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MOVING NOTES FOR THE ADOPTION OF THE NINETEENTH REPORT OF PIC ON THE ACCOUNTS OF STATE CORPORATIONS (VOL. I & II). LAID ON THE TABLE OF THE HOUSE ON TUESDAY 31ST MARCH 2015



Mr. Speaker Sir,

I beg to move that this House adopts the Nineteenth Report of the Public Investments Committee on the Accounts of State Corporations.

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

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

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

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

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

The Committee consisted of the following Members: -

- (1) **Hon. Adan Wehliye Keynan, CBS, MP** - **Chairperson**
- (2) **Hon. Anthony Kimani Ichung'wah, MP** - **Vice Chairperson**
- (3) Hon. Francis Mwanzia Nyenze, EGH, MP
- (4) Hon. (Dr.) Oburu Oginga, MGH, MP
- (5) Hon. (CPA) Thomas Ludindi Mwadeghu, CBS, MP
- (6) Hon. Adan Mohammed Nooru, MP
- (7) Hon. Franklin Mithika Linturi, MP
- (8) Hon. Athanas Wafula Wamunyinyi, MP
- (9) Hon. Elias Bare Shill, MP
- (10) Hon. Sammy Silas Komen Mwaita, MP
- (11) Hon. John Olago Aluoch, MP
- (12) Hon. (Dr.) Paul Otuoma Nyongesa, EGH, MP
- (13) Hon. (Eng.) John Kiragu, M.P
- (14) Hon. (Major) (Rtd.) John Waluke Koyi, MP
- (15) Hon. Abdullswamad Sheriff Nassir, MP
- (16) Hon. Beatrice Nkatha Nyaga, HSC, MP
- (17) Hon. Bernard Munywoki Kitungi, MP
- (18) Hon. Chrisanthus Wamalwa Wakhungu, CBS, MP
- (19) Hon. Cornelly Serem, MP
- (20) Hon. Ejidius Njogu Barua, MP

- (21) Hon. IrunguKang'ata, MP
- (22) Hon. Johana KipyegonNg'eno, MP
- (23) Hon. John MuchiriNyaga, MP
- (24) Hon. John OgutuOmondi, MP
- (25) Hon. Korei Ole Lemein, MP
- (26) Hon. Mary Sally Keraa, MP
- (27) Hon. OnesmusMuthomiNjuki, MP

PROCEEDINGS

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

1. National Oil Corporation
2. Kenya Rural Roads Authority
3. Kenya Roads Board
4. Kenya National Highways Authority
5. Kenya Airports Authority
6. Kenya Civil Aviation Authority
7. Kenya Plant Health Inspectorate Service
8. National Housing Corporation
9. Higher Education Loans Board
10. Kenya Tourist Development Corporation
11. National Social Security Fund
12. Kenya Industrial Research Development Institute
13. Cotton Development Authority
14. Nursing Council of Kenya
15. Kenya Ports Authority
16. Kenya Railways Corporations
17. Kenya Power & Lighting Company
18. Central Bank of Kenya
19. EwasoNg'iro North Development Authority
20. Kenya Petroleum Refineries Limited
21. Kenya Electricity Generating Company
22. Nzoia Sugar Company

23. Agro Chemical and Food Company Limited
24. Kenya Forest Service
25. Kenya Wildlife Services
26. Kenyatta National Hospital
27. Kenya Seed Company Limited
28. Kenya Maritime Authority
29. Kenya Marine and Fisheries Research Institute
30. Kenya Ferries Services Limited
31. Coast Development Authority
32. Coast Water Services Board
33. Kenya Medical Research Institute
34. National Hospital Insurance Fund
35. National Water Conservation and Pipeline Corporation
36. Tea Board of Kenya
37. National Authority for the Campaign against Alcohol and Drug Abuse
38. Northern Water Services Board
39. Kenya Reinsurance Corporation
40. Moi Teaching & Referral Hospital
41. Kenya National Examination Council
42. Kenya Electricity Transmission Company Limited
43. Kenya Medical Supplies Authority
44. National AIDS Control Council
45. Kenya Medical Training College
46. Kenya Dairy Board
47. National Irrigation Board
48. Agricultural Finance Corporation
49. Sugar Development Fund
50. Kenya Sugar Board
51. Local Authority Provident Fund
52. National Cereals and Produce Board
53. Tana and Athi River Development Authority
54. Kenya National Library Services
55. Commission for University Education

56. Kenya Forestry Research Institute
57. National Environment Management Authority
58. Geothermal Development Company
59. The Coffee Research Foundation
60. The Bomas of Kenya
61. The Kenya Film Classification Board
62. Kenyatta International Convention Centre
63. The Public Complaints Committee on Environment
64. The National Construction Authority
65. The National Cohesion and Integration Commission
66. Energy Regulatory Commission
67. Embu University College
68. The Kenya Institute of Curriculum Development
69. The Information, Communication and Technology Authority
70. Kenya Nuclear Electricity Board
71. The National Environment Trust Fund
72. TaitaTaveta University College.

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

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

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

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

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

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

COMMITTEE GENERAL OBSERVATIONS AND RECOMMENDATIONS

Mr. Speaker Sir,

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

Mr. Speaker Sir,

The Committee observed with concern that several State Corporations continued to operate under financial constraints occasioned by mismanagement and/or imprudent commercial arrangements. In addition, some Corporations continually breached Treasury guidelines on investment of surplus funds without authority, approval of budget and other management

guidelines on remuneration and salary increments to staff and Board Members.

Further, the Committee has continually taken great exception to the slow pace at which the Government has implemented the recommendations of this House arising from the previous reports. The Committee was concerned by the slow pace at which the Ministry of Lands and the National Land Commission have taken to have illegal allocations of Corporation land revoked to enable the Corporations make proper use of the same.

It is also noteworthy that most audit reservations relate to non-adherence to the procurement procedures; variation of tender award amounts; slow recovery of imprest; non-maintenance of fixed assets register; stalled projects; long term loans; receiving unqualified report yet the previous period's audit queries have not been resolved; outsourcing of audit services; conflict of interest; non-compliance with International Accounting Standards; weak financial positions; investments in non-performing organization; non-payment of statutory deductions and taxes; delay in constituting new Boards; payment of Board allowances; budgetary control, illegal allocation of Corporations land and acquisition of ownership documents for Corporations land, investment without authority and bad and doubtful debts.

Mr. Speaker Sir,

The Committee made the following observations and recommendations:

1. IMPREST

The Committee noted with concern that recovery of imprest was slow or non-existent. In some organizations, recovery was either done after a long while or from the staff dues when they left the organization. For instance:

- 1. National Water Conservation and Pipeline Corporation (NWPC) had Kshs 71,748 in form of staff imprest with no supporting documents;**

2. Coast Development Authority had outstanding imprest of Kshs 368,448 and Kshs 114,390 in form of staff imprest and staff advances that were outstanding for a long time and
3. Kenya Medical Research Institute (KEMRI) had outstanding imprest of Kshs 328,256 in Financial Year (FY) 2011/2012.

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

2. UNQUALIFIED ACCOUNTS

The Committee observed that some organizations which had audit queries the previous financial year were given reports of unqualified accounts the following year without satisfactory evidence that the audit queries had been resolved. For instance,

1. Kenya Roads Board had unqualified Accounts from FYs 2010 to 2012;
2. Nursing Council of Kenya had unqualified Accounts from FYs 2010 to 2012;
3. Kenya Industrial Research Development Institute (KIRDI) had unqualified accounts of FY 2010/2011;
4. Kenya Electricity Transmission Company (KETRACO) had unqualified Accounts of FY 2011/2012 and
5. Local Authority Pension Fund's (LAPFUND) had unqualified accounts from FYs 2008 - 2012. The Committee also noted that some state corporations did well in the financial audit and recorded unqualified audit reports.

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

3. OUTSOURCING OF AUDIT SERVICES

1. The Constitution under Article 229 mandates the Auditor General to audit and report on accounts of any entity that is funded from public

Funds. Section 39 of the Public Audit Act 2003 provides for the Auditor General to outsource audit services to private sector auditor. The Committee observed that audit of strategic State Corporations especially in the energy, financial and infrastructure sectors have been outsourced to private auditors. For instance:-

- 1. Geothermal Development Corporation (GDC);**
- 2. Kenya Power and**
- 3. KENGEN.**

The Committee recommends that, though the Auditor General is allowed to outsource auditors as provided under section 39 of the Public Audit Act, 2003, the Auditor-General should not outsource auditing of strategic State Corporations particularly in the energy, financial and infrastructure sectors and instead the audit office should undertake the audit, particularly now that there is adequate capacity in the audit office.

4. APPOINTMENT OF AUDITORS BY STATE CORPORATIONS:

The Committee observed that the accounts of some state corporations were not being audited by the Auditor General as per the provisions of article 229 of the Constitution of Kenya 2010 for example:-

- 1. National Bank of Kenya;**
- 2. Kenya Petroleum Refineries Limited;**
- 3. Telkom Kenya Limited and**
- 4. Central Bank of Kenya Financial Statements for the Financial Years 2001/2002 to 2011/2012 were not audited by the Auditor General but by a private auditor who was not appointed by the Auditor General and instead was appointed by the Bank.**

Committee Observation

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

Committee Recommendations

The Committee recommends as follows:-

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

5. CONFLICT OF INTEREST

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

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

6. CONSTITUTION OF BOARDS OF STATE CORPORATIONS

The Committee observed with concern how some Boards of Corporations whose terms had expired would continue transacting business that was binding to the Board.

- 1. For other Corporations like KEPHIS, even after alerting their Parent Ministry on the need for a new Board, the parent Ministry advised them how to conduct meetings without the Board. In other cases the Constitution of the new Boards was delayed and**
- 2. The Bomas of Kenya for instance the ex-Board members sued the new Board members, preventing them from taking up their offices.**

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

7. NON-COMPLIANCE WITH INTERNATIONAL FINANCIAL REPORTING STANDARDS

The Committee observed that a number of State Corporations had Financial Statements that did not comply with International Financial Reporting Standards.

- 1. For example, in the FY 2010-2011 Northern Water Service Board's Financial Statements did not comply with International Financial Reporting Standards (IFRS)-International Accounting Standards (IAS) No. 20;**
- 2. Kenya Civil Aviation Authority (KCAA) Stocks were carried at First in First out basis in contravention of IAS No. 2 which recommends lower cost and net realizable value;**
- 3. In the FY 2004/2005 KMFRI's financial statements did not contain comparative notes in respect to notes to the accounts and further the notes to the accounts had not been identified and cross referenced to the balances in the financial statements contrary to International Financial Reporting Standards (IFRS);**
- 4. KEPHIS in FY 2002-2004 claimed that their financial statements and disclosures were not compliant with IAS because the standards were new.**

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

8. FINANCIAL POSITION

Mr. Speaker Sir,

The Committee observed that some state organizations had audit queries on weak financial positions occasioned by several factors. For instance:-

- 1. National Oil Corporation complained of reduced market share, while Kenya Civil Aviation Authority in FY 2003/2004 made financial losses due to bad and doubtful debts and depreciation charges leading to negative working capital;**
- 2. National Housing Corporation in FY 2002/2003 on the other hand recorded losses leading to failure to meet its long-term loans and interests obligations;**
- 3. In FY 2010/2011 the Cotton Development Authority recorded a net deficit, which it attributed to the shortfalls of remittances of Government grants;**
- 4. In FY 2007/2008, the Kenya Railways Corporation realized a loss, which affected the Corporations financial position due to a high dependency on the support of creditors and principal shareholder;**
- 5. In the FY 2011/2012 EwasoNg'iro North Development Authority's financial position was unable to meet its financial obligations;**
- 6. In FY 2011/2012 KNEC incurred a deficit attributable to increased costs due to increased number of candidates which led to increased cost of management of examinations without corresponding increases in government capitation;**
- 7. In the FYs 2000-2012 Nzoia Sugar Company's current liabilities exceeded the current assets resulting in a negative net working capital.**

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

9. PROCUREMENT PROCESS

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

- 1. The National Oil Corporation for example procured contractors to construct the Nairobi Loading Facility a process which was based on financial rather than technical considerations. As a result of which the winning bidder could not execute the contract due to lack of technical capacity and the corporation ended up terminating the contract and engaging another contractor leading to time wastage, loss of paid up fees, protracted Court cases and variation of the original contract prices.**

Contracts would be awarded and later terminated for non- performance. The contractor then takes the corporation to court, which award damages to the contractor leading to losses in the Corporation.

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

In FY 2003/2004 the Nursing Council of Kenya procured goods without following the due process allegedly because the Council had low staffing levels in both accounts and procurement departments.

National Housing Corporation in FY 2001/2002 single sourced the procurement of computers from Elite Computers in contravention of the Public Procurement and Disposal Act.

In FY 2008/2009 NSSF contravened the Public Procurement and Disposal Act, 2005 (PPDA) by single sourcing ,leasing the plot along Kenyatta Avenue to Cheraik Agencies and Caryl Agency to operate car park services.

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

The Committee recommends that:-

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

10. BUDGETARY CONTROLS

The Committee observed with concern that several State Corporations appeared to exceed their budgets especially on recurrent expenditure and administrative items. For Example:-

- 1. The National Oil Corporation in the FY 2009/2010 NSSF over spent against various items; general insurance, board expenses and legal expenses without approval of the Board of Trustees, Parent Ministry and Treasury;**

2. In the FY 2009/2010, Kenya Ferry Services without the approval of the parent Ministry and the National Treasury incurred over expenditure on board expenses.

The Committee recommends that:-

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

11. NON- PAYMENT OF STATUTORY DEDUCTIONS AND TAXES

Mr. Speaker Sir,

The Committee noted that some State Corporations did not remit their statutory deductions like NSSF, NHIF and PAYE even though they deducted the same from the employees. This led to an accumulation of penalties. Some also had difficulties remitting their taxes to Kenya Revenue Authority. The Corporations either negotiated for extended payment periods or for waiver of the accumulated penalties and interests. For Instance:-

1. National Oil Corporation in FY 2002/2003;
2. In FYs 2009-2012 KTDC was facing challenges paying its taxes and so applied for waiver from penalties and interests, which was granted;
3. In FY 2009-2012 Nzoia Sugar Company had defaulted on tax remittance to Kenya Revenue Authority.

The Committee recommends that:-

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

12. DEVELOPING LANDS WHOSE OWNERSHIP IS IN DOUBT

The Committee observed that some State Corporations were putting up buildings on land whose ownership documents were not in their custody. This is attributed to either, the land having been originally owned by the parent Ministry or the title documents have never been transferred for instance:

- 1. Kenya Rural Roads Authority and Kenya Civil Aviation Authority inherited lands from Ministry of Transport and Infrastructure but not the title documents.**

The Committee also noted that there were cases of debt swap agreement e.g. National Housing Corporation was given a parcel of land by Webuye County Council which Kenya Forest Service claimed and was later given back to them; some of the Corporations do not have an asset register showing what their assets are thus making it easier for land grabbers and squatters to invade the land leading to court cases for instance, Kenya Marine and Fisheries Research Institute (KEMFRI).

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

13. ILLEGAL ACQUISITION/OCCUPATION OF CORPORATION LAND

National Water Conservation and Pipeline Corporation

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

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

The Committee noted with concern that despite its specific recommendations Nyali Water Wells, Likoni Area Water office, Changamwe Reservoirs and Shanzu Staff Quarters were still in the hands of private developers, seven years later.

The Committee further noted that many other properties in the Coast Province were irregularly allocated to private individuals and the process of regularizing them has been slow. Other Corporations affected by illegal acquisition of their land include :-

- 1. KEPHIS;**
- 2. Kenyatta National Hospital;**
- 3. Kenya Airports Authority;**
- 4. Kenya Civil Aviation Authority;**
- 5. Agricultural Development Corporation and**
- 6. National Housing Corporation among others.**

Committee Recommendations

The Committee recommends that:-

1. **The Cabinet Secretary for Lands, Housing and Urban Development and the National Lands Commission should put restrictions on all the parcels of the Corporation's land that are in private hands.**
2. **The Cabinet Secretary for Environment, Water and Natural Resources should liaise with the Office of the Attorney General, National Land Commission with a view to revoking all titles belonging to the Corporation that were irregularly allocated and in private hands.**
3. **The Cabinet Secretary for Lands, Housing and Urban Development and the National Lands Commission should put restrictions on all the parcels of the Corporation's land that are in private hands and liaise with the Attorney General in order to have Court proceedings instituted with a view to revoking all the titles for the Corporation which are in private hands.**
4. **The Cabinet Secretary for Environment, Water and Natural Resources fast tracks the review of The Water Act 2002 in order to speed up the vesting of assets and liabilities to the respective Water Boards/Counties.**

14. VARIATION OF TENDER AMOUNTS

The Committee observed that the awarding of tenders, changes being made to the tenders specifications, other contractors who were not part of the winning tenderers' being appointed and further, tender prices being varied, without reference to the tender committee are other issues which came up in the Corporations. For Instance:-

1. **In FY 2010/2011, the tender awarded for roads maintenance in the Nyanza Province by the KeRRA which had variations in cost of Kshs. 7,880,847;**

- 2. KeNHA awarded tender and made payments without approval of the Tender Committee for emergency markings on Mombasa road in the FY 2010/2011, in violation of the Public Procurement and Disposal Act, 2005 which led to approved variations of Kshs. 6,115,746.**

The Corporations gave reasons for the variations as being due to comparison between the contract values which they said were understated and the actual payments realized e.g. KeRRA. Notwithstanding the justifications given for the cost overruns by the Corporations, the Committee noted that there was need for the Corporations to adhere to the law.

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

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

15. LACK OF OWNERSHIP DOCUMENTS

The Committee noted that some Corporations did not have title documents for land which is in their possession. For some, the title documents are in other Corporations' name or in unlawful owners' names. For instance, KEPHIS land in Kitale, during the FY 2001-2010.

Others only had allotment letters or operating leases e.g. Kenya Airports Authority operating leases;

NAS having a title document to land within Jomo Kenyatta International Airport (JKIA) and at Wilson Airport.

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

- 1. KEPHIS land in Muguga and Nakuru from KARI;**
- 2. In the FY 2009-2012, the Cotton Development Authority excluded the value of Riverside Estate Property where its head office is located from Property, Plant & Equipment. The property is said to belong to the defunct Cotton Board of Kenya and had been charged against a loan from Co-operative Bank that the Board failed to service and which is the subject of a court case. Cotton Development Authority also has a list of properties owned by Cotton Board in Nairobi, Central, Eastern, Coast, Rift Valley, Western and Nyanza Regions but lacks ownership documents for the said land and properties. The Committee was informed that records of the defunct Cotton Board of Kenya were tampered with thus no accurate records were available. Further Cotton Development Authority was never vested with properties of Cotton Board of Kenya by law;**
- 3. In FY 2010/2011 Kenya Ports Authority (KPA) had four parcels of land located in Mombasa whose ownership documents were not availed for audit review. A further fifteen separate parcels of land situated in Mombasa were registered in the name of the defunct East African Railways and Harbors Corporation;**
- 4. In the FY 2007/2008 KPA had several parcels of land with undetermined value. Further, parts of the Corporation's land had been allocated to private entities by either the Commissioner of Lands or the Local Council without the approval of the Authority;**
- 5. In FY 2007-2012, EwasoNg'iro North Development Authority despite obtaining allotment for four (4) parcels of land measuring 4.4 hectares in Isiolo, the parcels had not been registered in the name of the Authority. Further, the Authority did not have**

allotment letters from the Ministry of Lands for two other parcels of land in Isiolo and Garissa measuring 10 hectares each thus making them insecure.

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

16. FAILURE TO MAINTAIN FIXED ASSETS REGISTER (FAR)

The Committee observed that some corporations failed to maintain crucial documentation such as the fixed assets register. The failure to maintain fixed asset registers for their assets and liabilities makes it difficult to follow up on the acquisition of ownership documents or even to trace the whereabouts of their properties.

- 1. During the FY 2004/2005 Nzoia Sugar Company did not have a Fixed Asset Register. Cash books, loans and shares registers were not maintained and instead the Company maintained computer generated data in the form of lists, schedules and statements;**
- 2. Kenya Industrial Estates's employers on the other hand used the lands as guarantees for loans e.g Karen land while others, lost or misplaced files in the land registries.**

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

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

17. STALLED PROJECTS

The Committee observed that some Corporations undertook projects which stalled for various reasons. The NHC housing scheme in Kibera Phase III for instance was stopped and the Board asked to write off the sunk cost. Others include:

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

The Committee recommends that:-

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

18. REVENUE COLLECTION

For Corporations which had revenue collections either in form of levies, cess or leases amounts for use of their assets done on their behalf by their parent

ministries or defunct authorities, there were issues with reconciliation of the debt collection before the function was given to KRA. For Instance:-

- 1. KCAA in FY 2003/2004;**
- 2. In FYs 2005-2012 KTDC advanced Kshs 8,467, 395 to Buffalo Springs Ltd, a subsidiary of KTDC. The premise which Buffalo Springs was using was rented out by the Isiolo Town Council to another tenant who crippled Buffalo Springs operations hence the inability to service the loan;**
- 3. Kenya Ports Authority reported in FY 2012/2013 debts amounts owed by the Ministry of Transport, Kenya Ferry Services, M/s Kobil Petroleum Ltd, M/s Kenol/Kobil and M/s Belize Freight and Cargo.**

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

19. LONG TERM LOANS

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

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

20. BOARD EXPENSES

The Committee observed that State corporations over-spent on Board expenses sometimes without National Treasury or parent Ministry approval. For instance:-

- 1. KCAA overspent on Board expenses in FY 2003/2004 in form of allowances to public officers seconded to various committees in the Authority during its formation;**
- 2. Kenya Plant Health Inspectorate Service (KEPHIS) in FY 2011/2012, paid non-directors Board sitting allowances. This was stopped in the FY 2013/2014 via a circular from the Office of the President;**
- 3. In FY 2003/2004 & 2005/2006, Kenya Tourist Development Corporation exceeded board expenses without the National Treasury approval.**

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

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

21. LEGAL FIRMS PROCUREMENT AND PAYMENT OF THEIR LEGAL FEES

The Committee noted with concern that some Corporation would procure the services of Legal firms and pay them questionable legal fees which were not commensurate with the services offered and therefore did not reflect value for money.

- 1. In FY 2011/2012, it was not clear nor did management of KPA explain how the external legal services were procured as no valid contract agreements were available for audit review;**
- 2. The Sugar Board on the other hand, hired the services of legal firms and paid exorbitant fees without commensurate services or proof of service having been rendered.**

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

22. RECONCILIATION OF BOOKS OF ACCOUNTS

The Committee heard that Corporations had difficulties in reconciliations of accounts for instance cash and bank balances; debtors and creditors balances; revenue accounts and suspense accounts.

- 1. In the FY 2002/2003 KEPHIS had difficulties reconciling cash and bank balances.**

The Corporations cited lack of capacity of the staff seconded to them from the **parent Ministries (e.g.LAPFUND) and the reason that the financial and audit period falls on the period when they have not fully reconciled the accounts at the close of the year.**

- 1. NSSF in the FY 2009/2010 did not have account reconciliations of tenant scheme account and expenditure account;**
- 2. In FY 2000-2002 the Nursing Council lacked personnel to undertake proper reconciliation of cash and bank balances.**

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

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

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

23. IRREGULAR PAYMENTS

Some State Corporations made irregular payments.

- 1. The Kenya Tourist Development Corporation (KTDC) in the FY 2003/2004 & 2005/2006 paid sitting allowances to public officers receiving salaries, paid the director's rent instead of owner's occupier allowance, legal fees were paid higher than advised by the Company secretary and salary awards to staff were made without parent Ministry approval as required by law;**
- 2. In the FY 2010-2012, NSSF, paid Kshs. 16,917,240 to a former Managing Trustee Mr. Odero towards his exit under unclear circumstances. It has not been possible to confirm the basis and propriety of the payments since there was no approval from the Government for the payment of benefits to staff retired under the voluntary early retirement scheme;**
- 3. In the FY 2003/2004 the Nursing council paid allowances to staff and Council Members without authority from parent Ministry for inspection visits made to health training facilities.**

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

24. INVESTMENT IN NON-PERFORMING ORGANIZATIONS

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

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

Committee Recommendations:-

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

Mr. Speaker Sir,

We commend the Corporations with unqualified accounts and urge them to continue with the same trend.

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

Mr. Speaker Sir,

The Committee wishes to record its appreciation to the office of the Speaker and Clerk of the National Assembly for facilitating the Committee during its inquiry. The Committee wishes to appreciate the witnesses who appeared and

adduced evidence before it. Further, the Committee is indebted to the staff of the National Assembly, Office of the Auditor General, the Inspectorate of State Corporations and the Department of Government Investments and Public Enterprises (The National Treasury) for the services they rendered to the Committee. It is their commitment and dedication to duty that made the work of the Committee and production of this Report possible.

Mr. Speaker Sir,

On behalf of the members of the Public Investments Committee, I beg that the House adopts the Nineteenth Report of the Public Investments Committee on the Accounts of State Corporations (Vol. I & II)

Allow me, Mr. Speaker, to call upon Honto second the Motion.

I thank you Mr. Speaker.