbursements, which affected the planned activities and impacted negatively on service delivery to the public.

## Committee Recommendations

### The Committee recommends that –

- i. The Accounting Officer must at all times ensure that the budgets are realistic, achievable and always adhere to annual work plans, procurement plans and revenue collection schedules in compliance with Regulation 44(2) of the PFM (National Government) Regulations, 2015.
- ii. The Committee recommends that Child welfare Society of Kenya diversifies its revenue base to reduce over reliance on Government support.
- iii. The National Treasury should ensure adequate funding for CWSK and other similar Public entities relying on the exchequer and that disbursements as made in time and as approved.

## 4.0 Development Expenditure

309. The Committee heard that CWSK had budgeted to spend Kshs. 2,700,007,737 on development projects. However, actual expenditure was only Kshs. 400,000,000, representing an under-expenditure of Kshs. 2,300,007,737, or 85%. The under-expenditure was attributed to inadequate government funding.

The table below shows the development expenditure details:

Programme/Activity	Budget (Kshs.)	Actual (Kshs.)	Underspending (Kshs.)	Underspending %
Capacity Building, Research, and Advocacy	54,720,000	4,689,234	50,030,766	(91%)
Child Labour, CSEC, Street Child Trafficking	50,000,000	-	50,000,000	(100%)
Education & Skills Development for Unreached Children	185,500,000	15,898,532	169,601,468	(91%)
Emergency Preparedness and Response	105,530,020	9,044,921	96,485,099	(91%)
Family Strengthening & Family Tracing	161,760,000	18,149,941	143,610,059	(89%)
Foster Care & Guardianship	300,000,000	-	300,000,000	(100%)

<b>Programme/Activity</b>	<b>Budget (Kshs.)</b>	<b>Actual (Kshs.)</b>	<b>Underspending (Kshs.)</b>	<b>Underspending %</b>
Alternative Family Care and Adoption Programme	145,566,000	12,476,410	133,089,590	(91%)
Operating Expenses	200,122,099	30,008,776	170,033,323	(85%)
Awareness Crisis Pregnancy Adolescence and HIV/AIDS Programme	5,049,618	432,800	4,616,818	(91%)
Temporary Places of Safety (Including Children's Homes)	291,760,000	37,863,576	253,896,424	(87%)
Upgrading CWSK Places of Safety	1,200,000,000	271,435,810	928,564,190	(77%)
<b>Total</b>	<b>2,700,007,737</b>	<b>400,000,000</b>	<b>2,300,007,737</b>	<b>(85%)</b>

#### **Management responses**

310. The management informed the Committee that, CWSK had not received the full amount requested for development expenditure. The management stated that they had requested Ksh 2,700,007,737 but only received Ksh 400,000,000.

#### **Committee Observations**

##### **The Committee observed that –**

The Committee noted with concern that CWSK was underfunded by Kshs.2,300,007,737 translating to 85% of its development budget. This negatively affected its ability to execute projects and deliver services to the public.

#### **Committee Recommendations**

##### **The Committee recommends that –**

The Accounting Officer must at all times ensure that the budgets are realistic, achievable and always adhere to annual work plans, procurement plans and revenue collection schedules in compliance with Regulation 44(2) of the PFM (National Government) Regulations, 2015.

#### **4.0 EXAMINATION OF THE REPORT OF THE AUDITOR-GENERAL ON THE AUDITED ACCOUNTS OF THE SACCO SOCIETIES REGULATORY AUTHORITY FOR THE FINANCIAL YEARS 2017/18 -2019/2020.**

**Mr. Mr. Peter Njuguna, Chief Executive Officer, Sacco Societies Regulatory Authority was accompanied by Ms. Roseline Regama Corporation Secretary, Ms. Flora Kimari, Manager Finance and David Sadaje, Director, Corporate Affairs appeared before the Committee to adduce evidence on the Audited accounts of the Sacco Societies Regulatory Authority for the Financial year 2017/2018 – 2019/2020.**

##### **FINANCIAL YEAR 2017/2018**

##### **1.0 Lack of Board Chairman**

311. The Committee heard that, the chairman's position fell vacant on 6<sup>th</sup> February, 2017 when the former Chairman exited. During the year under review, the Authority operated with five board members without a substantive Chairman, contrary to Section 1 of the Mwongozo Code of Governance and Section 6 (1)(a) of the State Corporation Act.

##### **Management response**

312. The management informed the Committee that, it is true that at the close of the financial year for 2017/2018, the Authority did not have a substantive chairman of the board. However, this position was filled on 20<sup>th</sup> September, 2018 through the appointment of Hon. John Munuve. The other two positions of independent board members were filled upon the appointment of Dr Sammy Letema and Hon. Silas Muriuki on 31<sup>st</sup> December, 2018. These appointments brought the board's composition to the required seven (7) members in accordance with Section 1 of the Mwongozo Code of Governance and Section 6(1)(a) of the State Corporation Act.

##### **Committee observations:**

##### **The Committee observed that –**

The authority operated without a substantive Chairman contrary to Section 1 of the Mwongozo Code of Governance and Section 6 (1)(a) of the State Corporation Act, CAP 446.

##### **Committee recommendations:**

##### **The Committee recommended that –**

The Committee reprimands the Cabinet Secretary for Co-operatives and Micro, Small and Medium Enterprises (MSMEs) for the delays in constituting the existing vacancies in the Sacco Societies Regulatory Authority's Board.



## FINANCIAL YEAR 2018/2019

### 1.0 Financial Performance

313. The Committee heard that, the statement of financial performance reflects a net deficit of Kshs 45,539,596 (2018: Kshs 51,494,563) representing 12% (2018:15%) of revenue. The deficit was occasioned by the failure of the Authority to achieve its budgeted revenue of Kshs 420,692,000 by Kshs 48,849.879 as reflected in the statement of comparison of budget and actual amounts.

314. Management should therefore put in place measures with a view of generating more own revenue.

### Management response

315. The management informed the Committee that, it was true that the Authority reported a deficit of Kshs.51,494,563 and Kshs. 45,539,596 for the financial years 2017/18 and 2018/2019, respectively. It is important for the Committee to note that a portion of these deficits was made up of non-cash items, namely, provision for staff leave, provision for gratuity, provision of audit fees, depreciation, and amortization. These non-cash items represented 5% and 8.4% of the total expenditure for the financial years 2017/18 and 2018/19, respectively. An analysis of the non-cash items from the financial year 2017/18 to 2021/22 and their impact on total expenditure is illustrated in the table below;

### Analysis of Total expenditure and non-cash items

Financial Year	2017/18	2018/19	2019/20	2020/21	2021/22
Total Expenditure (Kshs)	397,402,168	417,381,717	430,853,497	460,303,125	571,277,706
Depreciation and amortization (Kshs.)	12,264,044	25,824,841	33,312,309	69,180,648	111,701,190
Provision for Gratuity	2,008,800	2,008,800	1,431,270	-	2,901,290
Provision for Staff leave (Kshs)	5,314,843	6,723,183	5,756,637	4,264,590	7,918,642
Provision for Audit Fees (Kshs)	487,200	487,200	487,200	487,200	500,000
Total Non cash items (Kshs)	20,074,887	35,044,024	40,987,416	73,932,438	123,021,122

% of non cash items to total expenditure	5.05%	8.4%	9.5%	16%	21.5%
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316. Further, the Committee was informed that to enhance its financial sustainability and effectively fulfill its supervisory and regulatory mandate, the Authority amended the 2011 levy order. The levy rate charged on deposits of regulated sacco's increased from 0.125% in 2018 to 0.175% in 2022. This amendment of the levy rate, combined with the growth of deposit liabilities of regulated sacco's over the years, from 341.91 million in 2018/19 to 563.89 million in 2022/2022, has had a positive impact on the authority's revenue. The authority's revenue has grown from Kshs. 371.8 million in 2018/19 to Kshs. 538 million in 2022/2022, which has enabled the authority to cover operational costs, including supervisory costs, hence improving the financial performance of the authority. An analysis of total revenue and total expenditure is as illustrated in the table below.

#### **Analysis of total Revenue and Total Expenditure**

<b>Financial Year</b>	<b>2018/19</b>	<b>2019/20</b>	<b>2020/21</b>	<b>2021/22</b>
Total Revenue (Kshs)	371,842,121	477,171,713	438,335,506	538,438,709
Total expenditure (Kshs)	417,381,717	430,853,497	460,303,125	571,277,706
Surplus/ Deficit (Kshs)	(45,539,596)	46,318,216	(21,967,619)	(32,838,997)

#### **Committee Observations**

##### **The Committee observed that –**

- i. The authority's total expenditure was higher than its total revenue thus occasioning the deficit amounting to Kshs. 45,539,596. This affected the planned activities and impacted negatively on service delivery to the public.
- ii. The poor financial performance, if not addressed through an effective strategy may lead to severe financial and operational difficulties in the near future.

#### **Committee Recommendations**

##### **The Committee recommended that–**

Within three months upon adoption of this report, the Accounting Officer should document and submit a report to the respective Departmental Committee on the cost-effective strategies devised

to enhance revenue collections in order to effectively fulfill its supervisory and regulatory mandate as per the amended 2011 levy order.

## **FINANCIAL YEAR 2019/2020**

### **1.0 Implementation of Risk-Based Supervision System Project**

317. The Committee heard that, during the year under audit, the Authority had budgeted expenditures of Kshs 547,432,467 and Kshs. 215,320,742 under recurrent and development budgets, respectively. The development budget included an amount of Kshs 206,761,742 for the implementation of Risk Based Supervision System (RBSS) project which included an amount of Kshs. 201,761,742 rolled over from the previous financial year.
318. Examination of available records revealed that the Authority signed a contract with three local firms for the supply, installation, configuration, customization, testing and commissioning and maintenance of a risk-based supervision system, electronic document management system and related hardware system at a contract sum of Kshs. 206,422,869. The commencement date for the contract was 21<sup>st</sup> February, 2020 for a period of six (6) months with an expected completion date of 20<sup>th</sup> August, 2020.
319. According to the project timelines set out at schedule six of the signed contract, the project should have been at the deployment phase (integration to ERP and optimization, data preparation and migration) four months after the commencement of the contract. However, no documentary evidence has been provided for verification to confirm the project implementation status and ascertain whether the project objectives will be met since the contract period has expired. In addition, the management has not provided explanations for the level of budget absorption.
320. Consequently, value for money may not have been obtained on the project.

### **Management response**

321. The management informed the Committee that, the Risk Based Supervision System (RBSS) implementation was a process based on milestones as provided for in the contract. Though the contract was signed on 21<sup>st</sup> February, 2020, for six months, the kick-off meeting was held on 4<sup>th</sup> March, 2020 to agree on the project objectives, effectively making the completion date September 2020. However, due to the COVID-19 pandemic, the implementation of the project did not kick off as per the contract, thus pushing the commencement of the project to May 2020. The work plan was extended to 27<sup>th</sup> November, 2020, and another extension was granted up to 30<sup>th</sup> March, 2021 at the vendor's request.

## **Committee Recommendations**

### **The Committee recommends that –**

The Accounting Officer must always ensure adherence to the provisions of Section 81 (3) of the PFM Act CAP 412A with regard to the guidelines issued by Public Sector Accounting Standards Board.

## **3.0 Retirement Benefit Scheme**

338. The Committee heard that, note 17 to the financial statements states that the Institute operated a gratuity scheme for qualifying employees which qualifies as a defined benefit scheme. The employees were entitled to 12.5% of their monthly basic salary for every month of service which deductions is paid into a separate gratuity bank account maintained by the Institute. As at 30<sup>th</sup> June, 2016, cumulative balance of the gratuity bank account totaled Kshs. 25,868,000 which sum has been disclosed both as an asset and liability in the financial statements. However, the adequacy of cash balance to cover existing retirement benefit obligations of the Institute is not supported with documents analysis.

### **Management response**

339. The Management informed the Committee that, as at the time of the audit, the analysis had not been shared, however, management presented a schedule of Kshs. 25,868,000 being the account balance that was disclosed in the financial statements to support staff gratuity provision for the year and the respective staff entitlement. The individual balances are the amounts to be paid in the event a staff exits from the Institute or gratuity falls due.

## **Committee Observations**

### **The Committee observed that –**

- i. The Committee noted with concern that, although KIPPRA management provided the schedule of the respective beneficiaries of the gratuity amount of Kshs.25,352,580, the corresponding bank statements to confirm the existence and adequacy of the bank balance were not provided.
- ii. The Accounting Officer was in breach of section 62 (1)(c) of Public Audit Act, CAP 412B which requires that a person shall not without justification fail to provide information within reasonable time that is required under the Act.

## **Committee Recommendations**

### **The Committee recommends that –**

The Accounting Officer should always ensure adherence to the provisions of Section 62 (1)(c) of Public Audit Act, CAP 412B.

## **FINANCIAL YEAR 2016/2017**

### **1.0 Investment in Treasury Bills**

340. The Committee heard that the statement of financial performance reflected nil balance in respect of investment in treasury bills as at 30<sup>th</sup> June, 2017 (2016 Ksh 386,557,000). However, cash and cash equivalents balance was Kshs. 760,168,000 as at June 2017 (2016 – Kshs. 300,965,000). The interest income received from the cash held by the Institute reduced from Ksh 40,358,000 in 2015/16 to Ksh 22,421,000 in 2016/17 financial year as a result of the above action. In the circumstances, the Institute apparently lost an opportunity to increase its other income for the period under review. The management did not give satisfactory reasons for the decision to discontinue investment in the treasury bills.

#### **Management response**

341. The management informed the Committee that, the institute intended to start building its own premises in FY 2016/17. As a result, investment in treasury bills was put on hold so that the funds could be utilized in the development of the land. However, the process stalled because of land ownership and usage disputes raised by the Department of Veterinary Services. The management resumed the investment exercise and put together an investment Committee to oversee the process.

#### **Committee Observations**

##### **The Committee observed that –**

The institute put on hold the investment in Treasury bills in the year under review and opted to utilize the funds in development of its land which eventually stalled due to land ownership and usage disputes with the Department of Veterinary Services. This was despite the increase in cash and cash equivalents balance as at 30<sup>th</sup> June, 2017 to Kshs. 760,168,000 resulting in the opportunity cost in form of interest foregone.

#### **Committee Recommendations**

##### **The Committee recommends that –**

The Accounting Officer should at all times comply with the investments policies and guidelines by the National Treasury.

### **2.0 Project Income**

342. The Committee heard that as disclosed in Note 4 to the financial statements is project income totaling Kshs.79,963,000 for the year ended 30<sup>th</sup> June, 2017. Some of the projects commenced before and were spreading beyond the financial year under review. However, the basis of how the revenue allocation was done between the prior years, the current

financial year, and subsequent years was not provided for audit verification. In addition, an adjustment of Ksh 10,493,437 processed to increase the project's income for the year was not fully explained.

#### **Management response**

343. The management informed the Committee that, they have revised the structure of contracts for research consultancies to include the terms of payment and the deliverables thereof. It adopted to record Incomes based on the percentages of completion as would be stipulated in the contracts issued for research work. Management also, strengthened its internal control systems by acquiring an ERP system that has a project management module that generates fund accountability statements and introduced project tracking to monitor the implementation of projects.
344. The adjustment of Ksh 10,493,437, related to project income receivable from Public Service Commission for research consultancy paid up in July 2017. It was disclosed in note 12 under receivables from exchange transactions and recognized in the project income of FY 2016/2017. The schedule of receipts was as follows;

#### **Committee observations**

##### **The Committee observed that–**

- i. The management did not provide a documentary evidence in form of a schedule showing the breakdown of revenue allocation to the respective prior years, the current year and subsequent financial years for projects spanning multiple years. This made it difficult to confirm the accuracy of the project income.
- ii. The Accounting Officer by failing to fully explain the adjustment of Kshs. 10,493,437 was in breach of section 62 (1)(c) of Public Audit Act, 2015 which requires that a person shall not without justification fail to provide information within reasonable time that is required under the Act.

#### **Committee Recommendations**

##### **The Committee recommends that –**

The Accounting Officer should always ensure adherence to the provisions of Section 62 (1)(c) of Public Audit Act, CAP 412B.



## **FINANCIAL YEAR 2017/2018**

### **1.0 Unauthorized Reallocation and Utilization of Funds**

345. The Committee heard that during the year under review, the Institute budgeted and was allocated development grants amounting to Kshs. 52,236,486 in respect of acquisition for capital projects of its headquarters offices. However, the funds were reallocated, utilized and accounted for under recurrent operations contrary to the Public Finance Management Act, Section 43 and PFM Regulations, Section 48 and Section 49. No documentation was availed in support of approval of the reallocation of funds in the budget for the financial year. The details of how the funds were reallocated was also not provided for audit verification. In addition, the management used a total of Kshs.19,111,000 restricted capital expenditure funding brought forward from the previous year on recurrent operations but no reallocation request and approvals were availed for audit verification.

346. Under the circumstances, the propriety of the Institute's expenditure totaling Kshs. 71,347,486 could not be confirmed.

#### **Management Response**

347. The management informed the Committee that KIPPRA development grant started as support from ACBF Support to KIPPRA Vote No. 1072100300– which reflected a counterpart funding. The provision in the vote included Kshs. 52,236,486 from GoK and 100 million from the African Capacity Building Foundation (ACBF). This support was to finance the Young Professionals program, with a recruitment of 10 Young Professionals per year to be trained in public policy and analysis. The expected output being young professionals trained on public policy research and analysis. The expected impact and outcome were to enhance capacity of young professionals to analyze and formulate policies.

348. The ACBF Grant came to an end in June 2017. At that point, the Institute needed government support to keep the program running. During the budget process in 2017/18 KIPPRA defended continued counterpart funding using a YP proposal. This was captured as a development grant and in other years used the funds to meet the Young Professional's costs. During the year under review the Institute incurred Kshs. 13,179,650 on YP monthly allowances.

349. The Institute had always used part of the funds in the Capital and Development-ACBF Support to KIPPRA Vote No. 1072100300 to finance capital expenditures. It is from the development grant that the institute had been financing capital spending, including procurement of computers, office equipment's, furniture's, fittings and fixtures and intangible assets (software). The total amount spent on capital items during the year under review amounted to Ksh 27,187,467.



350. KIPPRA organized its first Annual Regional conference in fulfilling its commitment in its 2013/14-2017/18 strategic plan. In contributing to the conference management in 2017/18 work plan proposed to undertake a survey bringing together synergies from all research departments and the concept was shared with the programs Committee. This research work amounting Ksh 11,869,312 was financed from the development grant whose findings were disseminated during the conference.

#### **Committee Observations**

##### **The Committee observed that –**

The Committee observed that the institute reallocated Kshs. 52,236,486 from capital expenditure to recurrent expenditure and utilized Kshs.19,111,000 restricted capital expenditure brought forward on recurrent operations. The two expenditure items were contrary to the provisions of Section 43 of the Public Finance Management Act, CAP 412A, and Regulation 48 of the PFM (National Government) Regulations, 2015.

#### **Committee Recommendations**

##### **The Committee recommends that –**

The Accounting Officer should always ensure adherence to the provisions of Section 43 of the Public Finance Management Act, CAP 412A, and Regulation 48 of the PFM (National Government) Regulations, 2015.

## **2.0 Transfer from Governments**

351. The Committee heard that the statement of financial performance reflects amount of Ksh 333,931,000 in respect of transfer from the Government and as detailed in note 3 to the financial statements includes a transfer from retained earnings of Ksh 5,994,000. The amount has not been explained or supported in any way.

#### **Management response**

352. The management informed the Committee that retained earnings financed authorized project expenditures incurred during the year, this was recognized as revenue in the statement of financial performance of the reporting period (FY 2017/18) under note 3 and the statement of net changes in equity to reduce the retained earnings.

#### **Committee Observation**

##### **The Committee observed that –**

The Committee noted that the amount of Kshs.5,994,000 is unauthorized and unapproved expenditure irregularly drawn from retained earnings (surplus for the previous year) which were

not explained nor supported with any documentary evidence. This is contrary to section 12 of the state corporations Act CAP 446

### **Committee Recommendations**

#### **The Committee recommends that –**

Within three months upon adoption of this report, the Accounting Officer should submit a detailed report explaining how the Kshs.5,994,000 was utilized to the Auditor-General for audit review and reporting in the subsequent audit cycle.

### **3.0 Project Income**

353. The Committee heard that as reported in the previous year the statement of financial performance for the year ended 30<sup>th</sup> June 2018 and note 4 to the financial statements, discloses project income totaling Ksh 26,461,000(2016/2017 – Ksh 79,963,000). Although some of the projects commenced before and were spreading beyond the financial year under review, the basis of revenue allocation between the prior years, the current financial year and subsequent years was not provided for audit review.

354. Under the circumstances, the accuracy and completeness of the project income balance of Ksh 26,461,000 for the year ended 30<sup>th</sup> June 2018 could not be confirmed.

### **Management response**

355. The management informed the Committee that project income was recognized based on the terms stipulated in the terms of the contract for the research work and projects whose completion dates overflow to the following year, the institute disclosed incomes received in advance or incomes outstanding in the notes to the financial statement. Currently, KIPPRA is aligned with the auditor's expectations on the presentation.

### **Committee observations**

#### **The Committee observed that –**

The management did not provide documentary evidence in form of a schedule showing the breakdown of revenue allocation to the respective prior years, the current year and subsequent financial years for projects spanning multiple years. This made it difficult to confirm the accuracy of the project income.

### **Committee Recommendation**

#### **The Committee recommends that –**

The Accounting Officer should always ensure adherence to the provisions of Section 62 (1)(c) of Public Audit Act, CAP 412B.

#### 4.0 Employee Costs

356. The Committee heard that statement of financial performance and note 7 to the financial statement reflects employees costs of Ksh 189,598,000 which included acting allowance amounting to Ksh 1,294,462 paid to five (5) staff while appointed in acting capacities. However, the officers acted and got paid for more than six months contrary to KIPPRA Human Resource Policy and the Public Service Commission Human Resource Policies and Guidelines, 2016.

#### Management response

357. The management informed the Committee that current HR Policies and procedure manual was approved in November 2017. Before then KIPPRA/QMS/HR/01 policy dated 3<sup>rd</sup> May 2013 was in operation and Sec 14.5 – had not stated the timelines for acting appointment positions. This was rectified in the new HR policy to be in conformity with the PSC HR Policy of May 2016.

358. The Institute wrote an appeal for an extension of the Acting period through letter ref. KIPPRA/HR/4/1/DPSM/1 dated 14<sup>th</sup> August 2019 and the subsequent guidance provided by the State Department for Public Service & Gender, as outlined in their Letter Ref. No. MPSG/DPSM/HRM/2/4/Vol. XXXIV, dated 8<sup>th</sup> April 2020. The Acting appointment is approved by the Human Resource Management Advisory Committee and the KIPPRA Board. The board has since advertised the 5 acting positions as follows:

Sno.	Position	Date of Advertisement	Remarks
1	Deputy Director Private Sector	N/A	The substantive Officer is seconded to the Coffee Implementation Standing Committee. Management has sought approval from the Head of Public Service to transfer the services of the Officer. This will pave way for the recruitment of a substantive office holder.
2	Deputy Director Trade and Foreign Policy	March 2024	Recruitment Ongoing
3	Deputy Director Infrastructure and	March 2024	Recruitment Ongoing

Sno.	Position	Date of Advertisement	Remarks
	Economic Services Department		
4	Deputy Director Finance	February 2020	Position substantively filled
5	Deputy Director Human Resource and Administration	February 2022	Position Substantively filled

359. Further, the Board has advertised and readvertised vacant positions in a bid to curtail acting appointments.

#### **Committee observations**

##### **The Committee observed that–**

- i. The Committee noted that management of KIPPRA irregularly paid five (5) staff acting allowance for more than six (6) months. This was contrary to Section 34 of the Public Service Commission Act CAP 185.
- ii. The Committee noted that, currently the vacant positions have been filled by substantive officers.

#### **Committee Recommendations**

##### **The Committee recommends that–**

The Accounting Officer should always ensure adherence to the provisions of section 34 of the Public Service Commission Act, CAP 185.

#### **5.0 Deferred Income**

360. The Committee heard that the statement of financial position reflected a deferred income balance of Ksh 284,448,000 which was explained in note 19 as representing the development grants received over the years. The amount has decreased from Kshs. 303,599,000 in the previous year thus a reduction of Kshs. 19,111,000. The reduction of Kshs. 19,111,000 has not been fully supported as there is no documentation to show what the funds were used for and where the amount was transferred to in the statement of financial performance in line with accounting policy.

361. Under the circumstances, the deferred income balance of Kshs. 284,448,000 is not fairly stated.

### Management response

362. The management informed the Committee that the spent amount of Kshs. 19,111,000 facilitated payment of staff salaries amounting to Kshs. 13,860,815 and general expenses Kshs. 5,249,723 for the month of June 2018 due to delayed exchequer disbursements.

363. The amounts were transferred from the statement of changes in net assets as a movement in retained earnings and reported as reduction in the statement of financial position.

364. The Utilization of Ksh 19,111,000 is tabulated below;

S/No	Source/Donor	Description	Amounts
1	Payroll	Staff salaries – June 2018	13,860,815.00
2	Highend Solutions Ltd	Library AMLIB Service Level Agreement – Renewal of Licence	243,843.00
3	Nation Media Group Ltd	KIPPRA Conference 2018 – space order for advertisement	2,687,140.00
4	Ian Kariuki Muriuki	KIPPRA Conference 2018 – Music Performance & comical video	120,000.00
5	Lloyd Masika Ltd	5 <sup>th</sup> Floor Excess service charge	163,712.00
6	Lloyd Masika Ltd	2 <sup>nd</sup> Floor Excess service charge	163,712.00
7	Elsevier B.V	Renewal of Ithenticate Plagiarism Checker	576,024.75
8	Masada Hotel	KER 2018 Working retreat	522,900.00
9	Tricore Agencies	Printing of Policy Briefs No. 11,1	342,000.00
10	Xtranet Communications	Maintenance of KIPPRA Website	430,391.00
	<b>TOTAL COST</b>		<b>19,110,537.75</b>

### Committee Observations

#### The Committee observed that –

The Committee observed that Kshs.19,111,000 was drawn from the deferred income to facilitate payment of staff salaries. The expenditure is contrary to the provisions of Section 43 of the Public Finance Management Act, CAP 412A, and Regulation 48 of the PFM (National Government) Regulations, 2015.

### Committee Recommendation

#### The Committee recommends that –

The Accounting Officer should always ensure adherence to the provisions of Section 43 of the Public Finance Management Act, CAP 412A, and Regulation 48 of the PFM (National Government) Regulations, 2015.



