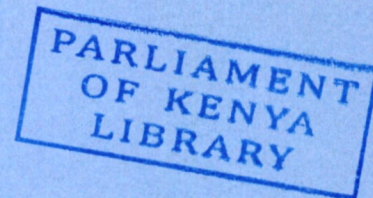


REPUBLIC OF KENYA



OFFICE OF THE AUDITOR-GENERAL



REPORT

OF

THE AUDITOR-GENERAL

ON

**THE FINANCIAL OPERATIONS OF KENYA
FILM CLASSIFICATION BOARD**

FOR THE PERIOD

1 JULY 2014 TO 30 JUNE 2015

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List of Abbreviations

CEO	Chief Executive Officer
IT	Information Technology
KFCB	Kenya Film Classification Board

REPORT OF THE AUDITOR-GENERAL ON THE FINANCIAL OPERATIONS OF KENYA FILM CLASSIFICATION BOARD FOR THE PERIOD 01 JULY 2014 TO 30 JUNE 2015

Executive summary

The Office of the Auditor-General has the mandate to audit and report on the accounts of the national government which includes state corporations under Article 229 (b) of the Constitution of Kenya and the Public Audit Act, 2003.

Background

The Kenya Film Classification Board (KFCB) operates as a Body Corporate under the Ministry of Sports, Culture and the Arts with a regulatory role under Part III of the Films and Stage Plays Act Cap.222 of the Laws of Kenya. The Act has empowered the Board to classify films for public exhibition and to ensure that they conform to national aspirations in line with Article 10 and 11 of the Constitution of Kenya.

The Ministry provides the necessary resources and policy direction that supports operations of the Board. Currently, the Government has developed policy proposals to restructure the Board to enable it improve service delivery to the public. The Board's mandate has further been enhanced by Section 46 1 (2) of the Kenya Information and Communications (Amendment) Act (2013) to include the broadcasting sub-sector to ensure that content meant for adults is not aired during watershed period (5 am – 10 pm).

The Children's Act 8 of 2001 (Section 15) further mandates the board to ensure that obscene materials are not accessed by children while the Sexual Offences Act, 2006 illegalizes possession, display, showing, selling, letting, hiring, exposing, distributing or exhibiting obscene images, words or sounds by means of audio-visual or any media to a child or the public.

Audit Objectives

The objective of the audit was to ascertain the efficiency, effectiveness and economy exercised in the utilization of public funds appropriated and generated for service delivery in line with laid down Government Financial Regulations and Procedures. The audit also aimed to establish the challenges encountered in

implementation and enforcement of regulatory laws and standards on censorship and classification of film and video content by the KFCB.

Terms of Reference

The terms of reference set for the audit include verification and confirmation of transactions in respect to but not limited to the following areas:

- Budget controls and performance;
- Film monitoring and enforcement;
- Film examination and classification;
- Procurement of goods and services;
- Revenue;
- Cash and bank balances;
- Human Resource Records;
- Board Expenses;
- Travelling and accommodation expenses;
- IT environment;
- Non-current assets;
- Current liabilities; and
- Prior audit issues.

Key Audit Findings

1. Effectiveness of the KFCB regulatory role

Despite the Boards expanded mandate there has been general concern about the censorship and classification of contents aired or available by means of audio-visual or other media in Kenya. Although media liberalization and technological advancement has negatively affected the role of censorship and classification of film and video content; the Board should also embrace technology/online internet protection policy to prevent access to certain sites and also best practices to ensure that its regulatory standards are enforced.

2. Lack of clear policy on fines and penalties

It was observed during the audit that while carrying out normal field inspections KFCB officers have to seek help from the police to arrest video operators who have not complied with the regulations and their work ends there. However, the

law is silent on who is to account for the revenue realized in cases where fines and penalties have been imposed.

3. Appointment of Acting Chief Executive Officer

An acting Chief Executive Officer (CEO) was appointed by the Board from among its existing staff members without adhering to the minimum requirement of the staff career progression guidelines for one to hold the position of a CEO as indicated in the detailed findings.

4. Board expenses - Ineligible expenditure incurred at the Chairman's Office

Expenditure totalling Kshs.575,600.00 incurred at the Chairman of the Board's Office was found to be ineligible as the Chairman had turned the Office into an executive one contrary to the OP//ISC/ADM/25/VOL.IV/36 Circular dated 30 June 2014 as shown in the detailed findings.

5. High number of key staff serving on an acting capacity

The audit revealed that several key departments including Finance and Accounts; Human Resource and Administration; Internal Audit; Monitoring and Enforcement; and Examination and Classification were headed by staffs who were serving on an acting capacity. Further, the posts of deputies in these key departments also remained unfilled, thus affecting service delivery.

6. Outstanding imprests

Imprests totalling Kshs.1,912,094.00 remained outstanding beyond the due dates contrary to the financial regulations governing issuance of imprests which requires unsurrendered imprests are recovered in full from the officer's salary.

7. Incomplete office lease contracts

The audit exercise further revealed three (3) instances where contracts on leases had neither been fully signed between the Lessors and the Board nor registered as required.


8. Weak Internal Control

Field audit inspections in the Coastal and Eastern Area/Cluster (Mombasa and Embu regional Offices) as well as Western and North Rift Area/Cluster (Nakuru,

Eldoret, Kisumu and Kisii regional Offices). revealed various internal control weaknesses including inadequate staff, non-maintenance of petty cash book and non-maintenance of fixed asset register.

9. Key Recommendations

- a) The management to ensure that infringement of provisions in the following Acts are adhered to and or prosecuted accordingly:
- (i) Section 46 1 (2) of the Kenya Information and Communications (Amendment) Act, 2013 that stipulates that content meant for adults is not aired during watershed period (5am – 10pm);
 - (ii) The Children’s Act No.8 of 2001, Section 15 that stipulates that obscene materials are not accessed by children; and
 - (iii) Sexual Offences Act, 2006 that illegalizes possession, display, showing, selling, letting, hiring, exposing, distributing or exhibiting obscene images, words or sounds by means of audio-visual or any media to a child or the public.
- b) The Board to review and clarify the policy on fines and penalties levied on video operations.
- c) Unaccounted for funds relating to outstanding imprest to be recovered from responsible officers.
- d) The Board to leverage Information Technology in its censorship and classification of film and view content to effectively execute its mandate.



FCPA Edward R. O. Ouko, CBS
AUDITOR-GENERAL

Nairobi

9 February 2016

DETAILED REPORT ON THE FINANCIAL OPERATIONS OF KENYA FILM CLASSIFICATION BOARD FOR THE PERIOD 01 JULY 2014 TO 30 JUNE 2015

Detailed Findings

1.0 Effectiveness of the KFCB regulatory role

Despite the Board's expanded mandate there has been general concern about the censorship and classification of contents aired or available by means of audio-visual or other media in Kenya. Liberalization of the media industry and technological advancement has negatively affected the role of censorship and classification of film and video content by the Board. Kenyans are able to access and download unclassified items from sources such as the internet and video libraries.

Recommendation

- (i) The Board should also embrace Information Technology such as online internet protection policy to prevent access to certain sites and also best practices to ensure that its regulatory standards are enforced.
- (ii) The Board to regrade content aired during the wakeship period to protect children and other vulnerable groups in line with constitution and the law.

2.0 Lack of Policy on Fines and Penalties

It was observed during the audit that while carrying out normal field inspections KFCB officers have to seek help from the police to arrest video operators who have not complied with the regulations and their work ends there. However, the law is silent on who is to account for the revenue realized in cases where fines and penalties have been imposed.

Recommendation

The Board should review its current policy and regulations to enable it collect revenue from its enforcement activities.

3.0 Appointment of Acting Chief Executive Officer

An acting Chief Executive Officer (CEO) was appointed by the Board from among its existing staff members without adhering to the minimum requirement of the Board guidelines for one to hold the position of a CEO.

Since 4 October 2012, the position of CEO has been held on an acting capacity. However, the CEO who had been acting from the year 2012 attained the retirement age in May 2015 at Job Group "T" and the Board appointed an acting CEO from among its existing staff members, but who was in Job Group "L" and therefore did not meet the minimum requirement to hold the position as set out in the Board's Staff Career Progression Guidelines dated February 2013.

On 4 July 2013, a recruitment consultancy company was contracted at a cost of Kshs.580,000.00 to provide consultancy services for recruitment and selection of a substantive CEO. Following the interviews, a list of successful candidates was sent to the parent Ministry for appointment, but none was posted to the Board.

Upon inauguration of a new Board in July 2014, fresh interviews were held in December 2014 and a final list of three (3) successful candidates forwarded to the Cabinet Secretary for appointment.

Recommendation

Recover the amount of Kshs.580,000.00 on consultancy services for recruitment and selection of a substantive CEO paid in July 2013 for which no value for money was obtained since the recruitment did not take place from the officer responsible for the nugatory payment.

4.0 Ineligible Board Expenditure

Expenditure totalling Kshs.575,600.00 incurred at the Chairman of the Board's Office was found to be ineligible as the Chairman had turned the Office into an executive one contrary to the OP//ISC/ADM/25/VOL.IV/36 Circular dated 30 June 2014 on the role of the Board of Directors in state corporations and also OP/CAB.17/34A Circular dated 14 January 2008.

Both circulars state that the role of the Board and Chairman are non-executive and duties that warrant payments as the ones that bear directly on the business of the entity for which the Chairman or Board members should be invited in writing by the C.E.O.

However, examination of expenditure notes provided for audit revealed that payments amounting to Kshs.410,600.00 were incurred towards daily subsistence allowance, vehicle fuel and maintenance on activities that do not bear directly on the Board as tabulated in **Appendix I**.

Further, the Office of Chairman of the Board has consistently been allocated a monthly standing imprest of Kshs.15,000.00 per annum : Kshs.165,000.00 which he is not entitled considering the Office is non-executive.

The expenditure thus incurred towards both travel and subsistence for the eleven (11) months up to 31 May 2015, at the Chairman's office totalling Kshs.575,600.00 was therefore ineligible.

Recommendation

The ineligible amounts of Kshs.575,600.00 paid to the Board Chairman be recovered in full and the practice be discontinued forthwith as it is against the financial regulations.

5.0 Key staff serving on an Acting Capacity

The audit revealed that several key departments including Finance and Accounts; Human Resource and Administration; Internal Audit; Monitoring and Enforcement; and Examination and Classification were headed by staff who was serving on an acting capacity. Further, the posts of deputies in these key departments also remained unfilled, thus affecting service delivery.

Recommendations

- (i) Internal vacancies and capacity should be assessed regularly and internal processes that hinder the filling of vacancies be reviewed and addressed.
- (ii) The acting staff be confirmed or vacancies filled to ensure Board delivers its mandate.

6.0 Outstanding imprests

Imprests totalling Kshs.1,912,094.00, as tabulated in **Appendix II** remained outstanding beyond the due dates contrary to the financial regulations governing issuance of imprests which requires unsurrendered imprests to be recovered in full from the officer's salary. Further, two (2) officer were issued with an additional imprest totaling Kshs.353,594.00 before surrendering or accounting for

previous imprest balances of which Kshs.110,000.00 was a balance brought forward from 2013/14 financial year.

Recommendation

All imprests of Kshs.1,912,094.00 unsurrendered by the due dates be recovered from the holder's salary as required by the financial regulations governing the issuance of imprests.

7.0 Incomplete Office Lease Contracts

The audit exercise further revealed three (3) instances where lease contracts had neither been fully signed between the Lessors and the Board as required.

Under the circumstances, the validity of the rental payments totalling Kshs.3,221,856.80 could not be authenticated as detailed in **Appendix III**.

Recommendations

Management to ensure that all leases entered are properly drafted, signed and executed; and also registered with the Ministry of Lands as required by the law to avoid risk of losses, penalties to the Board from the lease agreements.

The officers who authorized the lease payments of Kshs.3,221,856.80 be held responsible for all invalid payments.

8.0 Weak Internal Control

The audit teams undertook field audit inspections in the Coastal and Eastern Cluster (Mombasa and Embu regional Offices) as well as Western and North-Rift Area/Cluster (Nakuru, Eldoret, Kisumu and Kisii regional Offices). The audit revealed various internal control weaknesses as follows:

8.1 Coastal and Eastern Clusters

8.1.1 Mombasa Office

The office is charged with the responsibility of regulating the creation, broadcasting, possession, distribution and exhibition of films in the coastal cluster of five (5) counties.

The following were the findings:

- i. Despite the expansive coverage of five (5) counties the Office was

allocated a quarterly budget of Kshs.140,000.00 which appear insufficient to cover the cluster.

- ii. The office is manned by only two (2) technical staff; a subordinate staff and a security officer. This number is hardly enough to effectively executive the mandate of the office in the vast region.
- iii. The office did not also maintain a petty cash book to account for the grant issued by head office.
- iv. A listing of the fixed assets maintained is scanty in details in that items are not properly labeled and excludes serial numbers.

Recommendations

- (i) The proprietary budget of Kshs.140,000.00 need to be reviewed to support efficient delivery of the scope of the work involved;
- (ii) The management should post adequate staff to man the region's office for effective and efficient delivery of services;
- (iii) An updated and well maintained petty cash book should be introduced and put into use immediately; and
- (iv) The management to also maintain an up to date fixed assets register/schedule.

8.1.2 Embu Office

The above office is located within Embu town and charged with execution of the Board's mandate for the entire eastern cluster of six (6) counties.

The following were the findings:

- i. Despite the expansive coverage of six (6) counties the Office was allocated a quarterly budget of Kshs.140,000.00 which appear insufficient to cover the cluster.
- ii. The Office is manned by only three (3) officers who have it closed when they go to the field.
- iii. The Office did not have a vehicle to cater for transport needs of the Office.

- iv. The grant by the head office is given in form of imprest to the officer in charge, and therefore the funds were thus mixed with the officer's personal funds.
- v. The cash safe in the office is not operational due to lack of combination key.
- vi. All revenue receipts, vouchers and other related records are taken to Nairobi and thus the office is left with very scanty records for reference.

Recommendations

- (i) The quarterly allocation of Kshs.140,000.00 need to be adjusted upwards to be in tandem with the scope of the work involved;
- (ii) The management to post adequate staff to man the region's office for effective and efficient delivery of services;
- (iii) The Board's management to provide a vehicle for effective and efficient execution of the key activities;
- (iv) The head office should work out modalities to ensure that the grant is clearly differentiated from the officer in charge's personal funds;
- (v) Combination key of the cash safe should be provided to safeguard public funds under the custody of the regional office; and
- (vi) The management to ensure verifiable documents/records are left at the regional office in order for an audit trail to be effected.

8.2 Western and North Rift Regions

8.2.1 Lease of Office Accommodation

The Kerio Valley Development Authority letter of offer dated 29 June 2011 for lease of premises known as "Title Number Eldoret/Municipality/Block/4/78" situated at Oloo Street for a period of five (5) years and three (3) months, was accepted by the Board's management and signed on 04 August 2011. Details of the terms and conditions as indicated in the Lease Agreement specify that the rent payable by the lessee is at the end of every quarter.

However, records provided for verification indicate that the Board paid rent of Kshs.74,854.80 dated 04 May 2015 through receipt Nos.64779 and 64882 to the Authority instead of Kshs.67,024.80 as indicated in the Lease Agreement (page

3) under the acceptance clause. Reasons for the variance of Kshs.7,830.00 in the rent payment even where the lease period had not expired have not been given.

Recommendation

The management to justify the rent increase or be held responsible for the amount since the earlier Lease Agreement had not expired and no amendments had been made in the earlier Lease agreements ratified by both parties.

8.2.2 Issuance of Duplicated Revenue Receipts at Nakuru Office

It was observed that one (1) receipt number was used in receipting revenue for two (2) different customers as shown in **Appendix IV**.

In the circumstances, issuance of double receipts totalling Kshs.28,000.00 to different customers appears fraudulent.

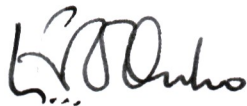
Recommendation

The officers responsible for the double receipting should be held accountable for the amounts fraudulently obtained.

9.0 Conclusion

The Kenya Film Classification Board's management should address the anomalies noted in order to ensure effective delivery of services to the people of Kenya. Government Regulations and Procedures be implemented to ensure public resources are only utilized for purposes for which they were intended.

Finally, the Board should endeavor to play a leading role in its regulation oversight to ensure that firm regulatory standards are strengthened and adhered to in order to ensure respect for the law, promotion of stakeholder engagement, upholding integrity in film regulatory processes and upholding professionalism and preservation of national and cultural values in film content.



FCPA Edward R. O. Ouko, CBS
AUDITOR-GENERAL

Nairobi

9 February 2016

APPENDIX I

Daily Subsistence Allowance, Vehicle Fuel and Maintenance

Date	Voucher No.	Name	Details of Expenditure	(Kshs)
24/07/2014	Staff Advance Request No.OSIMP0066	Bernard Shihemi (Driver)	Being Per diem, Fuel and Vehicle Maintenance – Driving Chairman to Baringo	30,000.00
20/08/2014	644	Jared Malika (Driver)	Being Per diem, Fuel and Vehicle Maintenance – Driving Chairman to Nakuru, Mogotio, Kabarnet and Narok	39,000.00
29/08/2014	643	Jared Malika (Driver)	Being Per diem, Fuel and Vehicle Maintenance Driving Chairman to Nakuru, Kabarnet and Eldama Ravine	24,000.00
08/08/2014	646	Jared Malika (Driver)	Being Per diem, Fuel and Vehicle Maintenance – Driving Chairman to Baringo	52,000.00
05/09/2014	668	Jared Malika (Driver)	Being Per diem, Fuel and Vehicle Maintenance – Driving Chairman to Nakuru, Mogotio and Kabarnet	21,000.00
12/09/2014	642	Bernard Shihemi (Driver)	Being Per diem, Fuel and Vehicle Maintenance – Driving Chairman to Nakuru, Kabarnet and Eldama Ravine	21,000.00
03/10/201	641	Jared Malika (Driver)	Being Per diem, Fuel and Vehicle Maintenance – Driving Chairman to Eldoret	21,000.00
10/10/2014	669	Jared Malika (Driver)	Being Per diem, Fuel and Vehicle Maintenance – Driving Chairman to Baringo	19,000.00
23/10/2014	712	Jared Malika (Driver)	Being Per diem, Fuel and Vehicle Maintenance – Driving Chairman to Baringo County	14,000.00
07/11/2014	742	Jared Malika (Driver)	Being Per diem, Fuel and Vehicle Maintenance – Driving Chairman to Baringo County	14,000.00
21/11/2014	742	Jared Malika (Driver)	Being Per diem, Fuel and Vehicle Maintenance – Driving Chairman to Baringo County	16,000.00
27/11/2014	792	Jared Malika (Driver)	Being Per diem, Fuel and Vehicle Maintenance – Driving Chairman to Eldoret	19,000.00
16/12/2014	864	Jared Malika (Driver)	Being Per diem, Fuel and Vehicle Maintenance –	16,000.00

				Driving Chairman to Nakuru County	
09/01/2015	914	Jared Malika (Driver)		Being Per diem, Fuel and Vehicle Maintenance – Driving Chairman to Baringo	18,400.00
05/02/2015	1009	Jared Malika (Driver)		Being Per diem, Fuel and Vehicle Maintenance – Driving Chairman to Baringo	22,600.00
20/02/2015	1086	Bernard Shihemi (Driver)		Being Per diem, Fuel and Vehicle Maintenance – Driving Chairman to Baringo	14,200.00
27/02/2015	1059	Jared Malika (Driver)		Being Per diem, Fuel and Vehicle Maintenance – Driving Chairman to Baringo	18,400.00
30/04/2015	1202	Jared Malika (Driver)		Being Per diem, Fuel and Vehicle Maintenance – Driving Chairman to Baringo	12,600.00
18/05/2015	Travel Imprest Warrant No.IMP0188	Jared Malika (Driver)		Being Per diem, Fuel and Vehicle Maintenance – Driving Chairman to Baringo	18,400.00
		Total			410,600.00

APPENDIX II

Outstanding imprests

	Name		Imprest No.	Date Issued	Amount (Kshs)	Due date
1.	Solomon Nambanga		0082	19/09/14	148,000.00	02/10/14
2.	Solomon Nambanga		0103	17/10/14	218,594.00	17/10/14
3.	Justice Ombati		0137	08/04/15	90,000.00	30/06/15
4.	Edward Koech		0140	08/04/15	135,000.00	30/06/15
5.	Linda Jumbari		0138	08/04/15	10,000.00	30/06/15
6.	Josephine Manguria		0135	08/04/15	135,000.00	30/06/15
7.	Lameck Omingo		0139	08/04/15	135,000.00	30/06/15
8.	Charity Macharia		0142	08/04/15	135,000.00	30/06/15
9.	Emmanuel Ndirangu		0141	08/04/15	135,000.00	30/06/15
10.	Bomvienture Kioko		0133	08/04/15	140,000.00	30/06/15
11.	Bernard Ondieke		0069	05/08/14	20,000.00	30/06/15
12.	Dokatu Jirma		0134	08/04/15	140,000.00	30/06/15
13.	Charles Ouma		0137	16/02/15	122,000.00	30/06/15
14.	Bernard Ondiek		0178	10/04/15	59,500.00	30/06/15
15.	Khadija O. Rama		0145	02/03/15	53,000.00	08/03/15
16.	Hillary Kilemi		Various	08 /04/15	236,000.00	31/05/15
	Total				1,912,094.00	

APPENDIX III

Incomplete Office lease contracts

No.	Lease	Registration/Signing	Management Explanations	Payments From Start To Date (Kshs)
1.	KFCB and Kenya National Library Services Board (Nakuru)	Both parties have executed the lease - pending registration at the Lands Registry .The lease is for the period of five (5) years and three (3) months from 01 February 2015 to 30 April 2020	The initial lease was between 01 January 2015 to 31 December 2020 for 72,960/- per month. However, initial space was 912 square feet which was reduced to 512 square feet which yielded a new lease cost of 40,960/- per month as from 01 February 2015 to 31 January 2020 .	507,801.60
2.	KFCB and Kerio Valley Development Authority (Eldoret)	Not fully signed nor registered	The initial lease was not properly drafted hence the lease contract has been rectified awaiting execution.	1,088,055.20
3.	KFCB and Mohamed Said Alabd Karama (MOMBASA)	"	The lessee is preparing a lease document to be executed by both parties.	1,626,000.00
			Total	3,221,856.80

APPENDIX IV

Duplicated receipts

Receipt No.	Name	Amount (Kshs)	Remarks
5029101	Victor Masese	2,000.00	Duplicated
5029101	Franklin K. Bett	2,000.00	"
5029112	Rolex Adala	2,000.00	"
5029112	Andrew Ndegwa	3,000.00	"
5232342	Stephen Kibe	3,000.00	"
5232342	Danson Mwangi	2,000.00	"
5233706	Pius Kibekorir	3,000.00	"
5233706	Hamisi Salim Abdi	2,000.00	"
5233701	Margret Wangechi	3,000.00	"
5233701	Whitney Houston	2,000.00	"
5233719	Moses Ngatia	2,000.00	"
5233719	Brian Mogaka	2,000.00	"
TOTAL		28,000.00	

