

REPUBLIC OF KENYA

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NATIONAL ASSEMBLY

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**FOURTEENTH REPORT**

OF THE

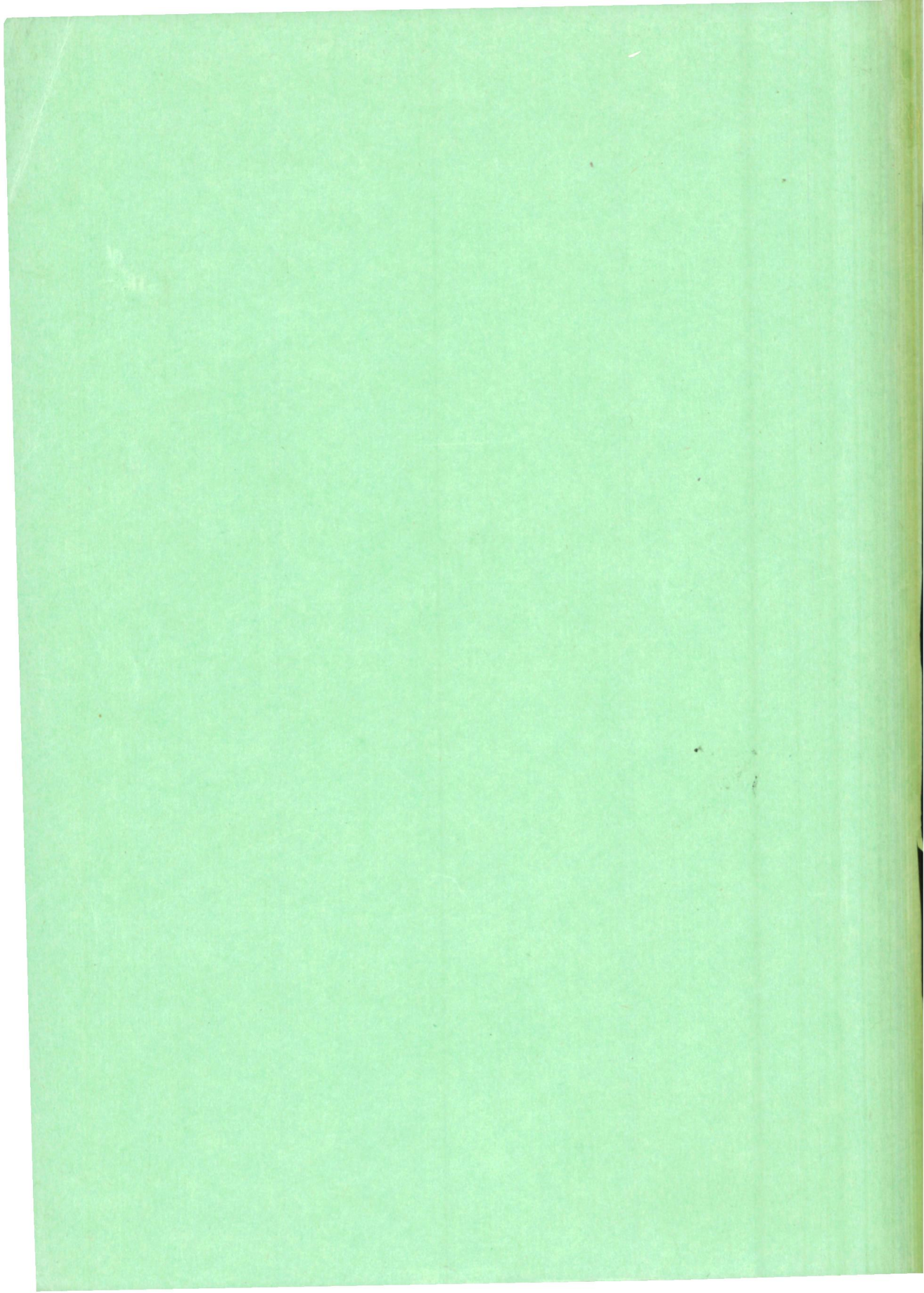
**PUBLIC INVESTMENTS COMMITTEE**

ON THE ACCOUNTS OF

**STATE CORPORATIONS**

VOLUME I

2007



**FOURTEENTH REPORT**  
**OF THE**  
**PUBLIC INVESTMENTS COMMITTEE**  
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**STATE CORPORATIONS**

VOLUME I

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## PREFACE

**Mr. Speaker Sir,**

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

The Public Investments Committee is a select committee established under Standing Order No. 148 as follows: -

148 (1) There shall be a select committee to be designated the Public Investments Committee for the examination of the workings of the public investments. The Public Investments Committee shall consist of a Chairman who shall be a Member who does not belong to the parliamentary party which is the ruling party and not more than ten Members who shall be nominated by the House Business Committee to reflect the relative majorities of the seats held by each of the parliamentary parties in the National Assembly.

Provided that, the ruling party shall have a majority of not more than two.

- (2) The Public Investments Committee shall elect its own Chairman.
- (3) The Chairman and four other Members of the Public Investments Committee shall constitute a quorum.
- (4) In the absence of the Chairman, a Member designated by him shall take the Chair and in their absence, the Members present shall elect one of them to act in his stead.
- (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 Controller 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 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. 151-162. The Committee has powers, under the provisions of the National Assembly (Powers and Privileges) Act (Cap. 6), the State Corporations Act (Cap. 446) and the Exchequer and Audit Act (Cap 412), to summon witnesses and receive evidence.

The Committee consisted of the following Members:

- (i) The Hon. J.B.N. Muturi, M.P. **Chairman**
- (ii) The Hon. Wafula Wamunyinyi, M.P.
- (iii) The Hon. Sammy Ruto, M.P.
- (iv) The Hon. Jimmy Angwenyi, MP
- (v) The Hon. Peter G. Munya, M.P.
- (vi) The Hon. K.M. Sang, M.P.
- (vii) The Hon. Geoffrey Gachara Muchiri, M.P.
- (viii) The Hon. Gitau Kabogo, M.P.
- (ix) The Hon. Abdirahman Ali Hassan, M.P.\*
- (x) The Hon. Ali Bahari, M.P.
- (xi) The Hon. (Dr.) Enoch Kibunguchy, M.P.\*

\* The Hon. Abdirahman Ali Hassan, M.P. ceased being a Member of the Committee in December, 2005 upon being appointed an Assistant Minister.

\* The Hon. (Dr.) Enoch Kibunguchy, M.P. ceased being a Member of the Committee in December, 2005 upon being appointed an Assistant Minister.

## **PROCEEDINGS**

The Committee held Fifty Five (55) sittings in which it closely examined the audited accounts of Sixteen (16) State Corporations and the Reports thereon by the Controller and Auditor General. The Committee also undertook site inspection tours of the National Water Conservation and Pipeline Corporation,

Coast Province, in Shanzu, Changamwe and Nyali Wells (Matters of Land) and Kenya Roads Board (Roads in Kinangop and Naivasha). 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 hereto annexed and copies of the HANSARD REPORT have been placed in the Parliament Library.

The Implementation Status of the Thirteenth Report has been printed separately as a Treasury Memorandum, which will be discussed together with this Report and is attached hereto as Volume II.

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 Controller and 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.

## **OBSERVATIONS**

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

The Committee was appalled to observe that several State Corporations continued to operate under financial constraints occasioned by mismanagement and/or imprudent commercial arrangements. In addition, and as had been observed in previous reports, the Committee observed that some parent Ministries constantly engaged in micro-managing State Corporations under them and severally undermined decisions made by Boards of such Corporations, even where such Boards were carrying out their

statutory duties. The Committee was concerned that this tendency, dilutes the principles underpinned in establishing State Corporations as well as the much hyped about Performance Contracting concept.

Further, the Committee has continually taken great exception on the slow pace at which the Government has implemented the recommendations of this House arising from the previous reports. In this regard, the Committee abhorred the apparent lackluster approach employed by the offices of the Attorney General and that of the Director of Criminal Investigations Department in implementing the recommendations of the House, particularly where the Committee recommends for "*investigation and/or possible prosecution*".

It is worth noting that the recommendations of the 13<sup>th</sup> Report requiring action by the Attorney General, Commissioner of Police and the Director of Criminal Investigation Department have not been acted upon as indicated herebelow:-

<b>CORPORATION</b>	<b>SUBJECT</b>	<b>OFFICER RESPONSIBLE</b>
Kenya National Trading Corporation 1996/1997	Irregular transfer of Corporation's land.	Attorney General
National Social Security Fund 2001/2002	Investigation and prosecution of Directors of Regent Management Ltd, an Estate Agency firm.	Attorney General
Kenya Wildlife Service 1999/2000	Prosecution of Officers who abetted illegal allocation of Corporation land.	Attorney General
Teachers Service Commission 1999/2000	Investigations of loss of funds lost through fraud and prosecution of persons involved.	Attorney General, Director of Criminal Investigations Department
National Cereals & Produce Board 1998/1999	Investigations on money lost through fraud by Messrs Alfred Kiptanui Keter and M/s Corrigrain	Director of Criminal Investigations Department
Investments Promotion Centre 1997/1998	Investigations on irregular payment of Kshs.481,012.20 to an ex employee.	Director of Criminal Investigations Department
National Hospital Insurance Fund 2000/2001	Investigations into escalation of costs on the construction of Medicare Plaza.	Director of Criminal Investigations Department
National Hospital Insurance Fund 2001/2002	Investigations on overnight lending of Funds to Euro Bank.	Commissioner of Police

Local Authorities Provident Fund 1997/1998	Amendments to the Local Authorities Provident Fund Act to streamline its operations.	Attorney General
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It is also noteworthy that most audit reservations relate to non-adherence to the procurement procedures; payment of Board allowances; budgetary control, government debtors and bad and doubtful debts.

### **Procurement of Goods & Services and Awards of Tenders**

The Committee noted with concern that despite Government Circulars meant to streamline procurement and tendering procedures and administration of public resources, certain Corporations have continued to flout laid down financial regulations on procurement and award of tenders.

The National Housing Corporation, for instance, entered into a 6-month contract with Computer Applications Limited (CAL) to upgrade its application programmes to 2000 compliant. Despite a down payment of 50%, the project was delayed, necessitating the hiring of an IBM RS6000 programme and consultancy services of M/s. Information Professionals Africa at a contract sum of Kshs.1,480,000 and further consultancy services of US\$2,300 per month both costs which could have been avoided had the management adhered to the laid down procurement procedures.

**The Committee reiterates its earlier recommendation in the Twelfth Report that the then Managing Director Mr. Lawi Kiplagat be surcharged for loses amounting to Kshs.2,780,210.20 and be barred from holding public office conferred by the Republic of Kenya.**

**The Committee further recommends that in future, the management should ensure that procurement procedures in force are adhered to.**

The Accounts of Kenya Roads Board on the other hand, document a litany of Variation Orders for reasons ranging from gross under-estimation of quantities to delayed payments of interim work certificates, change in scope of works, increased earth work quantities et cetera, issues that should be addressed before commencement of any road project.

The Committee was concerned that variation orders were granted at costs, sometimes much higher than the sums quoted in the tenders in total disregard of the legally acceptable margin of 10% after which fresh tenders ought have been floated for additional works.

**The Committee recommends that:-**

- (i) the Chief Executive Kenya Roads Board (KRB) and Ministry of Roads and Public Works ensure that implementation of future public road programmes are executed in accordance with the contracts;**
- (ii) the Chief Executive, Kenya Roads Board and the Ministry concerned with Roads and Public Works should ensure that variation orders are not abused and are implemented in accordance with the law; and**
- (iii) any officer of the Board or Ministry found to have misused the variation orders should be surcharged the amount arising therefrom and be barred from holding a public office conferred by Republic of Kenya.**

The Kenya Ports Authority on the other hand in the year 2000/2001, single sourced M/s. Collins Mercantile to carry out a survey to determine the effectiveness of an electric energy saving system, which was to cover Mombasa Dock Area, Embakasi ICD, Kisumu ICD and Canon Towers after which both parties entered into an agreement in September 2000 for implementation of the project at a cost of Kshs.27,761,051.

The Committee was appalled by the manner in which the entire project was executed and the fact that after spending such an amount, the Authority only made a paltry saving of Kshs.9,949,254 after 30 months, notwithstanding the fact that no warranties were issued on the equipment nor an insurance of savings certificate given as stipulated in the agreement.

**The Committee reiterates its earlier recommendations contained in the 9<sup>th</sup> Report Page (xiv) that the Government should implement all the PIC recommendations to-date in order to curb the rampant abuse of office and disregard of laid down financial regulations in procurement procedures and award of tenders.**

**The Committee further recommends that the Inspector General (Corporations) must carry out his duties as specified in the State Corporations Act (Cap 446) to curb abuse of office and flouting of financial regulations with regard to procurement procedures and award of tenders.**

## **Government Debtors**

The Committee was concerned that various Government Ministries Departments had failed to pay their rental obligations to the National Social Security Fund, which stood at Kshs. 171,529,294.50 as at 31<sup>st</sup> January, 2007.

**The Committee recommends that the Chief Executive liaises with the parent Ministry to ensure that rents owing from other Ministries are recovered in full during 2006/2007 financial year and that the Chief Executive should employ all measures including litigation to recover all rent outstanding from private companies, individuals and other Government Departments by 31<sup>st</sup> December 2007.**

## **Payment of Board Allowances**

The Committee noted with concern that emoluments to the Members of the Board in some Corporations continued to be paid without the authority of the parent Ministry, while some resolutions are made without due regard to the law.

The Committee was perturbed to note that the Board of Electricity Regulatory Board resolved that their allowances be paid net of tax, in contravention of the provisions of Income Tax Act, a move that cost the Corporation Kshs.1,041,089 in the year 2000/2001.

**The Committee reiterates its recommendations in the 13<sup>th</sup> Report that the Board should honour its tax obligations according to the law and that no tax equalization payment is ever made on behalf of the Board members or employees. The Board should also recover the tax due from the officers concerned.**

## **Budgetary Control**

The Postal Corporation of Kenya, for instance, overshot its budgetary provision by Kshs.377,412,106 leading to a loss of Kshs.40,084,704. The Committee noted that even though the expenditure was approved by the Board, the expenditure was irregular as authority was not sought from the parent Ministry and the Treasury.

**The Committee recommends that the Chief Executive seeks post facto authority from the parent Ministry and Treasury to regularize the over expenditure of Kshs.377,412,106 incurred during the year and also ensures that any future expenditure is within budgeted allocations.**

## **Bad and Doubtful Debts**

The Committee was concerned about high provisions for bad and doubtful debts made by some Corporations arising from losses made as a result of ineptitude in debt collection/recovery and at times imprudent business decisions.

The Kenya Post Office Savings Bank for instance, has deposits totaling Kshs.547,818,479 in Thirteen (13) unstable and collapsed banks / financial institutions, necessitating a full provision of Kshs.547,818,479 in the accounts for the year ended 31<sup>st</sup> December 2001 as the money is considered doubtful.

**The Committee recommends that the Chief Executive should employ all cost effective means possible to ensure that the deposits and the interest thereof are recovered.**

Telkom (K) Ltd during the year under review made provisions for Kshs.788,880,550 bringing the total accumulated provisions for bad and doubtful debts to Kshs.7,921,832,700 as at 30<sup>th</sup> June 2000. The Committee was concerned that the amount is too huge to be written off casually while no effort to recover the amounts has been shown.

**The Committee recommends that the Chief Executive expeditiously pursues all outstanding debts from Government Ministries, Departments and Parastatals and other debtors.**

## **ACKNOWLEDGEMENT**

The Committee wishes to record its appreciation to the various witnesses who appeared and adduced evidence before it.

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

**HON. JUSTIN B. N. MUTURI, MP**  
**(CHAIRMAN)**

SIGNED.....

DATE.....

10<sup>TH</sup> APRIL, 2007.

**REPORT OF THE CONTROLLER & AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF COMMUNICATIONS COMMISSION OF KENYA FOR THE YEAR ENDED 30 JUNE 2003.**

The Commission's plots L.R. 209/5883/2 and L.R. 3734/9 situated along Muthangari Road are encumbered to the tune of Kshs.300 million by the Income Tax Service 1982. Although the Commission has made inquiries with the Kenya Revenue Authority, no information has been obtained from the Authority and the nature of these encumbrances and adjustments that may be necessary in these financial statements cannot therefore be determined.

**The Committee heard the evidence given by the Chief Executive that the properties LR. 209/5883/2 situated along Waiyaki Way and LR 3734/9 situated along Muthangari Road, were vested to Communications Commission of Kenya according to Vesting Orders No.155 of 1999. When the Commission sought to have the properties registered in its name and presented the Certificates of Title to the Registrar of Lands, the Registrar noted that an encumbrance had been registered at the Ministry of Lands against the properties. The Registrar accordingly, made a similar entry on the Certificates of Title before registering the properties in the Commission's name.**

**Each of these plots were encumbered to the tune of Kshs.300 million by Kenya Revenue Authority (KRA) in 1982 in accordance with Income Tax Act Section 103(2), for non-payment of tax.**

**The Committee noted that the Commission has since applied to KRA to lift the encumbrance and has obtained confirmation indicating that the lifting is in the process and will be informed as soon as it is effected at the Lands Office.**

**The Committee recommends that the Kenya Revenue Authority lifts the encumbrance on the properties LR 209/5883/2 and LR 3734/9 and the Chief Executive pursues the matter expeditiously to its logical and soonest conclusion.**

**REPORT OF THE CONTROLLER AND AUDITOR GENERAL ON THE  
ACCOUNTS OF NATIONAL HOUSING CORPORATION FOR THE YEAR  
ENDED 30 JUNE 2001**

**1. FINANCIAL POSITION**

Although the Corporation recorded a profit of Kshs.1,431,377 during the year ended 30 June 2001 as compared to the loss of Kshs.7,934,931 realized in the previous year, the financial position of the Corporation still remains precarious as it was unable to meet its long term maturing obligations of loans and interest amounting to Kshs.3,055,206,921 as at 30 June 2001. Further the Corporation has not been able to recover loan arrears of Kshs.2,097,343,152 out of which Kshs.1,993,137,690 is due from Local Authorities and Kshs.102,031,271 from Rural Housing Loans. The continued existence of the Corporation as a going concern will therefore still depend on the support from lenders and efforts made to recover long outstanding loan arrears, especially from local authorities.

**The Committee heard the evidence given by the Chief Executive that during the year under review, the Corporation was unable to meet its long-term obligation in form of loans and interests amounting to Kshs.3,055,206,921, thereby questioning its existence as a going concern.**

**The Committee further heard that the Corporation collected loan arrears of Kshs.2,097,343,152 from Local Authorities and Rural Housing Loans.**

**The Committee was informed that:-**

- (i) a restructuring plan for the Corporation approved by the Cabinet in 2002 has enabled the Corporation to convert its debts (principal and arrears) into government equity, and thereby improving its financial performance; and,**
- (ii) the Corporation has embarked on various measures, including litigation and negotiations with debtors, efforts which have realized Kshs.785,785,093.80 for the period July 2001 to June 2005.**

**The Committee observed with concern that loan arrears from local authorities had been accumulating while little effort was employed by these Councils to offset arrears despite the Committee's recommendations in the 9<sup>th</sup> Report that the Chief Executive liaises with the parent Ministry and the Ministry of Local Government to ensure recoveries of arrears in full.**

**The Committee recommends that the parent Ministry liaises with the Ministry of Local Authorities to ensure that statutory deductions and**

**those due to NHIF are deducted from LATF Funds payable to each Local Authority before releasing such funds.**

## **2. ELDORET MORTGAGE SCHEME – PHASE III**

Available records indicate the Corporation designed the Eldoret Mortgage Scheme – Phase III project estimated to cost Kshs.228,832,035 for 78 No. bungalow units. The Corporation later on scaled down the project to 24 units and awarded a contract to a construction firm for construction of 24 units at a sum of Kshs.73,884,790 without entering into a signed contractual agreement with the firm. The project which was originally to take thirty four (34) weeks to complete with effect from November 1997 to July 1998, stalled in May 1999, despite the fact that the Corporation had paid the contractor Kshs.41,646,478.55 and Kshs.13,901,337.90 to the consultants. After the scheme stalled, the consulting Architect in April 2, 2001 submitted a revised estimated total cost to completion of Kshs.106,762,550 resulting in additional expenditure to be incurred of Kshs.33,877,760 over and above the original contract sum of Kshs.73,884,790. The additional cost would bring the average construction cost per unit to Kshs.4,448,440 and it is not clear that the Corporation will be able to recover the costs when the units are completed and sold.

Further included in the total amount paid of Kshs.55,547,816.45 is Kshs.13,901,337.90 which the Corporation made to the Consultants, while it had in its employment technically and professionally qualified personnel competent to do the job. In addition, part of the Eldoret Mortgage scheme land has been allocated to private developers putting in doubt the ownership status and development of forty nine (49) plots of the Corporation land. Under the circumstances, the Corporation is likely to suffer further losses if the scheme remains stalled and the land dispute with private developers is not resolved.

**The Committee heard the evidence given by the Chief Executive that the Eldoret Mortgage Scheme Phase III was part of a development carried out by the Corporation for which land had been allocated in the Corporation's name under a letter of allotment.**

**The Committee was informed that:-**

- (i) the project was initially planned for 78 units at a cost of Kshs.228,832,035 though it was later scaled down to 24 units at a cost of Kshs.73,884,790;**
- (ii) the management engaged the contractors M/s. Aristocrats and later single sourced project consultants who executed and later abandoned the project at 60% completion, after receiving payment totaling to Kshs.55,547,816.45. Further there was no contract signed between contractors and the Corporation, in blatant disregard of public procurement procedures;**

- (iii) after the stalling of the project in May 1999, the management hired a private quantity surveyor to establish the cost of outstanding works - who gave an overall completion figure of Kshs.106,762,550 - whereas the Corporation has in its employment, competent quantity surveyors who had earlier on done the estimates and designs for the project;
- (iv) a portion of the land on which the project stands had been allocated to private developers, who are in possession of a title deed, which the Corporation has challenged in court; and
- (v) the management has engaged a contractor to complete the 24 units for rental purposes.

In view of the huge overheads incurred on the project, the Committee was concerned that the Corporation may never recover the costs through sale as rent.

The Committee reiterates its earlier recommendation in the 11<sup>th</sup> Report that the then Managing Director Mr. Lawi Kiplagat be investigated by the Anti-Corruption Commission for possible abuse of office and other corrupt practices.

### **3. PUMWANI PHASE II**

During the year ended 30 June 2001, the Corporation engaged the services of a Quantity Surveyor to survey a plot belonging to the Corporation for Pumwani Phase II Housing Project at a cost of Kshs.950,936, while another payment of Kshs.136,997 was made to a contractor to erect a signboard at the plot. Apart from the fact that management has not explained how the Quantity Surveyor was identified and the fees determined, available evidence indicate that portion of the land where the project is intended to be built was taken by private developers and as a result, the project has not taken off. The future of the development project cannot be guaranteed and the total expenditure of Kshs.1,087,933 incurred by the Corporation is likely to turn out nugatory.

The Committee heard the evidence given by the Chief Executive that the management irregularly engaged a quantity surveyor in 1998 to prepare bills of quantities and estimates for the Pumwani Phase II project at a cost of Kshs.950,936 and further sought the services of M/s Mbomko Construction Company to erect two signboards at a cost of Kshs.136,998.

The Committee observed that:-

- (i) the works were contracted in blatant disregard of the procurement procedures and no tendering was done for the works;
- (ii) the project has since been completed and the letter of allotment for the plot is being processed; and
- (iii) at the time of audit, the management failed to avail sufficient information to the auditors in respect of the Project.

**The Committee therefore recommends that:-**

- (i) the management should adhere to public procurement procedures and that the then MD, Mr. Lawi Kiplagat be investigated by Kenya Anti Corruption Commission for possible abuse of office;
- (ii) the then Managing Director, Mr. Lawi Kiplagat, be surcharged the amount of Kshs.950,936; and
- (iii) the Management should in future avail all relevant documentation to the auditors for verification as and when required.

#### **4. KILIFI MORTGAGES HOUSING SCHEME**

In 1989, the Corporation was allocated land measuring 75.56 acres in Kilifi for the purpose of construction of a housing estate comprising one and two bedrooms units for sale, under the Kilifi Mortgages Housing Scheme. However, after the Corporation had spent Kshs.1,891,222 on survey fees and other costs, squatters invaded the land and settled on it. In May 2001, the Corporation surrendered the land to Mabirikani resident committee at an agreed compensation cost of Kshs.7 million. Available information, however, indicates that the committee has to date paid a total of Kshs.2,675,000 leaving a balance of Kshs.4,325,000 unpaid.

**The Committee heard the evidence given by the Chief Executive that the Corporation was allocated 75.56 acres in Kilifi for a Housing Scheme and incurred an expenditure of Kshs.1,891,222 on survey and miscellaneous costs, but could not develop the land due to invasion by squatters on the said plot.**

**The Committee was further informed that:-**

- (i) negotiations between the squatters, Kilifi Town Council and the Corporation agreed on a settlement sum of Kshs. 7 million as compensation for the land. The squatters had paid Kshs.3,290,000 as at April 2006; and

- (ii) the Kilifi Town Council has offered a 10-acre plot to settle the remaining balance due to the Corporation at Kshs.3,710,000, an option that the management is considering.

Noting the efforts made by the squatters in settling the outstanding balances and appreciating the gesture by the Town Council, the Committee recommends that the management considers the offer by the Council with a view to implementing the project on the 10 acres offered.

## **5. ADVERTISEMENTS IN THE INTERNATIONAL PRESS**

During the year 2000/2001 the Corporation paid US\$15,000 (Kshs.1,176,176) to an international company for advertising Kenya's image overseas. As was the case in the previous year this expenditure which was not approved by the Board of Directors was not related to the core business of the Corporation.

The Committee heard the evidence given by the Chief Executive that during the year under review, the Corporation incurred an expenditure of Kshs.1,176,176 (US\$15,000) for an advertisement overseas without the approval of the Board.

The Committee noted with concern that:-

- (i) even though the Government had approved the expenditure, the exercise was totally outside the purview of the Corporation and charges were also arbitrary; and
- (ii) the parent Ministry acted ultra vires by encouraging the Corporation to pay for an activity which was irrelevant to the Corporation.

The Committee reiterates its earlier recommendation in the 13<sup>th</sup> Report that:-

- (i) the then Chief Executive be surcharged the amount involved in the advertisements by the Inspector General (State Corporations) for acting imprudently in the transaction, which was not approved by the Board; and
- (ii) the Corporation should stop engaging in such activities, as public relations exercise is not one of its core functions.

## **6. COMPUTERIZATION PROGRAMME**

In the year 1998/99 concern was expressed over the manner in which the Corporation entered into a contract with a computer firm for the installation of year 2000 computer programme compliant. Examination of contract

documents for the year 2000/2001 revealed that the contractor did not complete the work within the stipulated period. As a result the Corporation hired another company to provide computer services at an additional cost of Kshs.1,843,105. Further, the related consultancy contract sum of Kshs.1,480,000 was without any justification, varied by Kshs.937,105.20 thus bringing the total additional and irregular cost to Kshs.2,780,210.20 which would have been saved had the computer installation been made as per the agreed contract.

**The Committee heard the evidence given by the Chief Executive that in 1999, the Managing Director Mr. Lawi Kiplagat, entered into a contract with a company, Computer Applications Ltd (CAL) to upgrade its application programmes to year 2000 compliant status with a 50% down payment of Kshs.2,488,468.75 and further that the Board thereafter declined to ratify the contract award on procurement of hardware for IBM RS/6000 as it was expensive and other cheaper alternatives were available in the market.**

**The Committee was informed that:-**

- (i) the contractor delayed in completing the works and the programme took almost three years instead of six months, as stipulated in the contract;**
- (ii) that IBM RS6000 Programme was hired to run the Corporation's loan portfolio, as a result of the delay by the consultants to complete the project. This was planed for in February 2000 to January 2001, at a cost of US\$ 2,300 per month, in addition to the contractual figure earlier on agreed with CAL; and**
- (iii) the Corporation further hired the services of M/s. Information Professionals Africa, at a contract sum of Kshs.1,480,000, whose term was also extended, necessitating a further cost of Kshs.937,105.20 or a monthly rate of Kshs.90,000.**

**The Committee was concerned that the computerization project was implemented without due regard to the reservations by the Board, which resulted in additional cost of Kshs.2,780,210.20, a cost which could have been avoided had the management adhered to the laid down procurement procedures.**

**The Committee reiterates its earlier recommendation in the Twelfth Report that the then Managing Director Mr. Lawi Kiplagat be surcharged for loses amounting to Kshs.2,780,210.20 and be barred from holding public office conferred by the Republic of Kenya.**

**The Committee further recommends that in future, the management should ensure that procurement procedures currently in force are adhered to.**

#### **7. IRREGULAR PAYMENT**

During the year 2000/2001 the Corporation incurred expenditure of Kshs.1,873,314 comprising auction and legal fees paid to auctioneers and a company of advocates, who were hired to deal with unresolved cases relating to recovery of rent in four estates in Kisumu Municipality. However, the rent arrears was not recovered through the intended auction because the High Court issued a court injunction in favour of the tenants. Consequently the amount of Kshs.1,873,314 paid by the Corporation to these service providers resulted in nugatory expenditure.

**The Committee heard the evidence given by the Chief Executive that during the year under review, the Corporation engaged auctioneers and advocates to recover a debt of Kshs.5,548,648.85 in lieu of rent arrears within the Kisumu Municipal Council, at a fee of Kshs.1,873,314.**

**The Committee was informed that the tenants had earlier lost a court case against the Corporation, after which they complied with the court order, thereby nullifying the services of the Auctioneers and Advocates.**

**The Committee noted that even though the tenants paid up their debts, the management ought to recover the costs of hiring the auctioneers and advocates from the tenants.**

**The Committee therefore recommends that the Management pursues the court order on costs of the suit from the tenants.**

#### **8. SHORT TERM DEPOSITS**

Out of the total deposits of Kshs.138,494,186 placed by the Corporation, deposits amounting to Kshs.88,715,539.50 were held in three financial institutions now under receivership, and were deposited with the private banks without Treasury approval. Further, the high provision of Kshs.59,375,589 made in the accounts to cater for bad and doubtful debts on the investments would suggest that the recoverability of the total amount held in these financial institutions is considered irrecoverable.

**The Committee heard the evidence given by the Chief Executive that during the year under review, the Corporation had deposited Kshs.138,494,186 in financial institutions, out of which Kshs.88,715,539.50 was held in three private banks without Treasury's approval.**

**The Committee was informed that:-**

- (i) deposits were held in financial institutions as follows:-

<u>INSTITUTION</u>	<u>AMOUNT AS AT 30.6.2001</u>
Central Bank of Kenya	49,778,343.80
Prudential Bank	73,499,878.65
National Bank of Kenya	302.60
Indo Africa Finance	3,000,000.00
Continental Bank of Africa	12,215,660.85

- (ii) the Kshs.88,715,539.50 held in collapsed institutions was as follows:-

Prudential Bank	73,499,878.65
Indo Africa Finance	3,000,000.00
Continental Bank of Africa	<u>12,215,660.85</u>
<b>TOTAL</b>	<b><u>88,715,539.50</u></b>

- (iii) the provision for loss on investments of Kshs.59,375,589 was made in the books on realization that the deposits held in the three institutions namely Prudential Bank, Indo Africa Finance and Continental Africa would not be fully recovered, since the institutions were under receivership; while the remaining amount would be written off over a period of five years; and

The Committee noted that the then Chief Executive has since been surcharged Kshs.6,935,556 vide Surcharge Certificate No. 008 for investing funds contrary to Treasury Circulars and that he has since filed and obtained a bankruptcy order against himself.

The Committee reiterates its earlier recommendation in the 13<sup>th</sup> Report that:-

- (i) the Chief Executive should pursue the recovery of the outstanding amount from the Deposit Protection Fund of the Central Bank of Kenya; and
- (ii) the Corporation and the Inspectorate of State Corporations should counter the Bankruptcy order obtained by the former Chief Executive Mr. Lawi Kiplagat, with a view to recovering the losses occasioned by him through the irregular transactions at the Corporation.

## **9. LOSS OF CASH**

During the year under review, the Corporation lost cash totaling Kshs.266,320 bringing the total cash lost by the Corporation between 1999/2000 and 2000 /2001 to Kshs.717,441. The loss is made up of Kshs.451,121 representing a cheque drawn by the now defunct Kenya National Assurance which has been registered with Corporation's brokers

for follow up, Kshs.100,000 held by the lawyers awaiting clearance of the cheque before the amount is remitted to NHC and the balance of the loss of Kshs.166,320 which was reported to the Police but the suspected employees released for lack of evidence.

**The Committee heard the evidence given by the Chief Executive that during the year under review, the Corporation lost cash totaling to Kshs.226,320 bringing the total amount lost in the previous years to Kshs.717,441.**

**The Committee was informed that:-**

- (i) of the total amount of Kshs.717,441, an amount of Kshs.451,121 involves a compensation cheque drawn by KNAC and that the latter was put under receivership before the cheque could be cleared; and**
- (ii) Kshs.166,320 was lost within the Corporation's premises and that the suspected employee was arrested for questioning and released due to lack of evidence and the amount has since not been recovered as insurance regulations require prosecution before compensation can be paid.**

**The Committee reiterates its recommendation in the 13<sup>th</sup> Report that the Chief Executive should use all possible means including litigation to recover the amount of Kshs. 451,121 and interest from Kenya National Assurance Company (2001 Ltd) without further delay.**

**REPORT OF THE CONTROLLER AND AUDITOR GENERAL ON THE  
ACCOUNTS OF THE KENYA POST OFFICE SAVINGS BANK FOR THE  
YEAR ENDED 31 DECEMBER, 2001**

**1. DEFERRED ASSET**

The total of Kshs.9,175,637,071 as 31 December 2001 include a deferred asset of Kshs.723,183,721 which represents accumulated losses incurred by the Bank over the years. Although Section 13 (1) of the Kenya Post Office Savings Bank Act Cap.493 B provides that if in any year the revenue of the Bank is insufficient to defray the interest due to depositors and all expenses under the Act, such deficiency shall be charged upon and paid out of the Consolidated Fund, the accumulated losses, incurred by the Bank may have represented gross financial mismanagement. In the circumstances therefore, it is not possible to confirm the propriety of the losses or that they are chargeable on the Consolidated Fund.

**The Committee heard the evidence given by the Chief Executive that during the year under review, the total asset figure of Kshs.9,175,637,071 as at 2001 included deferred assets of Kshs.723,183,721 which represents accumulated losses incurred by the Bank over the years. Pursuant to Kenya Post Office Savings Bank Act Cap 493(B), which provides that if in any year the revenue of the Bank is insufficient to defray the interest due to depositors and all the expenses under the Act such deficiency shall be charged upon and paid out of the Consolidated Fund, the Bank claimed this deficiency / loss from the government.**

**The Committee further heard that:-**

- (i) the losses were cumulative from the year 1992 to 2001;**
- (ii) a dispute arose on the refund of the losses in 1992 occasioning the parties involved to appoint Bell House Mwangi, Ernst and Young Firm of Auditors to examine the nature of the losses. The Consultants found out that of the total losses of Kshs.1,104,732,000 incurred, Kshs.10,277,000 was occasioned by Non Commercial Management decisions and as such, were to be borne by Kenya Post Office Savings Bank while the Treasury was to underwrite the balance of Kshs.1,094,455,000.00; and**
- (iii) the Treasury, while noting that the government guarantee should be seen as security for depositors and not as a source of income for the Bank, has continued to meet its obligation of offsetting the loss such that the amount owing as at March 20, 2002 was Kshs. 202 Million.**

The Committee observed with concern that Kenya Post Office Savings Bank Act. Cap 493B is inadequate as it obligates the government to offset losses/deficiencies incurred by the Bank from the Consolidated Fund irrespective of how such losses arose thereby committing public funds to meeting losses occasioned by poor management practices.

The Committee recommends that:-

- (i) the Chief Executive of the Bank ensures that the Bank is run in accordance with prudent commercial management practices; and
- (ii) the Chief Executive and Treasury urges the Attorney General to propose amendments, for consideration by the House, to Sections 8(1) and 13(1) of the Kenya Post Office Savings Bank Cap 493 (B) to accommodate the views of the Treasury that the Bank should only be compensated by the government in event of losses accrued due to operating in financially non-viable environment and not in instances where such losses are occasioned by inefficiencies and/or mismanagement at the Bank.

## **2. FIXED ASSETS**

The Fixed Assets figure of Kshs.994,432,351 includes Kshs.27,390,255 being the value of a parcel of land L.R. No. 209/11908 and the building thereon at Upper Hill, Nairobi, which the Bank took over from Thabiti Finance Company to offset the value of an investment totaling Kshs.15,435,411 that the bank held in the company (now in liquidation). Available information, however, indicates that although the court vested this property to the bank in July 1994, the bank has not been able to have the title deed for the property transferred, because of a caveat placed on the property by the individual. In addition the property has, so far been claimed by a private individual who claims to have been allocated the property in 1993. The claimant sued the bank and the case is pending in court. Consequently, it is not possible to confirm the ownership of the property.

**The Committee heard the evidence given by the Chief Executive that the fixed asset figure of Kshs.994,433,351 includes an amount of Kshs.27,390,255 being the value of a parcel of land L.R. No.209/11908 and the building thereon at Upper Hill, Nairobi, which the Bank took over from Thabiti Finance Company to offset the value of an investment totaling Kshs.15,435,411 that the bank held in the Company in liquidation.**

The Committee was informed that:-

- (i) the Bank applied and obtained a vesting order at the High Court and went on to register the vesting order in 1994

against the title, thereby transferring all the rights in the title to the Bank; and

- (ii) in 1995, the Bank filed eviction proceedings against the tenants; Mr. Abed Wasike (former Permanent Secretary and Managing Director of KENATCO Taxis) who filed a defence claiming rights of allotment to the property and the case was first heard in March 2005.

The Committee observed with concern that the case has taken inordinately long to be resolved to the detriment of the Bank and as a consequence, public funds are now in jeopardy.

The Committee recommends that the Chief Executive pursues the case to its logical conclusion and ensures that the interests of the Bank are safeguarded.

### **3. DEPOSITS HELD IN UNSTABLE AND COLLAPSED BANKS AND FINANCIAL INSTITUTIONS.**

A review of the Bank's investment Portfolio indicated that the Bank held deposits totaling Kshs.547,818,479 in 13 Banks/Financial institutions whose operations were suspended by the Central Bank of Kenya. Five of these have since been put under receivership while the remaining ones with deposits totaling Kshs. 441,593,947 have since been put under liquidation. Apart from the fact that the Bank has not produced any evidence to show what efforts have been made to recover the amounts, the full provision for bad and doubtful debts of Kshs.559,362,440 made in the accounts is an indication the recoverability is doubtful and the debts may eventually be written off.

The Committee heard the evidence given by the Chief Executive that the Bank held deposits totaling to Kshs.547,818,479 in 13 banks/financial institutions whose operations were suspended by the Central Bank of Kenya and that the Bank has continued to receive dividends from receivers / liquidators of some of the institutions such that as at August 31 2005, cumulative dividends received amounted to Kshs.205,046,653.85 as follows:-

<b>INSTITUTION</b>	<b>KSHS</b>
1. Continental Bank	4,627,357.10
2. Continental Credit	4,481,889.10
3. Pioneer Building Society	5,411,323.65
4. Rural Urban & Credit Bank	7,613,934.40
5. Post Bank Credit	139,400,083.20
6. Trade Bank	3,100,000.00
7. Middle Africa Finance	5,143,626.80

8.	Intra Africa Finance	2,523,257.70
9.	Allied Credit Ltd	8,093,124.00
10.	Trust Bank	17,493,383.50
11.	Prudential Bank	7,058,674.40
12.	Euro Bank Ltd	100,000.85
	<b>Total</b>	<b>205.046,653.00</b>

- (i) in accordance with its accounting policy, the Bank has since made a provision for bad and doubtful debts of Kshs.559,362,440.00 including a provision of Kshs.20,144,170.00 being interest accrued on the principal.

**The Committee recommends that the Chief Executive should employ all means possible to ensure that the deposits and the interest thereof are recovered.**

#### **4. SALE OF PROPERTY**

In June 1999 the bank engaged, through their lawyer, the services of a firm of Auctioneers to sell, by public auction, a property belonging to Kenya Projects and Investment Ltd. a subsidiary of Allied Credit Limited so as to recover a deposit of Kshs.32,926,975 inclusive of an accrued interest that the bank had deposited with Allied Credit Ltd. According to the highest bidder, the property was offered for Kshs.35million on behalf of the Kenya Post Office Savings Bank Pension Fund. The highest bidder was asked to pay a deposit of Kshs.8,750,000 which they failed to pay. Available information further indicates that for unexplained reasons the Bank instead advance the bidder Kshs.8,750,000 representing 25% of the bid price so as to be able to pay the deposit. The Bank however paid the amount to Valley Auctioneers who was supposed to pay the same to the Bank on behalf of the Pension Fund. The Auctioneers did not pay the amount to the bank, but instead transferred the property to the Pension Fund on 4<sup>th</sup> December 2000 after the Bank paid a further sum of Kshs.1,400,000 in respect of transfer fees and Kshs.1,223,904 in respect of water bills. Apart from the fact that evidence was not seen to confirm that the loan repayment terms under which the Bank advanced the Pension Fund of Kshs.8,750,000 deposit, there is no indication of the balance of Kshs.26,250,000 having been demanded before the property was transferred to the Fund. The transaction, therefore, means that the Bank has to date not been able to recover the sales proceeds of Kshs.35,000,000 from both the Fund and Auctioneers and no indication has been given as to how the total amount of Kshs.43,750,000 will eventually be recovered from both the Fund the Auctioneer. In addition no justification has been provided as to why the Bank had to pay Kshs.1,223,904 to cover water bills when such expenditure should have been met by those who used the water. Consequently the payment of Kshs.1,223,904 is irregular and not a proper charge to the Bank.

The Committee heard evidence given by the Chief Executive that on June 30 1999, the Bank vide letter KPSB/25/CON/98CC engaged through its lawyers, the services of M/s. Valley Auctioneers to sell by public auction, on "as is" basis, a property belonging to Kenya Projects and Investments Ltd, a subsidiary of Allied Credit Ltd, to secure investments owed to it amounting to Kshs.32,296,975.00, inclusive of interest.

The Bank's Pension Fund was the highest bidder of the property at a price of Kshs.35 Million subsequent to which the Fund was required to pay 25% of the bid price (Kshs.8.7 Million) to the Auctioneers at the fall of the hammer.

The Committee was informed that:

- (i) the Bank as the Fund's sponsor advanced the Pensions Scheme a total of Kshs.10.15 Million comprising Kshs.8.75 Million and Kshs.1.4 Million as 25% of purchase and stamp duty respectively, to enable the Fund to purchase the property, Trishul Towers situated in Ngara L.R. No.209/6556/1;
- (ii) the Auctioneer M/s. Valley Auctioneers paid the deposit of Kshs.8.75 Million to the Bank through the Bank's lawyer M/s Wambugu & Co. Advocates, who declined to remit the funds ostensibly because the Bank previously owed the firm legal fees totaling to Kshs. 12 Million in respect of previous engagement, which amount was disputed by the Bank as the latter asserted that it owed the firm Kshs. 5 Million;
- (iii) the Bank has since terminated the services of Wambugu & Co. Advocates save for a few unsettled cases and has since referred the matter to Law Society of Kenya requesting that disciplinary action be taken against the firm of advocates;
- (iv) the Bank and Wambugu & Co. Advocates later opted for mediation to resolve the matter of disputed legal fees.
- (v) since Kenya Post Office Savings Bank Pension Scheme is a legal entity, distinct from the Bank, the latter on September 12, 2005 demanded payment of total purchase price amounting to Kshs.35 Million together with Kshs.1.4 Million being stamp duty from the Pension Scheme. The management of the scheme agreed to pay the total sum of Kshs.36.4million in 6 equal monthly installment of Kshs.6.07 Million with effect from September 2005; and
- (vi) the Bank paid the mortgage sum of Kshs.1,223,904 in respect of water bills owed to Nairobi City Council in order to obtain

clearance certificate from the latter and facilitate transfer of property to the Scheme.

The Committee observed that it was irregular for Wambugu & Company Advocates, to withhold the Kshs.8.75 Million in lieu of disputed Legal Fees between itself and the Bank.

Accordingly, the Committee recommends that:-

- (i) the Chief Executive employs all cost effective means possible including taxation of the legal fees of the amounts claimed by Wambugu & Co. Advocates to ensure that the interest of the Bank is safeguarded in respect of the legal fees dispute; and
- (ii) the Chief Executive ensures that Kenya Post Office Savings Bank Staff Pension Scheme honours its obligation of settling the full amount of Kshs.36.4 million in respect of transfer of the property L.R. NO. 209/6556/1.

#### **5. PURCHASE OF MOTOR VEHICLE**

In November 1995 the Bank placed an order for two vehicles with a private individual who was a motor vehicle dealer at a total cost of Kshs.6,825,000 and made an advance payment of Kshs.3,412,500 being 50% of the cost price for the two vehicles. However, the advance payment of Kshs.3,412,500 was inexplicably converted to payment of full price of an apparently second hand vehicle whose cost was quoted as Kshs.3,300,000 inclusive of freight, duty, VAT and delivery charges from the port to the Bank offices. However, the supplier did not refund the excess amount of Kshs.112,000 paid over and above the cost quoted for this one vehicle, which was Kshs.3,300,000. One year later in August 1996, the bank made further payments totaling Kshs.2,051,763 without any justification to cater for the following charges even though the advance payment had included the same costs:

<b>DUTY/VAT</b>	<b>KSHS.</b>
Customs/Excise duty plus 20% penalty	1,599,604
Cater for Local Inspection Fees as the vehicle was not inspected in the country of origin	252,159
Fines for non payment	100,000
Clearance charges	50,000
Registration	50,000
<b>Total</b>	<b>2,051,763</b>

However, it was noted that these charges had earlier been included in the advance payment. The Bank, on realizing the double payment sued the company for Kshs.2,164,263 made up of the additional cost of Kshs.2,051,763 and the balance of the advance of Kshs.112,500. Judgment was made in favour of the Bank for Kshs.2,164,263. However, from the date

of judgment in 1997 only a sum of Kshs.700,000 has since been paid to the bank and the recoverability of the balance is still in doubt.

**The Committee heard evidence given by the Chief Executive that in November 1995 and without competitive bidding, the Bank placed an order for supply of two vehicles with M/s. Tonny Willheim, a motor vehicle dealer represented by a Mr. Kiprono Kittony at a cost of Kshs.6,825,000 and subsequently made an advance payment of Kshs.3,412,500 being a 50% down payment of the two vehicles.**

**The Committee was informed that:-**

- (i) the Board had initially approved the purchase of two new vehicles; Peugeot 605 and a Land Rover Discovery and a 50% down payment for the value of each;**
- (ii) the dealer M/s. Tonny Willheim inexplicably imported two second hand vehicles which were rejected by the Bank on arrival;**
- (iii) at a later stage, the Bank accepted the second hand Peugeot 605 which was quoted at Kshs.3.3 Million and was registered and transferred to the Bank after paying an additional Kshs.2,051,767 ostensibly being custom duty, local inspection fee, nonpayment fines, clearance and registration despite the fact that these charges had been included in the advance payment;**
- (iv) the Bank sued the supplier M/s Tonny Willheim for recovery of Kshs.2,142,263 being the amount incurred over and above the quoted price. Judgment was delivered in favour of the Bank and it recovered Kshs.700,000; and**
- (v) the supplier later appealed against this judgment and the Bank lost on the grounds that the Commissioner of Assize erred in amending the Plaint at the stage of judgment without request of the Bank and further that his ruling was contrary to the pleadings. The Bank therefore refunded Kshs.700,000 to the supplier and the excess amount over and above the price of the car was treated as a loss.**

**The Committee observed with concern that the then Chief Executive Mr. Isaiah F. Kiplagat authorized the second payment of Kshs.2,051,763 allegedly as inland charges for the second hand vehicle when he knew that those charges were included in the initial deposit of Kshs.3,412,500.**

The Committee recommends that the amount of Kshs. 3,412,500 be recovered from the then MD, Mr. Isaiah Kiplagat, with immediate effect.

## 6. AVOIDABLE EXPENDITURE

The Bank entered into an agreement with a foreign company, Progeny Ventures, to act between it and the Western Union regarding money transfers. Under the Agreement, the Commission was to be shared among the parties as follows:-

Post Bank	54%
Progeny Ventures	36%
Deposit to Account	
Designed Market	
Development Fund	<u>10%</u>
	<b><u>100%</u></b>

Although Western Union Money Transfers paid Commission totaling Kshs.617,976,448 to be shared according to the above agreed ratios, the Bank for unknown reasons paid Progeny Ventures only 8.5% of the proceeds amounting to Kshs.52,499,920 as at 31.12.2001 thus illegally retaining Kshs.169,971,601 to itself. Progeny Ventures therefore sued the Bank for recovery of the balance. Consequently, the Bank incurred a total of Kshs.20,850,638 while defending the case as follows:

	Kshs.
Payment to overseas lawyers	12,729,341
Arbitration expenses	3,324,760
Payment to Local Lawyers	1,581,955
Staff expenses to and from Nairobi to USA	3,214,582
<b>Total Expenditure</b>	<b>20,850,638</b>

Had the Bank not breached the Agreement the total Expenditure of Kshs.20,850.638 could have been avoided.

**The Committee heard the evidence given by the Chief Executive that on 16<sup>th</sup> February 1995, the Bank entered into a tripartite money transfer contract with M/s. Western Union and M/s. Progeny Ventures Inc. whereby the latter would market the Bank in the USA as an agent of Western Union and in return the Bank would share out the commission received from Western Union.**

**The Committee heard that:-**

- (i) **at the time of entering in the contract, the Western Union concept was new in Africa, having only been introduced in Ghana in the same year by Progeny Ventures Incorporated;**

- (ii) initially, the proceeds of the Commission were to be shared on the ratio of 60:40 between the Bank and Western Union (Principal) and thereafter the Bank would share its portion (60%) with Progeny Ventures Inc. as follows:-

Post Bank	54%
Progeny Ventures Inc.	36%
Deposit to an account	<u>10%</u>
	<u>100%</u>

The 10% deposit to an account was supposed to cater for marketing expenses to Kenyans living in the USA.

- (iii) in the course of this partnership and having evaluated the performance of Progeny Ventures Inc., the Bank realized that the firm was not doing marketing commensurate to the 36% commission it had received. By December 2002, the Bank had paid Progeny Ventures Inc. a total of Kshs.250,182,730. Consequently, the Bank reduced the commission payable to the firm to 10%, based on the percentage of marketing activities the firm was undertaking, thereby retaining an accumulated sum of Kshs.169,671,601 as at 31<sup>st</sup> December 2001, which resulted in M/s. Progeny Ventures Inc. suing the Bank; and
- (iv) when defending the case, the Bank incurred a total of Kshs.20,860,640.00. The Court ruled that the Bank remits the amount of Kshs.169,671,601 which it had withheld to Progeny Ventures Inc.

The Committee noted that:-

- (i) the Bank terminated the contract with M/s. Progeny Ventures Inc and negotiated a contract with the principal (Western Union). Consequently, the commission received from the transfer is shared between the Bank and Western Union at the ratio of 55% and 45% respectively. Thereafter, 8% of the proceeds is set aside for marketing and is shared equally between the two parties;
- (ii) currently, the Bank deals with Western Union directly without an agent; and
- (iii) during the time that the contract was terminated, the Bank had deposited Kshs.169,671,601 in an account where it earned 22% interest.

The Committee observed with concern the initial tripartite contract between Western Union Money Transfers, Progeny Venture Inc. and the

Bank was lopsided in that Ms. Progeny Ventures Inc., who were only a link between the principal and the Bank benefitted substantially by receiving 36% of the Bank's 60% Commission. This Commission was not commensurate to the work they were contracted to undertake. The Committee also observed that the contract failed to incorporate mechanisms in evaluating the performance of Progeny Ventures Inc. in regard to marketing.

The Committee recommends that the Chief Executive should ensure that the interests of the Bank are safeguarded in transactions between itself and Western Union and all other such contracts.

#### **7. DEBTORS AND PREPAYMENTS**

The Debtors and prepayments figure of Kshs.1,122,229,491 as at 31 December, 2001 includes debts totaling Kshs.515,034,705 claimed as due from the Postal Corporation but which has been disputed by the Corporation and Corporation has therefore declined to confirm the existence of the total debt of Kshs.515,034,705. Further the debtors and prepayments figure includes Directors and Staff Loans totaling Kshs.251,867,731 arrived at as follows:-

	(Kshs.)
Directors Loans	12,694,221
Staff Loans	<u>239,173,510</u>
<b>Total</b>	<b><u>251,867,731</u></b>

Out of this amount Kshs.11,394,524 was noted to be outstanding against 2 directors and 2 employees who are no longer in the service of the Bank including the immediate former Managing Director who held a loan of Kshs.4,046,461. In addition schedules produced for audit verification in support of Visa Card Debtors showed total debtors of Kshs.65,376,151 while in difference of Kshs.35,029,516. The analyses and supporting schedules in respect of these debtors were not provided for audit verification. Consequently it has not been possible to confirm the recoverability of the Visa Card Debtors amount of Kshs.100,405,667 and the accuracy of the debtors and prepayment figure of Kshs.1,222,229,491 as at 31 December 2001.

**The Committee heard the evidence given by the Chief Executive that the debtors and prepayments figure of Kshs.1,122,229,491.00 as at 31<sup>st</sup> December 2001 included Kshs.515,034,705 due from Postal Corporation of Kenya and Kshs.251,867,731 owed by former Directors and staff.**

The Committee further heard that the figure of Kshs.100,405,667 had not been reconciled and schedules availed to the Auditors could not support the difference of Kshs.35,029,516.

The Committee was informed that:-

- (i) the amount of Kshs.515,034,705 was initially owed by the defunct Kenya Posts and Telecommunications Corporation;
- (ii) between the time of splitting of the defunct the KP&TC and July 2005, the amount continued to earn interest at commercial banks overdraft interest rates ruling at the time;
- (iii) as at 31<sup>st</sup> July 2005, with the intervention of Transitional Management Committee, the amounts were reconciled and signed by both parties such that the amount owing from Postal Corporation of Kenya as at 4<sup>th</sup> August 2005 was Kshs.405,231,359.35;
- (iv) the loans of Kshs.239,173,510 and Kshs.12,694,221 advanced to the two former employees and former Directors, respectively, were advanced to them while they were in employment of the Bank as House/Development Loans and of which recovery is on-going as per the Bank's policy such that as at 31<sup>st</sup> August 2005, Kshs.4,209,998 had been recovered. The loans are secured on the properties/developments that they financed; and
- (v) the amount of Kshs.35,029,516 being the difference between Kshs.100,405,667 and Kshs.65,376,151 in respect of Visa Card Debtors represented active accounts with no overdue amounts, which has since been verified by the auditors.

The Committee noted with concern the matter of vesting and reconciliation of the debt owed by the defunct KP&TC had taken inordinately long necessitating the amount to attract huge interest of Kshs.256,853,311.

The Committee recommends that the Chief Executive should ensure that:-

- (i) the loans extended to former directors and staff continue to be recovered as per the Bank's policy; and
- (ii) the Bank's credit policy is strengthened to include instituting measures such as recovery of staff loans through the payroll, engaging services of debt collectors and litigation where necessary.

**REPORT OF THE CONTROLLER AND AUDITOR GENERAL ON THE  
FINANCIAL STATEMENT OF KENYA SUGAR AUTHORITY FOR THE  
YEAR ENDED 30<sup>TH</sup> JUNE 2001**

**1. OPERATING RESULTS**

During the year ended 30<sup>th</sup> June 2001 the Authority realized a deficit of Kshs.61, 246, 829 compared to a surplus of Kshs.37,710,092 in 1999/2000 thereby reducing the reserves from Kshs.193,471,234 in previous year to Kshs.132,224,405.00 as at the same date. The deficit was reportedly caused mainly by reduction in gross income from Kshs.138 million in 1999/2000 to Kshs.77 million in 2000/2001 and increase in employment costs from the previous year's figure of Kshs.32 million to Kshs.65 million in the 2000/2001 although the authority has indicated that it has contracted on agency basis, the collection of the levy to Kenya Revenue Authority it has not indicated what it intends to tackle the employments costs.

**The Committee heard the evidence given by the Chief Executive that during the year under review, the Authority realized a deficit of Kshs.61,246,829 compared to a surplus of Kshs.37,710,092 in 1999/2000, thereby reducing the reserves from Kshs.193,471,234 in the previous year to Kshs.132,224,405 as at 30<sup>th</sup> June 2001.**

**Further, the Committee was informed that losses were occasioned by decreased levy collections and loan repayments and that the increase in staff cost was as a result of review of staff house allowances and other allowances and also repayment of retrenchment costs during the year.**

**The Committee expressed concern that of the 7% levy collected by the Board, half of it is spent by financing the Board, a trend that would continue unless the staffing levels and the Board's membership are reduced.**

**The Committee recommends that:-**

- (i) the Chief Executive should reduce expenditure by the Board and retain surpluses for investment; and**
- (ii) the Chief Executive in conjunction with the parent Ministry causes the Attorney General to propose amendments for consideration by the House to effect changes on the number of membership into Kenya Sugar Board.**

**2. FORMER CHAIRMAN'S IMPREST**

Imprests records show the former Chairman of the Authority, Mr. Mark Too was granted various imprests on diverse dates of which Kshs.5,920,898 had not been accounted for by the time he left authority. The information seen

indicates that although a demand note and reminder have been sent to Mr. Mark Too to account for the Imprest, no response has been seen and no further action appears to have been taken on the matter.

**The Committee heard the evidence given by the Chief Executive that the Board had granted imprest on diverse dates to its then Chairman Mr. Mark Too, amounting to Kshs.5,920,898, which had not been accounted for by the time he left office.**

**The Committee was informed that the Board has since referred the matter to M/s. Tobiko and Associates Advocates.**

**The Committee observed with concern that by issuing cumulative imprests to its Chairman, the Board's rules and regulations governing issuance of imprests were grossly flouted.**

**The Committee recommends the Inspector General, State Corporations executes recovery of the civil debt of Kshs.5,920,898 owed by Mr. Mark Too in respect of un-surrendered imprest with immediate effect and avoid a situation whereby the Board would be time barred under Limitations of Actions Act.**

### **3. RETIREMENTS BENEFITS**

During the year ended 30<sup>th</sup> June 2001, the Chief Executive, Mr. F.M. Chahonyo, who was on secondment from National Bank of Kenya was retired by the Bank and was employed on contract terms by the Board of Kenya Sugar Authority from January 2001 available records indicate that the reimbursement of the Chief Executive personal emoluments for the months of November and December 2000 amounting to Kshs.2,547,446.50 included Kshs.1,887,894 in respect of retirement dues under the Bank's Pension Scheme. Although there is information that Kshs.1,887,894 erroneously paid has been demanded from the National Bank of Kenya, the question arises as to why the amount was paid by the Authority in the first place. The question also arises as to the chances of recovery of the amount.

**The Committee heard the evidence given by the Chief Executive that during the year under review, the then Chief Executive Mr. F. M. Chahonyo, who was on secondment from National Bank of Kenya was retired by the Bank and employed on contract terms by the Board of Kenya Sugar Authority from January 2001.**

**The Committee also heard that the reimbursement of the Chief Executive personal emoluments for the month of November and December 2000 amounting to Kshs.2,547,446.50 included Kshs.1,887,894 in respect of retirement dues under the Bank's Pension Scheme.**

**The Committee was informed that the Kshs.1,887,894 was erroneously paid and that after several demands by the Board, the Bank has since reimbursed the amount vide Cheque No. 224183 for Kshs.1,887,894 on February 7, 2006, thereby resolving the audit query.**

#### **4. MEDICAL SCHEME AND ALLOWANCES**

As was reported in the previous year, the Medical Scheme for the Authority was approved by its Board on 13 December 1996. However, the Scheme was not approved by the Government as required by existing regulations. Similarly, it was reported that the authority revised allowances payable to its directors and staff including house allowances without Government approval. Although the Authority later wrote to the Government requesting for approval for the revised rates of allowances, no approval for the implementation of the revised rates of allowances was seen. It was, therefore, not possible to confirm that the expenditure amounting to Kshs.31,043,779.20 was properly authorized on both the Medical Scheme and House allowances.

**The Committee heard the evidence given by the Chief Executive that the Board expended a total of Kshs.31,043,779.20 on medical scheme and house allowances following approval of a new Medical Scheme by its Board of Directors on 13<sup>th</sup> December 1996.**

**The Committee further heard that the revised expenditure on allowances for its directors and staff was done without the approval of the Government.**

**While noting that the Board had harmonized the house allowance in line with Civil Service Housing Allowance Structure vide Office of the President letter Ref. OP.18/1A of 21<sup>st</sup> June 2000, the Committee observed with concern that the management of the Board revised the allowances of its Directors and staff without recourse to the State Corporations Advisory Committee contrary to Section 27 of State Corporations Act.**

**The Committee noted that the irregular salaries and allowances were revised in July 2003 and have since been amended to comply with Government's guidelines and that the current terms and conditions of service for staff and Board of Directors were approved by State Corporation's Advisory Committee through the parent Ministry on 14<sup>th</sup> March 2005.**

**The Committee recommends that:-**

- (i) the Chief Executive seeks post facto approval from State Corporations Advisory Committee to regularize the expenditure of Kshs.31,043,779.20 on medical scheme and**

house allowance for Kenya Sugar Board Directors and staff;  
and

- (ii) the Board ensures that any future review of Terms and Conditions of Service for Staff and Board of Directors should be submitted to the State Corporations Advisory Committee for consideration and approval.

#### **5. UNSUPPORTED AMOUNTS**

Included in the Creditors and Accruals figure of Kshs.28,077,534.55 is an amount of Kshs.2,344,425 in respect of accruals whose supporting schedules were not seen. Further, the miscellaneous expenses figure of Kshs.917,681.85 includes some Kshs.411,745 in respect of provision for possible loss on obsolete items which was unsupported and which had not been adjusted in the Store's figure of Kshs.2,295,332.95 reflected in the financial statements as at 30<sup>th</sup> June 2001. In the absence of supporting schedules and adjustments, it was not possible to confirm the accuracy of these amounts and their effect on the financial statements.

**The Committee heard from the Chief Executive that during the year under review, the Creditors and Accruals figure of Kshs.28,077,534.55 included an unsupported amount of Kshs.2,344,425 and further that the miscellaneous expense figure of Kshs.917,681.85 included an unsupported amount of Kshs.411,745 which had not been adjusted in the Stores sum of Kshs.2,295,332.95 reflected in the financial statements.**

**The Committee was informed that all supporting documents and schedules in respect of the two items have since been availed to the Kenya National Audit Office and verified and necessary adjustments made in the subsequent financial year, thereby resolving the audit query.**

**REPORT OF THE CONTROLLER AND AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF SUGAR DEVELOPMENT FUND FOR THE YEAR ENDED 30 JUNE 2001**

**1. LOSS ON EXPORT AND IMPORT OF RAW SUGAR**

During the year ended 30 June 2001, the Fund incurred losses totaling Kshs.54,843,925 on the export of sugar, procured from Nzoia and Chemelil Sugar Companies, on the ground that in order to secure the EU market it was in the national interest and unavoidable to incur such losses. However, no evidence has been provided to confirm that the EU sugar market was secured through this action. The Fund further imported 2,000MT of sugar from the third lowest tender, ED and F Man Sugar Limited of South Africa, at US\$330 per metric tonne, all valued at US\$660,000 or Kshs.52,000,000. However, records show that Hira Enterprises of Brazil and Gulf – U Flex CC of South Africa had quoted to supply and deliver sugar at US\$160 and US\$188 per metric tonne respectively. Had the Fund purchased the Sugar from the lowest bidder at US\$160 per metric tone there would have been a saving of Kshs.26,787,880. Although the sole aim for the importation was to stabilize the availability of sugar in the local market, the consignment was released into the market six months after it arrived at the Port of Mombasa when other COMESA countries had gained access to Kenya Market with cheap sugar. The purpose for importation was, therefore, defeated and resulted into over-flooding the market for local sugar companies. Under the circumstances, and in the absence of any plausible explanations for these imprudent decisions there would appear to have been no justification for the total loss of Kshs.81,631,805 made by the Fund comprising of export loss of Kshs.54,843,925 and import loss of Kshs.26,787,880

**The Committee, while broadly examining the reservations raised by the Controller and Auditor General in this paragraph, resolved to address the matter to its current status where in it:-**

- (i) deliberated on the matter of Sugar Importations under the COMESA, FTA Regulations as stipulated in Legal Notice No. 2 (Legislative Supplement) of January 12, 2006 vis-à-vis the role of Kenya Sugar Board as vested in it by the Sugar Act 2001; this was through a Special Report which has since been tabled before the House titled “Special Report of The Public Investments Committee on the Kenya Sugar Board and Importation of Sugar vide Legal Notice No. 2 of 2006”; and**
- (ii) deliberated on the financial aspects of the audit query, which part is addressed in this report.**

**The Committee heard the evidence given by the Chief Executive that during the year under review, the Fund incurred losses totaling Kshs.54,843,925 on the export of sugar procured from Nzoia and**

**Chemilil Sugar Companies in its bid to secure a quota in the European Union Market.**

**The Committee was further informed that:-**

- (i) in the period 1985/86, Kenya lost its Sugar Protocol Quota of 5,000 Metric Tonnes per annum in the European Union Market, during which period the price of sugar was government regulated and soon after, having realized the losses associated with losing the quota, Kenya started lobbying to re-enter the sugar protocol, culminating in the temporary allocation in the years 1999-2001 and the six year allocation of 10,186 Metric Tonnes for the years 2001/2002 to 2006;**
- (ii) the lobbying efforts had borne fruits and Kenya was allocated 2033 Metric Tonnes Quota. The ex-factory price of sugar was approximately 38,000 per metric tonne, making the domestic market more lucrative for local producers than the European Market;**
- (iii) in the year 2000/2001, Kenya's allocation was under the Special Preferential Sugar Quota priced at Kshs.29,660.90 (442.70 Euro) which was an even less attractive option, making it difficult to interest local producers to supply the raw sugar to meet the quota;**
- (iv) considering that the 1999/2000 and 2000/2001 ACP-EU allocation resulted from failure by some member states to deliver, Kenya had to decide and prove its ability to deliver at a short notice, in order to gain consideration in the restoration and maintenance of the subsequent Special Protocol Quotas in the European Union Market; and**
- (v) the loss was envisaged in the early stages of membership to the protocol due to the initial uneconomically small allocations and the prevailing high costs of production. By this time, COMESA FTA arrangements had not been concluded and the most economic place to source sugar was outside the COMESA.**

**The Committee further heard that:-**

- (i) M/s. Hira Enterprises and Gulf-U Flex CC allegedly from Brazil and South Africa quoted via e-mail to deliver the sugar at US\$160 and US\$188 per metric tonne respectively, and further that on pursuit of the offers, the two companies turned out to be fictitious and could not provide information necessary to pursue the transactions;**

- (ii) three companies M/s. Golden Sparrow, Holbud Ltd and ED&F Man Sugar Ltd of South Africa submitted bids for the service subsequent to which the latter's bid was found to be favourable as it was the lowest at US\$ 330 per metric tonne and that they had reliable and extensive network in the ACP-EU and that the price quoted which was trading at the London Futures Market at the time, guaranteed competitiveness;
- (iii) the Board therefore contracted ED&F Man Sugar Ltd of South Africa to supply the 2000 metric tones of sugar at the quoted price totaling Kshs.52,000,000 and that the quotation of US\$300 was broken down as: Freight (US\$ 23/MT); Stewarding/Linear Charges (US\$10/MT and FOB price (US\$297/MT);
- (iv) by the time the sugar reached the port of Mombasa, large amounts of COMESA sugar had gained access to the Kenyan Market under the FTA before the 100% import duty had been imposed, subsequent to which there was over supply of sugar in the country, resulting to unfair competitive advantage of the COMESA sugar over the one sourced from South Africa. During this time (around September 2000) wholesale and retail prices of sugar dropped by almost 61%;
- (v) considering the declining domestic prices quoted, which were below the cost of importing the sugar, the Board had to sell the sugar at Mombasa at a price of Kshs.80 per kilogramme in order to break even, a price which could not fetch any trader. The Board therefore spent time fetching for buyers; and
- (vi) in the meantime, demurrage, other port charges, duties and levies had built up to Kshs.125,861,132 and the Board spent considerable time seeking waiver on Import Duty, V.A.T. and demurrage charges, which was eventually granted albeit five months after the sugar landed at the port.

The Committee also heard that the Board has since sought subvention from the Treasury for the losses made by the Board in this sugar imports as this loss has had a direct impact on the financial position of the Board.

The Committee observed with concern that:-

- (i) much as the importation was intended to meet and secure the European Union quota, this justification eventually was void as the sugar was not only sold in the local market, defeating the sole purpose for the importation, but also deteriorated the already flooded local sugar market;

- (ii) arising from the (i) above, the Fund made an import loss of Kshs.26,787,880;
- (iii) even though the Board, the parent Ministry and the Ministry of Trade viewed the justification of meeting the European Market as urgent government procurement, procedures were flouted in that the approval of the Directorate of Public Procurement not to employ international open tendering in procuring the sugar was not sought; and
- (iv) there appears to have been a conduit between the Board, the parent Ministry and the Ministry of Trade to use the Board as a means of delivering sugar into the country at zero rated import duty in the guise of meeting the European Union Market.

In view of the foregoing and in course of taking evidence, the Committee recommends that:-

- (i) the Director of Criminal Investigations Department institutes investigation into the manner in which the 2000 metric tones of sugar was imported from South Africa through M/s. ED&F Man Sugar Ltd (S.A.) with a view to preferring charges against any persons found culpable in the irregular transaction which caused the Kenya Sugar Board to incur a loss of Kshs.26,787,880; and
- (ii) that the Treasury considers and grants a subvention to the Board for the import loss of Kshs.26,787,880.

## **2. LOGS ASSOCIATES**

During the year 2000/2001, the Fund contracted Logs Associates to evaluate its Irrigation Projects at Kibos National Sugar Research Centre and Opapo Sugar Research Sub-Centre at a cost of Kshs.1,992,320. Records however show that the firm was overpaid by Kshs.796,926. Although the Fund has demanded the refund of Kshs.796,926 no refund has so far been received and consequently it has not been possible to confirm the full recoverability of the amount.

**The Committee heard the evidence given by the Chief Executive that during the year under review, the Fund contracted Logs Associates to evaluate its irrigation projects at Kibos National Sugar Research Centre and Opapo Sugar Research at a cost of Kshs.1,992,320 and that the firm was overpaid by Kshs.796,926.**

**The Committee was informed that the Board has since confirmed the overpayment was Kshs.420,064 and not Kshs.790,926, which it had undertaken to recover from the year 2005/2006 fee note of**

**Kshs.498,800 from the same consultant for new services rendered during the National Sugar Conference held in December 2005.**

**The Committee recommends that the Chief Executive without further delay recovers the overpayment of Kshs.420,064.10 from M/s. Logs Associates using all cost effective means possible.**

### **3. DEBTORS AND PREPAYMENTS**

Included in the figure of Debtors and Prepayments of Kshs.924,783,816 as at 30<sup>th</sup> June 2001 is a sum of Kshs.10,813,693.70 due from various companies and organizations. The Authority has not taken action to either recover or write off the debts and as a result it has not been possible to express an opinion as at the recoverability of these debts.

**The Committee heard the evidence given by the Chief Executive that included in the figure of Debtors and Prepayments of Kshs.924,783,816.50 is a sum of Kshs.10,813,693 due from various companies and organizations.**

**The Committee was informed that:-**

- (i) the amount relates to payment made for services rendered to sugar industries and other outgrower organizations;**
- (ii) despite efforts of the Board to recover the debts which include an amount of Kshs.5,103,939 outstanding from Kenya Sugar Research Foundation, the debts have not been settled due to financial problems facing the sugar industry; and**
- (iii) the Board, through the parent Ministry has prepared a proposal for the financial restructuring of the industry's debt portfolio, which includes writing off the long outstanding outgrowers debts and that the Cabinet is expected to consider this proposal.**

**The Committee recommends that the government waives outstanding outgrowers' debts as proposed by the Board.**

### **4. OVERDUE LOANS TO SUGAR COMPANIES**

The Total amount of overdue loans and interest thereon held by the Sugar Outgrowers Companies stood at Kshs.5,370,382,733.33 as at 30<sup>th</sup> June 2001 included in the overdue loans to Sugar Companies are receivership costs amounting to Kshs.43,847,637 incurred in the process of placing Muhoroni and Miwani Sugar Companies under receivership and also Kshs.49,902,781 paid to various legal firms and reflected as loans to Sugar and Outgrowers Companies. However, there were no written instructions to the Fund from those companies authorizing such payments. Further, the

fee from lawyers did not indicate the nature of the service provided. In the absence of such instructions, it has not been possible to ascertain if the companies got best value for money or whether the loans to sugar companies were fairly stated. Further, and as reported in previous year, the companies had not been servicing these loans as provided for in the loan agreements as evidenced by huge outstanding loans and interest. Until the problem of loan repayment is addressed, Sugar Outgrowers Companies loans might eventually turn out to be irrecoverable and consequently affect ability of the Fund to continue supporting the sugar sector.

**The Committee heard the evidence given by the Chief Executive that during the year under review, the total amount of overdue loans and interest thereon held by the Sugar and Outgrowers Companies stood at Kshs.5,370,382,733.33 and that included in the overdue loans to Sugar Companies, are receivership costs amounting to Kshs.43,847,637 incurred in the process of placing Muhoroni and Miwani Sugar Companies under receivership and also Kshs.49,902,781 paid to various legal firms and reflected as loans to Sugar and Outgrowers Companies and that the outstanding loans have continued to adversely affect the operations of the Fund.**

**The Committee was informed that:-**

- (i) the Fund has since received a total of Kshs.561,852,513 as loan repayment from various companies as at July 30, 2005 and waived interest on the levy, leaving arrears amounting to Kshs.2,020,647,760.57 owed by Sugar and Outgrower Companies, the Board has since contracted Kenya Revenue as collecting agent for the Board;**
- (ii) considering the impact of the debt to the indebted companies and the increasingly unfavourable sugar industry, the Board has made a recommendation to the government for possible write off of the whole debt;**
- (iii) the Board in the year 1999/2000 had contracted six law firms to pursue and recover the loans from owing Sugar and Outgrowers Companies and expended a total of Kshs.32,488,429.00 as legal fees. Pursuant to the recommendation of the Committee in page 52 of its 12<sup>th</sup> Report, the Board referred the fees paid to the law firms for taxation and that the Board, after negotiations with the law firms was able to make a saving of Kshs.30,173,168.90 being the difference between the total amount taxed by the High Court and the negotiated fees paid to the law firms as follows:-**

<u>Law Firm</u>	<u>Fees Paid</u>	<u>Taxed Amount</u>	<u>Difference</u>
Wetangula & Co.	6,118,530	7,023,218	904,688
Hayanga & Co	7,038,180	24,213,267.55	17,175,087.55
Lumumba & Muma	540,178.75	619,900	74,721.25
EA Ngaira & Co	3,562,055	5,548,500	1,986,445
Kipkorir Titoo & Co	<u>12,658,400.35</u>	<u>22,690,626.95</u>	<u>10,032,226.60</u>
<u>Total</u>	<u>29,917,344.10</u>	<u>60,090,513.00</u>	<u>30,173,168.90</u>

The amount of Kshs.2,842,186.90 paid to Kasamani & Co. Advocates has been referred to Kenya Revenue Authority for taxation.

The Committee noted that the Sugar Development Fund Management Committee had reviewed its lending procedure, which include ensuring that borrowers provide clean adequate securities and also make down payment as proof of commitment for the loan applied, while satisfactory evaluation of previous disbursements before any further disbursement is made.

Further, while noting the proposal of the Board through the parent Ministry to the government for debt write-off, the Committee observed that there is no evidence that the companies have been unable to pay the outstanding loans, which have continued to affect the ability of the Fund to support the Sugar Sector.

The Committee reiterates its recommendation on its Twelfth Report page 50 that the Chief Executive should use all means possible, including legal redress, to recover the overdue loans amounting to Kshs.5,370,382,733.33.

The Committee further recommends that the Fund should employ the services of a sound financial institution to professionally and competently manage its loan portfolio to large-scale farmers.

##### **5. BUSIA SUGAR COMPANY**

Information available shows that Busia Sugar and Busia Outgrowers Companies had been advanced a total Kshs.435,624,344.95 in loan by the Sugar Development Fund as at 30<sup>th</sup> June 2001. Busia Sugar Company which was planned to process 115,500 metric tones of sugar per year at Nasewa in Busia District was to be operational by 1997. However, the construction and completion of the factory has delayed. As reported in the previous years, the Company has been selling its cane to Mumias Sugar Company but no significant repayments of the Sugar Development Fund's loans have been made. Although the Fund has indicated that it has taken action, the outcome of such action is still awaited. Consequently it is not possible to express an opinion on the recoverability of these loans.

**The Committee heard evidence given by the Chief Executive that Busia Sugar and Busia Outgrowers Companies had been advanced a total of**

**Kshs.435,624,344.95 by the Fund and that even after selling its cane to Mumias Sugar Company, no significant repayment of the loan had been made.**

**The Committee was informed that:-**

- (i) due to delay in the construction of the factory in Busia, arrangements have been made to have all cane developed in Busia Scheme, milled by Mumias Sugar Company and that the latter would recover loans advanced to Busia Sugar Company against proceeds from the sugar delivered and remit such recoveries to the Kenya Sugar Board to service the loan;**
- (ii) out of the total loan advanced, only Kshs.48,021,799.95 made of Kshs.25,051,191.50 and Kshs.22,970,588.45 representing principal and interest repayment, respectively has been paid as at December 31, 2005, leaving an outstanding balance of Kshs.337,324,077.99 as the Government waived interest on all loans in the sugar industry;**
- (iii) arising from the recommendations of the Committee, the Kenya Sugar Board has since charged the Title deed No. Bukhayo/Nasewa/1500, which measures 341.2 hectares owned by Busia Sugar Company as security for the loan. The Board also intends to pursue Civil Case No. H.C.C.C. No. 375 of 2002 in the event that no meaningful extra judicial settlement is arrived at on the on-going efforts between the Treasury, the State Law Office, Ministry of Agriculture, Busia Sugar Company and Kenya Sugar Board.**

**The Committee noted that the Government has a controlling majority share subscription of 135,324,000 while Booker Tate's shareholding is 55,155,000 and CDC's shareholding is 1,000,000.**

**The Committee observed with concern that Busia Sugar Company has failed in its contractual loan obligation of servicing the loan owed to the Fund, despite the fact that it continues to deliver and receive the proceeds of the cane from Mumias Sugar Company.**

**The Committee recommends that the Chief Executive moves with speed and prosecutes civil case No. H.C.C.C. 375 of 2002 against Busia Sugar Company.**

**REPORT OF THE AUDITOR GENERAL ON THE ACCOUNTS OF THE AGRICULTURAL FINANCE CORPORATION FOR THE YEAR ENDED 30<sup>TH</sup> JUNE, 1999.**

**1. FINANCIAL POSITION**

During the year 1998/99, the Corporation realized a loss of Kshs.548,957,854 which brought its cumulative losses to Kshs.885,198,781 as at 30 June 1999. The Accounts also show creditors totaling Kshs.1,877,699,623 as at 30 June 1999 which include accrued interest of Kshs.1,778,224,773 in respect of overdue loans which the Corporation was unable to settle. The Corporation was unable to service its obligations as they fell due and evidently, therefore, it is technically insolvent and its continued operation as a going concern will depend on continued support of its creditors, lenders and Government.

**The Committee heard the evidence given by the Chief Executive that during the year under review, the Corporation realized a loss of Kshs.548,957,854 which brought its cumulative losses to Kshs.885,198,789 while its creditors figure of Kshs.1,877,699,623 included accrued interest of Kshs.1,778,224,774 in respect of over due loans.**

**The Committee was informed that:-**

- (i) the loss of Kshs.548,957,854 was occasioned by a high provision for bad and doubtful loans amounting to Kshs.583,299,000.00 which pushed the cumulative loss in respect of the Corporation to Kshs.855,198,781; and
- (ii) the figure of Kshs.1,877,699,623.00 included interest of Kshs.1,778,224,773.00 due from G.O.K. Loan.

**The Committee further heard that the government through the Sessional Paper No.1 of 2002 approved a restructuring of the Corporation's books of Accounts which was effected in the Corporation's Accounts for the year 2002/2003.**

**The Committee noted that due to the restructuring of the AFC, out of Kshs.1,778,224,773.00 due to the G.O.K, an amount of Kshs.1,135,140,664.00 was written off, while Kshs.468,537,975 was converted into equity and a balance of Kshs.174,546,137.00 was retained as G.O.K. loan to the Corporation.**

**The Committee recommends that:-**

- (i) the Chief Executive should ensure that the Sessional Paper No.1 of 2002 on financial restructuring of AFC is implemented; and

- (ii) **the Chief Executive ensures that the Corporation is self sustaining.**

## **2. LOANS TO FARMERS**

During the year under review, the Corporation did not recover Large and Small scale loans together with accrued interest thereof totaling Kshs.2,742,652,704 as at 30 June 1999, most of which have been outstanding for over ten years. The Total provision for bad and doubtful debt of Kshs.709,365,571 made in the Accounts over the years against the same loans is a clear indication that these loans may in fact not be recoverable.

**The Committee heard the evidence given by the Chief Executive that the Corporation, during the year under review, failed to recover large and small scale loans totaling Kshs.2,742,652,704 including accrued interest as at June 30, 1999.**

**The Committee was informed that loans amounting to Kshs.2,940,667,033.50 were written off when Sessional Paper No.1 of 2002 was implemented and the same has since been reflected in the 2002/2003 Accounts of the Corporation, thereby resolving the audit query.**

**REPORT OF THE AUDITOR GENERAL (CORPORATIONS) ON THE ACCOUNTS OF AGRICULTURAL FINANCE CORPORATION FOR THE YEAR ENDED 30 JUNE 2000.**

**1. LOAN ARREARS FROM FARMERS**

The unsatisfactory situation with regard to recoverability of large and small-scale farmers loans remained the same in 1999/2000 as reported in the previous year. The outstanding balance of loans and accrued interest thereof as at 30 June 2000 stood at Kshs.3,006,548,000 compared to a balance of Kshs.2,742,653,000 outstanding as at 30 June 1999. The very high provision for bad and doubtful debts of Kshs.1,291,567,000 made in the Corporation's Accounts as at 30 June 2000 is an indication that a substantial portion of these loans are considered irrecoverable and may, therefore, have to be written off. If not seriously addressed the trend and level of loan repayment arrears is likely to adversely affect the operation of the Corporation.

**The Committee heard the evidence given by the Chief Executive that the Corporation, during the year under review, failed to recover large and small scale loans totaling Kshs.3,006,548,000 including accrued interest as at June 30, 2000.**

**The Committee was informed that the loan amounting to Kshs. 3,006,548,000 was written off when Sessional Paper No.1 of 2002 was implemented and the same has since been reflected in the 2002/2003 Accounts of the Corporation, thereby resolving the audit query.**

**2. BOARD OF DIRECTORS MEETINGS**

During the year 1999/2000 the Corporation did not hold any Board Meetings contrary to provisions of Section 8(1) (a) of the State Corporations Act (Cap 446). Although the Corporation has explained that a Board meeting scheduled for July 1999 was cancelled by the parent Ministry on the grounds that the term of that Board had expired. Section 4 (4) of the AFC Act (Cap 323), however, empowers an expired Board to continue in office when a new one is not appointed within a period of one month. Consequently, it has not been possible to confirm how the functions of the Board as provided for under Section 15 (1) of the State Corporations Act were discharged in the absence of a functional Board during the year 1999/2000.

**The Committee heard the evidence given by the Chief Executive that during the year 1999/2000, the Corporation did not hold any Board meetings in contravention of Section 8(1)(a) of the State Corporations Act (Cap 446) as well as the AFC Act.**

**The Committee was informed that the parent Ministry delayed in constituting a new Board until 7<sup>th</sup> July 2000, when the new Board held**

its next sitting and a recommendation passed, in effect backdating the appointments to July 1999.

The Committee was concerned that the Ministry acted in blatant disregard of the law by delaying to constitute a Board and causing the Chief Executive Officer to manage the Corporation single handedly without a Board in place, an action which would render any decisions taken illegal.

The Committee recommends that the Corporation should in future adhere to the laid down legal procedures in the management of the Corporation, in particular Section 8(1) of State Corporations Act (Cap 446).

**REPORT OF THE AUDITOR GENERAL (CORPORATIONS) ON THE  
ACCOUNTS OF THE SEASONAL CROP CREDIT AGENCY ACCOUNTS FOR  
THE YEAR ENDED 30 JUNE 1999.**

**REDEEMABLE LOANS.**

During the year 1998/99 and as was the case in the previous year, the Scheme was still not able to service the principal loan of Kshs.728,308,997 previously advanced to it by the Cereals and Sugar Finance Corporation. This loan has remained unpaid for so many years while the interest on the same loan increased from Kshs.3,924,928,835 as at 30 June 1998 to Kshs.4,510,905,332 as at 30 June 1999. Although the Scheme has made a provision of Kshs.630,159,460 to cater for bad and doubtful debts on GMR loans and on the 1984 Seasonal Crops Credit loans reportedly on the basis of a government directive to write off these loans, the same directive did not, however, appear to have applied to the cereals and Sugar Finance Corporation loans from which the monies loaned out to the farmers had been borrowed. Accordingly, and in the absence of any other explanation, it is not understood how the Scheme would repay both the principal Cereals and Sugar Finance Corporations loan and the interest accrued thereto particularly when the funds on-lent to farmers are not recoverable. In addition, the Agricultural Finance Corporation has to-date not remitted a total of Kshs.732,400,181 collected in the past on behalf of the Scheme.

**The Committee heard the evidence given by the Chief Executive that the scheme was unable to service the principal loan of Kshs.728,308,997 advanced to it by Cereals and Sugar Finance Corporation.**

**The Committee was informed that the downward trend of the scheme was mainly attributable to the 1984 drought, which affected the capacity of farmers to repay the loans and subsequent Government directive of 1989 to write off loans under the scheme where loans due from AFC were not written off and therefore continued accruing interest.**

**The Committee further heard that Kshs.775 million being loan collections by the Corporation continued being on lent to farmers under the Seasonal Crop Credit Loans.**

**The Committee recommends that the management looks into ways of initiating a crop insurance scheme to cushion AFC in cases of drought and bad weather.**

**REPORT OF THE CONTROLLER AND AUDITOR GENERAL ON THE  
ACCOUNTS OF THE SEASONAL CROP CREDIT AGENCY ACCOUNTS FOR  
THE YEAR ENDED 30<sup>TH</sup> JUNE 2000.**

**REDEEMABLE LOANS**

As was the case in the previous year, the scheme was not able to service the Principal loan of Kshs.728,308,997 advanced to it by the Cereals and Sugar Finance Corporation. This loan has remained unpaid for many years while the interest on the same increased from Kshs.4,510,905,332 in 1998/99 to Kshs.5,183,024,146 as at 30 June 2000. Although the Scheme has made full provision of Kshs.777,887,000 to cater for bad and doubtful debts on GMR loans and 1984 seasonal crop credit loans advanced to farmers following Government directive to write off these loans, the same directive did not, however, apply to the Cereals and Sugar Finance Corporation loans from which the money lent out to farmers had been borrowed. Further, although the provision made in the accounts amounts to Kshs.777,887,000 the computer print outs in respect of such loans reflects a total of Kshs.780,518,355.82. The difference of Kshs.2,631,355.82 has been identified and will be adjusted in 2003. However, if the money loaned out to farmers is not recoverable, the rationale for accruing interest on the loans both from the cereals and Sugar Finance Corporation and also the farmers is evidently unclear. In addition, the Agricultural Finance Corporation has not been able to remit to the Agency a total of Kshs.775,595,756 collected in the past on behalf of the scheme. The Corporation has however not explained the terms under which AFC continues to hold the collections.

**The Committee heard the evidence given by the Chief Executive that the scheme was unable to service the principal loan of Kshs.728,308,997 advanced to it by Cereals and Sugar Finance Corporation.**

**The Committee was informed that the downward trend of the scheme was mainly attributable to the 1984 drought, which affected the capacity of farmers to repay the loans and subsequent Government directive of 1989 to write off loans under the scheme where loans due from AFC were not written off and therefore continued accruing interest.**

**The Committee further heard that Kshs.775 million being loan collections by the Corporation continued being on lent to farmers under the Seasonal Crop Credit Loans.**

**The Committee recommends that the management looks into ways of initiating a crop insurance scheme to cushion AFC in cases of droughts and bad weather.**

**REPORT OF THE CONTROLLER & AUDITOR GENERAL ON THE  
ACCOUNTS OF THE TEACHERS SERVICE COMMISSION FOR THE YEAR  
ENDING 30<sup>TH</sup> JUNE 2001**

**1. DEBTORS**

The Debtors balance of Kshs. 408,841,576 as at 30 June includes cash losses totaling Kshs. 28,184,660 out of which Kshs. 21,600,693 relates to cash losses which occurred at the Commission's Headquarters in 1993/94 as a result of fraudulent payment of fictitious TSC rent. The Commission took legal action against six persons suspected in the fraud and the case was determined in favour of TSC on 30 January 2002. However, only two persons were found guilty of the offence, and at the time judgment was delivered, the balance in the bank account of the accused was only Kshs.2,477,885.05 which the Court ordered to be released to TSC. The amount of Kshs.2,477,885.05 was subsequently received by TSC in July 2003. It is understood that the Commission has asked for the revision of the case by the court with a view to instituting recovery of the balance of Kshs. 19,122,807.85 and that the matter is still pending in court.

Included in the Debtors figure is also an amount of Kshs.912,516 which is a balance of an amount of Kshs.2,232,364 reportedly stolen from TSC way back in November 1992. The reported thefts were perpetrated by the Commission's staff and although the Commission has, on several occasions, sought police assistance in the matter, as far as it has been possible to ascertain no suspects have, so far been, arrested or charged in court for the theft. Under the circumstances the recoverability of the amount of Kshs. 19,122,805.85 and the balance of stolen salaries of Kshs.912,516 all included in the Debtors figure cannot be confirmed and the Balance Sheet Debtors figure of Kshs. 408,841,576 as at 30 June, 2001 is consequently affected to this extent.

**The Committee heard the evidence given by the Chief Executive that of the losses figure of 28,184,660, an amount of Kshs.21,600,693 related to cash losses fraudulently paid to Kenya Trust Company as rent in 1993/1994 and that the anomaly was discovered in 1994.**

**The Committee further heard that:-**

- (i) the Commission took legal action vide HCCC No. 2713/94 subsequent to which six persons (Maingi Gateri & Others) were charged on 19 counts of forgery and stealing, contrary to Section 349 and 257 of Penal Code. The judgment was made in January 2002 and the Commission recovered Kshs.2,477,885.05 and Kshs.12,219.65 from frozen accounts of the accused in Giro and Trust Banks respectively, leaving an outstanding balance of Kshs.19,110,587.20, which has since been written off from the accounts of the Commission commencing 2002/2003;**

- (ii) in a bid to recover the balance, the Commission wrote to the Attorney General on 21<sup>st</sup> May 2002 with a view to recovering the full loss from property acquired by the convicts by use of ill-gotten wealth. However, the Attorney General advised that the Commission's claim was statutory time barred under the law, since the request was made after expiry of the five year period of limitation; and
- (iii) of the amount of Kshs.912,516.00 which is the balance of Kshs.2,232,364.00 reportedly stolen from the Commission in 1992 by the Commission's own staff, Kshs.394,023.85 has since been recovered and that further thefts of teachers salaries had continued. The following is the status of the cases:-

DISTRICT	MONTH	LOSS INCURRED BY	POSITION	AMOUNT
DEO Meru	Sept 89	Simon Maina Kibura – Meru CR 3746/89	Case Pending before court due to loss of case file between the Law Courts and Police. Warrant of arrest issued on 6 <sup>th</sup> June 1998 to the OCS Meru by the court	21,016.65
DEO Vihiga	Nov.92	Kennedy Bunyali of MOE Milk Division. Case No. CR.922/1062/92	Suspect is still at large. Administrative action taken to effect recovery from Michael Njoroge's TSC 100280 salary at Kshs.7,879.00 per month with effect from 1/2/06. The former DHRO Vihiga due to negligence of duty.	353,976.60
TSC Headquarters	1993/94	Peter Maingi Gateri & Sylvester W. Maranga. Case No.2731 of 1994	Commission received cheque No.121498 dated 11/7/2003 from Giro Bank, the frozen accounts of the accused persons.	2,477,886.05
DEO Mwingi	May 1994	Moses O. Diero – TSC 100868 DPO Mwingi – Kitui. Case file No.CR/401/417/95	The suspect absconded as per CID letter Ref:CID/SEC/2/16/VOL.X29 of 21.12.2000. The case still pending under investigations.	21,140.05
DEO Homabay	Dec 97	Alfred Ogeto – TSC 500019. Homabay Criminal Case No.125/98	Accused person put on 2 years probation.–Matter referred to AG for further directions. Officer dismissed by Commission for negligence of duty	787,210.15
DEO W/Pokot	Aug 97	J. K. Cheruiyot – TSC 500628 OB 21 of 19/9/97	Case Pending with DCIO W/Pokot. No arrests have been made to date.	110,370.45
DEO Muranga	Dec 98	Anthony K. Riungu-TSC 600227 and James W. Karema TSC 500984	No arrests have been made. The matter reported to the DCIO Muranga Ref OB 20/13/8/99 DATED 13/8/1999.	164,621.85

DEO Nyamira	Feb 98	Alfred Ogeto – TSC 50019	Officer Dismissed	24,541.80
DEO Gucha	Nov 00	David Kibet Majeshi an Administration Officer and James Oeba Bundi – TSC 6000345 Case No.691/430/2000	One of the accused persons Mr. James Oeba Bundi – TSC 600345 was discharged by the court under Section 210 of the CPC due to lack of evidence. But Mr. David Kibet Majeshi was found guilty and put his own defence by the court. The case is still pending at the Kisii Law Courts.	1,147,806.20
DEO Migori	Jan 02	Martin Gichege TSC 500364. Case no. CR 661/14/2001 OB No. 47 of 9.1.2001	The officer was acquitted by the court under section 215 of the CPC due to lack of evidence. Administrative Action taken by the Commission to recover Kshs.132,855.10 and Kshs.121,311.80 respectively from the salary of Mr. Gichege @ Kshs.2,000 with effect from 1/10/05. Balance outstanding as at 31/1/06 is Kshs.246,196.90	132,884
DEO Migori	Jan 02	Martin Gichege TSC 500364. Case no. CR 661/64/2002 OB No. 47 of 9.2.2002	As above.	121,311.80
DEO Homabay	July 98	Khisa Kololi TSC/600276	Case No.617/205/99 case still pending with the DCIO Homabay. He claims vide his letter Ref: CID/C/CRI/6/8/108/2000 dated 26 <sup>th</sup> July 2000 the suspect is still at large.	14,426.20
DEO Kisumu	July 99	Late Liza Mugele	Authority being sought from the Trustees of TSC Superannuation Pension Scheme to recover from dues available to the late Liza Mugele	44,973.80
Joel Nderitu Rukwaro TSC/14954		Cheque 339058 dated 10/11/99 intercepted and deposited in account No.031-800-098 at Afya Centre Post Bank and encashed by bank fraudsters	The CID wrote to the Commission indicating that they have been unable to arrest the fraudsters and establish their whereabouts vide their letter CID/IB/SED/2/16/VOL11/19 dated 1/11/2002. They published three photographs of wanted persons on the dailies on 2 <sup>nd</sup> October 2002.	61,211.00
Dinah Mukami Njuguna TSC/30145 4		Cheque No.338520 dated 2/11/99 intercepted and encashed at Post Bank Ronald Ngala Branch by bank fraudsters on	The CID wrote to the Commission indicating that they have been unable to arrest the fraudsters and establish their whereabouts vide their letter CID/IB/SEC/2/16/VOL11/19 dated 1/11/2002. They published three	53,518.60

		9/12/99. The case reported to the Director of CID and inquiry No.84/2000 on 12/9/2000 under investigating officer Joseph Kaberia	photographs of wanted persons on the dailies on 2 <sup>nd</sup> October 2002.	
Igantius Mwaniki TSC/31331		Cheque No.317322 dated 4/8/99 intercepted at Post Bank, Ronald Ngala and cleared on 19/10/1999 by fraudsters. Inquiry case file No.84/2000 opened by CID.	The CID wrote to the Commission indicating that they have been unable to arrest the fraudsters and establish their whereabouts vide their letter CID/IB/SEC/2/16/VOL11/19 dated 1/11/2002. They published three photographs of wanted persons on the dailies on 2 <sup>nd</sup> October 2002.	122,942.15
Johnstone Njue TSC/32159 8		Cheque No.331064 dated 18/10/99 intercepted and deposited at Post Bank Head Office account no. KAAC-185463-4 and cleared on 27/10/99 by the bank.	No arrests have been made and case still pending.	135,650.50
Joseph K. A. Tanui TSC/11713 7		Cheque no.338520 dated 2/11/99 intercepted and encashed at Post Bank Ronald Ngala branch by bank fraudsters on 18/8/2000. The case reported to director of CID and inquiry no. 84/2000 on 12/9/2000 under investigating officer Joseph Kaberia of CID headquarters.	No arrests have been made and case still pending.	55,626.75
<b>Money Lost in Provincial Offices</b>				
TSC Secretariat			Kshs. 1,317.15	
Central Province Primary			Kshs. 64,137.10	
Eastern Province Primary			Kshs. 334,535.80	
Cost Province Primary			Kshs. 129,996.65	
Rift Valley Province Primary			Kshs. 28,767.05	
Western Province Primary			Kshs. 112,531.60	
Nyanza Province			Kshs. 417,426.20	
Nrb/Msa N/E Provinces			Kshs. 33,114.80	
Department 44-58			Kshs. 480,817.45	
Department 52			Kshs. 11,126.60	

**The Committee observed with concern that:-**

- (i) despite complaints from the Commission, the Director of Criminal Investigation Department had failed to investigate the theft of teachers salaries of Kshs.353,976.60 and Kshs.21,140.05 at DEO Offices in Vihiga and Mwingi respectively; and
- (ii) the Commission had continued to experience losses of teachers' salaries through theft by its own staff such that as at May 2006, an amount of Kshs.6,984,990.60 (which includes an amount of Kshs.1,257,798.70 associated with losses in Provincial Education Offices) is still outstanding.

**The Committee further observed that the Commission and the Director of Criminal Investigation Department are inept in pursuit of the above-mentioned losses.**

**The Committee recommends that:-**

- (i) the Director of Criminal Investigations Department expedites investigation into the matter of losses of teachers' salaries through theft and fraudulent actions and reports back to this Committee by 31<sup>st</sup> December 2006;
- (ii) that the Commission puts in place measures to ensure that further losses of the teachers' salaries does not occur; and
- (iii) Teachers Service Commission makes necessary provision for such losses.

## **2. CASH ON HAND AND BANK**

The Cash on Hand and Bank balance of Kshs 1,449,184,443 as at 30 June, 2001 includes stale cheques for a value of Kshs. 32,894,567.50 out of which a cheque for Kshs. 4,079,502 was payable to a Bank. There is no indication, however, that the Commission ever investigated and ascertained why this cheque would not be presented and therefore became stale. In the circumstances, therefore, it has not been possible to confirm the accuracy of the Cash on Hand and Bank balance of Kshs. 1,449,188,443 as at 30 June, 2001.

**The Committee heard evidence from the Chief Executive that the Cash in hand and Bank balance of Kshs.1,449,184,443 included stale cheques of a value of Kshs.32,894,567.50 out of which Cheque No. 187792 of Kshs.4,079,502 dated March 24, 1999 was drawn through Bank Account No. 01020756061 at Standard Chartered Bank, Nairobi for credit into the account of Kakamega Teachers Savings and Credit Society Ltd in respect of shares and loan deductions from teachers.**

**The Committee further heard that the cheque became stale after 24<sup>th</sup> April 2003 (after six years) and was subsequently removed from the Creditors Account to Accumulated Fund of the Commission vide letter JE/6354/02/03 dated 30<sup>th</sup> June 2003 and that no cash was lost.**

**The Committee reiterates its recommendations in the 13<sup>th</sup> Report that the Chief Executive ensures that stale cheques are accounted for in accordance with the Commission's accounting regulations.**

**REPORT OF THE CONTROLLER & AUDITOR GENERAL ON THE  
ACCOUNTS OF THE TEACHERS SERVICE COMMISSION FOR THE YEAR  
ENDING 30<sup>TH</sup> JUNE 2002**

**1.0 FINANCIAL POSITION**

The financial statements for the year ended 30 June 2002 show that the Commission realized a deficit of Kshs. 200,836,910 compared to a deficit of Kshs. 147,233,503 in the previous year. The deficit is attributable to heavy expenditure on personal emoluments and maintenance expenses. This trend, if not checked, could threaten the operations of the Commission.

**The Committee heard from the Chief Executive that the financial statements for the year under review showed that the Commission realized a deficit of Kshs.200,836,910 compared to Kshs.147,233,503 in the previous year and that this deficit was attributed to shortfalls in the Exchequer releases from Treasury through Ministry of Education, Science and Technology, which amounted to Kshs.1,299,964,971.90**

**The Committee further heard that the Treasury through the Ministry of Education regularized this monetary deficit by releasing to the Commission Kshs.745 Million and further allowing the Commission to utilize Kshs.533 Million from the TSC Accumulated Fund, thereby resolving the audit query.**

**2.0 DEBTORS**

As disclosed in note 9 to the financial statements the debtors balance of Kshs. 1,008,416,841 as at 30 June 2002, includes losses of cash amounting to Kshs. 26,877,030 out of which an amount of Kshs. 21,600,692 relates to 1993/94 and which occurred at the Commission's headquarters through fraudulent payment of fictitious rent. However, only Kshs. 2,477,885.05 has been recovered under court process and the balance of Kshs, 19,110,587.20 is indicated to have been written off in the financial statements for 2002/2003 following Treasury authority. Also included in the debtors' figure of Kshs. 1,008,416,841 are salary overpayments of Kshs. 133,157,786.65 and net salary advances totaling Kshs. 16,431,074.30. No action appears to have been taken to check and control the recurrence of similar overpayments and salary advances.

**The Committee heard the evidence given by the Chief Executive that of the losses figure of 28,184,660, an amount of Kshs.21,600,693 related to cash losses fraudulently paid to Kenya Trust Company as rent in 1993/1994 and that the anomaly was discovered in 1994.**

**The Committee further heard that:-**

- (i) the Commission took legal action vide HCC No. 2713/94 subsequent to which six persons (Maingi Gateri & Others) were**

charged on 19 counts of forgery and stealing, contrary to Section 349 and 257 of Penal Code. The judgment was passed in January 2002 and the Commission recovered Kshs.2,477,885.05 and Kshs.12,219.65 from frozen accounts of the accused in Giro and Trust Banks respectively, leaving an outstanding balance of Kshs.19,110,587.20, which has since been written off from the accounts of the Commission commencing 2002/2003;

- (ii) in a bid to recover the balance, the Commission wrote to the Attorney General on 21<sup>st</sup> May 2002 with a view to recovering the full loss from property acquired by the convicts by use of ill-gotten wealth. However, the Attorney General advised that the Commission's claim is statutory time barred under the laws since the request was made after expiry of the five year period of limitation; and
- (iii) of the amount of Kshs.912,516.00 which is the balance of Kshs.2,232,364.00 reportedly stolen from the Commission in 1992 by the Commission's own staff, Kshs.394,023.85 has since been recovered and that further thefts of teachers salaries had continued. The following is the status of the cases:-

DISTRICT	MONTH	LOSS INCURRED BY	POSITION	AMOUNT
DEO Meru	Sept 89	Simon Maina Kabura - Meru CR 3746/89	Case Pending before court due to loss of case file between the Law Courts and Police. Warrant of arrest issued on 6 <sup>th</sup> June 1998 to the OCS Meru by the court	21,016.65
DEO Vihiga	Nov.92	Kennedy Bunyali of MOE Milk Division. Case No. CR.922/1062/92	Suspect is still at large. Administrative action taken to effect recovery from Michael Njoroge's TSC 100280 salary at Kshs.7,879.00 per month with effect from 1/2/06. The former DHRO Vihiga due to negligence of duty.	353,976.60
TSC Headquarters	1993/94	Peter Maingi Gateri & Sylvester W. Maranga. Case No.2731 of 1994	Commission received cheque No.121498 dated 11/7/2003 from Giro Bank, the frozen accounts of the accused persons.	2,477,886.05
DEO Mwingi	May 1994	Moses O. Diero - TSC 100868 DPO Mwingi - Kitui. Case file No.CR/401/417/95	The suspect absconded as per CID letter Ref:CID/SEC/2/16/VOL.X29 of 21.12.2000. The case still pending under investigations.	21,140.05
DEO Homabay	Dec 97	Alfred Ogeto - TSC 500019. Homabay	Accused person put on 2 years probation. Matter referred to AG	787,210.15

		Criminal Case No.125/98	for further directions. Officer dismissed by Commission for negligence of duty	
DEO W/Pokot	Aug 97	J. K. Cheruiyot – TSC 500628 OB 21 of 19/9/97	Case Pending with DCIO W/Pokot. No arrests have been made to date.	110,370.45
DEO Muranga	Dec 98	Anthony K. Riungu-TSC 600227 and James W. Karema TSC 500984	No arrests have been made. The matter reported to the DCIO Muranga Ref OB 20/13/8/99 DATED 13/8/1999.	164,621.85
DEO Nyamira	Feb 98	Alfred Ogeto – TSC 50019	Officer Dismissed	24,541.80
DEO Gucha	Nov 00	David Kibet Majeshi an Administration Officer and James Oeba Bundi – TSC 6000345 Case No.691/430/2000	One of the accused persons Mr. James Oeba Bundi – TSC 600345 was discharged by the court under Section 210 of the CPC due to lack of evidence. But Mr. David Kibet Majeshi was found guilty and put his own defence by the court. The case is still pending at the Kisii Law Courts.	1,147,806.20
DEO Migori	Jan 02	Martin Gichege TSC 500364. Case no. CR 661/14/2001 OB No. 47 of 9.1.2001	The officer was acquitted by the court under section 215 of the CPC due to lack of evidence. Administrative Action taken by the Commission to recover Kshs.132,855.10 and Kshs.121,311.80 respectively from the salary of Mr. Gichege @ Kshs.2,000 with effect from 1/10/05. Balance outstanding as at 31/1/06 is Kshs.246,196.90	132,884
DEO Migori	Jan 02	Martin Gichege TSC 500364. Case no. CR 661/64/2002 OB No. 47 of 9.2.2002	As above.	121,311.80
DEO Homabay	July 98	Khisa Kololi TSC/600276	Case No.617/205/99 case still pending with the DCIO Homabay. He claims vide his letter Ref: CID/C/CRI/6/8/108/2000 dated 26 <sup>th</sup> July 2000 the suspect is still at large.	14,426.20
DEO Kisumu	July 99	Late Liza Mugele	Authority being sought from the Trustees of TSC Superannuation Pension Scheme to recover from dues available to the late Liza Mugele	44,973.80
Joel Nderitu Rukwaro TSC/14954		Cheque 339058 dated 10/11/99 intercepted and deposited in account No.031-800-098 at Afya Centre	The CID wrote to the Commission indicating that they have been unable to arrest the fraudsters and establish their whereabouts vide their letter	61,211.00

		Post Bank and encashed by bank fraudsters	CID/IB/SED/2/16/VOL11/19 dated 1/11/2002. They published three photographs of wanted persons on the dailies on 2 <sup>nd</sup> October 2002.	
Dinah Mukami Njuguna TSC/301454		Cheque No.338520 dated 2/11/99 intercepted and encashed at Post Bank Ronald Ngala Branch by bank fraudsters on 9/12/99. The case reported to the Director of CID and inquiry No.84/2000 on 12/9/2000 under investigating officer Joseph Kaberia	The CID wrote to the Commission indicating that they have been unable to arrest the fraudsters and establish their whereabouts vide their letter CID/IB/SEC/2/16/VOL11/19 dated 1/11/2002. They published three photographs of wanted persons on the dailies on 2 <sup>nd</sup> October 2002.	53,518.60
Igantius Mwaniki TSC/31331		Cheque No.317322 dated 4/8/99 intercepted at Post Bank, Ronald Ngala and cleared on 19/10/1999 by fraudsters. Inquiry case file No.84/2000 opened by CID.	The CID wrote to the Commission indicating that they have been unable to arrest the fraudsters and establish their whereabouts vide their letter CID/IB/SEC/2/16/VOL11/19 dated 1/11/2002. They published three photographs of wanted persons on the dailies on 2 <sup>nd</sup> October 2002.	122,942.15
Johnstone Njue TSC/321598		Cheque No.331064 dated 18/10/99 intercepted and deposited at Post Bank Head Office account no. KAAAC-185463-4 and cleared on 27/10/99 by the bank.	No arrests have been made and case still pending.	135,650.50
Joseph K. A. Tanui TSC/117137		Cheque no.338520 dated 2/11/99 intercepted and encashed at Post Bank Ronald Ngala branch by bank fraudsters on 18/8/2000. The case reported to director of CID and inquiry no. 84/2000 on 12/9/2000 under investigating officer Joseph Kaberia of CID headquarters.	No arrests have been made and case still pending.	55,626.76

Money Lost in Provincial Offices	
TSC Secretariat	Kshs. 1,317.15
Central Province Primary	Kshs 64,137.10
Eastern Province Primary	Kshs. 334,535.80
Cost Province Primary	Kshs. 129,996.65
Rift Valley Province Primary	Kshs. 28,767.05
Western Province Primary	Kshs. 112,531.60
Nyanza Province	Kshs. 417,426.20
Nrb/Msa N/E Provinces	Kshs. 33,114.80
Department 44-58	Kshs. 480,817.45
Department 52	Kshs. 11,126.60

**The Committee observed with concern that:-**

- (iii) despite complaints from the Commission, the Director of Criminal Investigation Department had failed to investigate the theft of teachers salaries of Kshs.353,976.60 and Kshs.21,140.05 at DEO Offices in Vihiga and Mwingi respectively; and
- (i) the Commission had continued to experience losses of teachers' salaries through theft by its own staff such that as at May 2006, an amount of Kshs.6,984,990.60 (which includes an amount of Kshs.1,257,798.70 associated with losses in Provincial Education Offices) is still outstanding.

The Committee further observed that the Commission and the Director of Criminal Investigation Department are inept in pursuit of the above-mentioned losses.

**The Committee recommends that:-**

- (i) the Director of Criminal Investigations Department expedites investigations into the matter of losses of teachers' salaries through theft and fraudulent actions and reports back to this Committee by 31<sup>st</sup> December 2006; and
- (ii) that the Commission puts in place measures to ensure that further losses of the teachers' salaries does not occur; and
- (iii) Teachers Service Commission makes provision for such losses.

### **3.0 SHORT TERM DEPOSIT**

The balance sheet shows short-term deposits with Pioneer Building Society which ceased operation in 1987 amounting to Kshs. 6,985,354 which matured on various dates in 1986. The deposits had accrued interest amounting to Kshs. 1,194,270 by 13 February 1987, when according to the

information seen, the deposits ceased to attract interest. No efforts have been made by the Commission to recover the amounts due.

**The Committee heard from the Chief Executive that short term deposits of Kshs.6,985,354 held in Pioneer Building Society, which ceased operation in 1987, matured on various dates in 1986 thereby accruing interest of Kshs.1,194,270 as at 13<sup>th</sup> February 1987 when deposits ceased to attract interest.**

**The Committee was informed that the Commission was pursuing payments of dividends through the Official Receiver, Registrar General, who has since informed the Commission that as at April 20, 2005, no dividend has been declared.**

**The Committee recommends that the Chief Executive continues pursuing the recovery of the amounts with the Official Receiver and ensures prompt payment of interests / dividends.**

#### **4.0 CASH ON HAND AND AT BANK**

The cash on hand and at Bank figure of Kshs.810,258,537 as at 30 June 2002 includes stale cheques amounting to Kshs.28,996,608 out of which a cheque that the Commission ever carried out investigation to ascertain why a cheque for Kshs.4,079,502 was never presented for payment and therefore became stale. Consequently it has not been possible to confirm the accuracy of the cash on hand and at bank as at 30 June 2002.

**The Committee heard evidence from the Chief Executive that the Cash on hand and Bank balance of Kshs.810,258,537 included stale cheques valued at Kshs.28,996,608 out of which Cheque No. 187792 of Kshs.4,079,502 dated March 24, 1999 was drawn through Bank Account No. 01020756051 at Standard Chartered Bank, Nairobi for credit into the account of Kakamega Teachers Savings and Credit Society Ltd in respect of shares and loan deductions from teachers.**

**The Committee further heard that the cheque became stale after 24<sup>th</sup> April 2003 (after six years) and was subsequently removed from the Creditors Account to Accumulated Fund of the Commission vide letter JE/6354/02/03 dated 30<sup>th</sup> June 2003 and that no cash was lost.**

**The Committee reiterates its recommendations on the 13<sup>th</sup> Report that the Chief Executive ensures that stale cheques are accounted for in accordance with the Commission's accounting regulations.**

#### **5.0 CREDITORS**

The balance sheet as at 30 June shows creditors' balance of Kshs.1,674,368,157 made up of Kshs.1,589,334,725.25 in respect of clearances and Kshs.28,996,608.05 in respect of stale cheques. Apart from

the fact that these balances were not analyzed to disclose what they represent, no indication has been given of the action taken to bring them to manageable levels and eventual clearance.

**The Committee heard from the Chief Executive that the balance sheet for the year under review showed creditors balance of Kshs.1,974,368,157 made up of Kshs.1,589,334,725.25 in respect of clearance accounts and Kshs.28,996,608.05 in respect of stale cheques which were not analyzed to disclose what they represented.**

**The Chief Executive informed the Committee that the clearance and stale cheque accounts have been analyzed and verified by Controller and Auditor General, thereby solving the audit query.**

**REPORT OF THE CONTROLLER & AUDITOR GENERAL ON THE  
ACCOUNTS OF THE TEACHERS SERVICE COMMISSION FOR THE YEAR  
ENDING 30<sup>TH</sup> JUNE 2003.**

As disclosed in note 9 to the financial statements the debtors balance of Kshs.241,256,428 as at 30 June 2003, includes losses of cash amounting to Kshs. 378,714.45 which were not analyzed to indicate how they occurred. In the absence of full analysis of these losses it has not been possible to ascertain the accuracy of the debtors balance of Kshs.241,256,428.00 shown in the balance sheet.

**The Committee heard evidence given by the Chief Executive that the debtors' balance of Kshs.241,256,428 as at 30<sup>th</sup> June 2003 includes losses of cash amounting to Kshs.7,373,714.45 which were not analyzed to indicate how they occurred.**

**The situation has since been rectified and the Commission has availed the details of losses incurred to the Kenya National Audit office, thereby resolving the audit query.**

**REPORT OF THE CONTROLLER & AUDITOR GENERAL ON THE  
ACCOUNTS OF KENYA PORTS AUTHORITY FOR YEAR ENDING 30 JUNE  
2001.**

**1. COMPUTER SOFTWARE DEVELOPMENT COSTS - KSHS.  
317,160,257.00**

During the year ended 30 June 2001 the Authority entered into an Agreement with a South African Company, Systems Application Products (Africa) Propriety Ltd for purchase and installation of a Computer Software. However, it was observed that the tendering process was not open in that only three (3) firms had made written submissions of their proposals and because the firms were offering different products, the winner of the contract was judged on a Power Point presentation to the Board and Management. The authority also entered into a tripartite professional services agreement with Systems Application Products without tendering. As indicated in note II to the financial statements the total amount spent on the computer software Development amounted to Kshs. 317,160,257.00. In absence of the tender documents showing detailed specifications of the software and professional services to be rendered and how the tender was adjudicated, it has not been possible to confirm that the Authority obtained value for Kshs. 317,160,257,090 spent under this project.

**The Committee heard the evidence given by the Chief Executive that the Authority through a closed tender, invited three firms, M/s. Software Applications Products Ltd (SAP); M/s. Oracle Ltd and M/s. System Applications Products Ltd (SAL) to quote for an integrated Enterprise Resource Planning Solution (ERP).**

**The Committee further heard that:-**

- (i) on technical evaluation, the three firms were evaluated on parameters of product superiority, suitability, support and quality assurance; SAL and Oracle were disqualified at this stage;**
- (ii) the three firms had been invited to present a Power Point display of their proposed solutions as part of the Technical Evaluation Process;**
- (iii) on award of tender, the Authority requested SAP to provide a turnkey solution of the system. SAP recommended the appointment of Ms. Soluziona as its implementation partner, subsequent to which the terms and conditions of a tripartite contract between the Authority, SAP and Soluziona were negotiated by the Committee of the Board of Directors and duly approved by the Board. The Authority was granted approval by the parent Ministry for the procurement.**

**The Committee noted that the Board in its sitting of 30<sup>th</sup> August 2000, approved the award of the ERP to M/s. SAP and thereafter in March 2001 approved the appointment of M/s. Soluziona as an implementation partner.**

**The Committee observed with concern that the Authority failed to seek the sanction of the Treasury to exempt the procurement of the project from the requisite open tender.**

**The Committee recommends that the Chief Executive ensures that statutes, rules and regulations pertaining to procurement of goods and services are adhered to.**

## **2. WRITE OFFS OF CONTRACTUAL CLAIMS - KSHS. 513,380,162.55**

In August 1994, the Authority, without inviting open competitive appointed M/s Mide Architects to provide professional services for extension and refurbishment of Kipevu Headquarters and the Authority at the Port of Mombasa. M/s Mode Architects were to lead consultants and following their appointment they in turn appointed, in a selective basis, three sub-consultants to design the project. The project proposed construction of extra floors on the existing structure and the consultants were paid initial payment amounting to Kshs. 42,000,000 in respect of the fee notes accepted by the Authority. The Project was however abandoned in August 1995 for being impractical. Available information indicates that the Project was designed without properly establishing where the existing foundation of the present buildings could support extra weight and without prior approval, of the Parent Ministry for Treasury. After the abandonment of the Project, the consultants were paid a total of Kshs. 481,380,162.55 thereby bringing total nugatory payments on the Project to Kshs. 513,380,162.55 included total payments of Kshs. 315,691,200 to Jagar Consultants the project's quantity surveyors. This amount included court awards for breach of contract where the consultant was awarded a decretal amount of Kshs. 197,973,367.05 against the Authority made up principal amount of Kshs. 97,285,505.85 and interest of Kshs. 100,687, 737.05 calculated at 26% per annum from 22/06/95 to 18/06/99. The Authority was however unable to pay the decretal sum of Kshs. 197,973,367.05 in one lump sum and consequently negotiated with the decree holder to pay Kshs. 10,000,000 on 31 July 1999 and the balance at Kshs. 5,000,000 until payment in full, the outstanding amount earning interest at the court rate of 26% per annum. As a result the total payment to Jagar Consultants stood at Kshs. 315,691,200 as at 30 June 2001 as already indicated above. It would appear the Authority embarked on the project without proper consultations and planning and ended up not obtaining value for the money spent.

**Observing that it had exhaustively deliberated on the matter of contractual fees associated with refurbishing the Authority's Kipevu Headquarters during the preparation of its 12<sup>th</sup> Report (page 57), which has since been adopted by the House, the**

Committee took evidence on the paragraph ONLY to the extent of fresh evidence / information which may not have been provided in preparation of the above-mentioned report.

In the 12<sup>th</sup> Report, the Committee had noted that:-

- (i) *the idea of refurbishing the Headquarters was initiated in a Board Paper Memorandum No. 888 of 1994 which among others stated that the building required extensive rehabilitation in operations and marine offices, replacement of floor tiles, toilet fittings, cleaning of windows, wall repainting, repairing of cold water fountains, harmonization of external wall appearances, improvement of the fire station and creation of new offices at the new Services Area for the Purchasing and Supplies Departments.*
- (ii) *the Board in its 163<sup>rd</sup> sitting held on 24<sup>th</sup> August, 1994 approved the proposals subject to the fact that the Architect and other Consultants would only be paid if construction work was undertaken in furtherance of the designs and the letter appointing the Lead Consultants.*
- (iii) *In September 1994, the following consultants were appointed to work under the Lead Consultant in accordance with the terms and conditions agreed upon between the Authority and the Lead Consultants: M/s. Kisa and Partners - Mechanical/Electrical Services: M/s. Multiconsult Consulting Engineering--Civil/Structural Service: M/s. Jagar Consultants- Quantity Surveying Services*
- (iv) *that, meanwhile, the composition of the Board had changed, and that, in March 1995, the Lead Consultants and the three other Consultants presented their fee notes amounting to Kshs.42 million for design works and that payments were made following Board's approval during its 172 sitting held on 8<sup>th</sup> August, 1995. The Board making the decision consisted of Mr. A.C Juma, Chairman, Mr. Simeon M. Mkalla, Managing Director; Mr. S.N. Arasa, Director (P.S); Mr. J.K. Ole Wuantai, Director, Mr. W.K. Rotich, Director; Mr. O.M.A. Ahmed, Alternate Director and in attendance was Mr. George Dulu, Ag. Secretary. The Consultants were paid as follows:*

♦ Mode Architect	-	Kshs.11,625,600
♦ Multiconsult	-	Kshs. 6,908,800
♦ Kisa & Partners	-	Kshs. 4,774,400
♦ Jagar Consultants	-	<u>Kshs.18,691,200</u>
<b>Total</b>		<b><u>Kshs.42,000,000</u></b>

*These payments were meant to defray costs incurred by the Consultant while the overall issue of their fees was being considered.*

- (v) a review of the design works by M/s. Davidson and Ward revealed that the costs of the whole project were high and subsequently the costs were reviewed downwards.*
- (vi) the project was abandoned thereafter ostensibly for being impractical and that a total of Kshs.331,317,163 had been paid to the Consultants for design work and drawings as at 28<sup>th</sup> February, 2001.*
- (vii) the Authority had paid a total of Kshs.405,849,355.95 as at 31<sup>st</sup> March 2001 on the abandoned project as follows:*
  - ♦ Mode Architect - Kshs.147,445,658.98*
  - ♦ Multiconsult - Kshs. 87,635,457.85*
  - ♦ Kisa & Partners - Kshs. 60,515,613.95*
  - ♦ Jagar Consultants - Kshs.110,253,625.20*
  - Kshs.405,252,625.20*
- (viii) the Authority lost a civil suit filed by M/s. Jagar Consultants vide HCCC No. 2931 of 1997 for breach of contract and it decreed that the Authority must pay a total of Kshs.97,973,367.05 inclusive of interests of Kshs.100,689,737.20 at 26%. The Authority entered into an agreement with the Consultant to pay the amount in three installments.*
- (ix) while the other three Consultants amicably resolved their claims through joint meetings with the Authority on pending contractual/consultancy claims, M/s. Jagar Consultants who carried out Quantity Surveying work based drawings supplied by Architects and the structural Engineers which included preparation of Bills of Quantities took the Authority to Court which awarded it full principal fee claim of Kshs.97,282,505.*
- (x) owing to the poor cash flow to the Authority prevalent then, the management entered into an agreement with M/s. Jagar Consultants to settle the decretal amount by installments of Kshs.5 million per month with an initial payment of*

*Kshs.10 million and that on 17<sup>th</sup> July, 2001 the two parties agreed to settle the outstanding amount as follows:*

<i>17<sup>th</sup> July 2001</i>	<i>-</i>	<i>Kshs.57.5 million</i>
<i>31<sup>st</sup> August 2001</i>	<i>-</i>	<i>Kshs.57.5 million</i>
<i>30<sup>th</sup> September 2001</i>	<i>-</i>	<i>Kshs.57 million</i>

*The total amount paid to M/s. Jagar Consultants in respect of the alleged Quantity Surveying works between 18<sup>th</sup> November 1995 and 27<sup>th</sup> September, 2001 came to Kshs.315,691,200.*

- (xi) although the M/s. Jagar Consultants had been hired under Architects and Quantity Surveyors Act Cap. 525, the principal fee claim of Kshs.110,252,625.20 was inflated compared to the fees charged by the other Consultants.*
- (xii) the Court ruling vide Civil Case No. 2931 1997 failed to take cognizance of the Board's earlier decision made on 24<sup>th</sup> August, 1994 during its 163<sup>rd</sup> sitting that the Consultants should only be paid for services rendered if construction work was undertaken in furtherance of the designs and that the High Court award of interest at the rate of 26% was very punitive to the Authority.*

*Further, the Committee had observed that:*

- (i) the Board had initially resolved and explicitly approved for refurbishment and rehabilitation works only, with reference to looking into possibility of extension and additional floors, subject to its approval and that there was no budgetary allocation for the extension and the additional floors.*
- (ii) the then Chief Executive Mr. Simeon Mkalla and the then Secretary Mr. George Dulu (now Judge of the High Court) appeared to have deliberately withheld from the Board its earlier decision that payments for the design works would only be made if construction work was undertaken in furtherance of the designs and that as a result, the Board in its 172 Sitting approved payments to Consultants.*
- (iii) on the basis of the initial project, the fee note paid to M/s. Jagar Consultants on quantity surveying were inordinately*

*inflated in comparison to fees paid to the Consultants thus flouting the provisions of CAP 525 of the Laws of Kenya.*

- (iv) the project that included extensions and additional floors was neither viable nor necessary as the Authority then and now has sufficient office space and some of the works earmarked for rehabilitation did not require designing as they were normal maintenance works.*
- (v) the High Court ruling vide civil case No. 2931 of 1997 ignored to take into account the Board's original decision of 24<sup>th</sup> August 1994 on appointment and payments to Consultants. Had the Court taken cognizance of this decision, it would have made a different decision.*

The Committee therefore, in compiling this 14<sup>th</sup> Report, received requests from Messrs. George M. A. Dulu and Hon. J. N. Gachagua to give further evidence on the matter:

The Hon. Mr. Justice George Dulu informed the Committee that:-

- (i) even though he was Acting Secretary of the Board of Directors the execution of the project, he did not participate in preparation of the Memo No.59 of 1995 which was tabled at the 172<sup>nd</sup> Board Meeting of August 8, 1995; since his duties involved:-
  - to receive Board Memos that were prepared by departmental/divisional heads;
  - to number and oversee photocopying and binding of the Memo's for inclusion in the agenda of the subsequent Board meetings;
  - to distribute to all Directors, Board Chairman and Managing Directors such Board Memos;
  - to prepare minutes of the Board and Action Taken Papers on decisions of previous Board Meetings for approval and tabling to the Board; and
  - to communicate in writing the decisions of the Board of Directors to various departmental / divisional heads for appropriate action.
- (ii) at the time of the 172<sup>nd</sup> Board Meeting in which the Memo No. 59 of 1995 was presented, he did not notice that it failed to inform the Board that payment for the design works would only be made if construction work was undertaken; and,

- (iv) at the time, the Authority had several changes in Chairmanship and Directorship within a period of 5 years, which impacted negatively on the Corporate working environment. As such, there was significant disconnect between the management and the Board.

During the appearance before the Committee and in light of the contents of the 12<sup>th</sup> Report, the Committee heard from Hon. J. N. Gachagua that:-

- (i) the project consultants M/s Mode Architects were appointed by the Authority vide a letter of 24<sup>th</sup> August 1994 which among other things stated that "professional design fees attributable shall be paid only at the construction stage";
- (ii) M/s. Jagar Consultants was commissioned as quantity surveyor by the Lead Consultant, Mode Architects vide their letter Ref. No. MA/JC/94/3 dated 7<sup>th</sup> September 1994, which among other things stated that "your appointment is in accordance with the letter from the client" (which specified that professional design fees attributable shall be paid only at the construction stage);
- (iii) notwithstanding the above condition by the client, M/s Jagar Consultants accepted the offer and there after went ahead to carry out the quantity survey works which included obtaining drawings from the architect and electrical engineers which was pertinent to preparation of Bills of Quantities;
- (iv) on March 8, 1995 having duly completed their work Jagar Consultants forwarded blank Bills of Quantities to the Authority. Invariably, the BQs were meant to assist the Authority to prepare tender documents for the works;
- (v) on 22<sup>nd</sup> March 1995. on instructions of the Authority, M/s Jagar Consultants priced and forwarded the BQs again based on the then prevailing construction rates which estimated that the building would comprise of , Kshs 515 million for Phase I, 908 million for Phase II and 124 million for Phase III;

- (vi) on receipt of the documents the then Chief Civil Engineer at the Authority Mr. Obed. E. Njiru on behalf of the Engineering Department confirmed to M/s Jagar Consultants that the drawings and documentations as received had met the required standards and were satisfactory up to the tender stage such that construction could commence using the documents. Subject to availability of funds and having checked the fee notes, he recommended payment of Kshs. 110,252,624.25 to M/s Jagar Consultants;
- (vii) since the project had not been budgeted for, the Authority had difficulties in meeting its obligations. Thereafter M/s Jagar Consultants were paid Kshs. 12,696,039.00 as part payment. At the same time the Lead Consultants were paid Kshs. 42,000,000 (in August 1996) while they expected the Authority to clear the standing balance of 363,849,414.10. Observing that actual construction had not commenced the Lead Consultants implored upon the Authority to implement the project;
- (viii) despite demands by M/s. Jagar Consultants, the Authority declined to pay the outstanding balances compelling the former to seek legal re-dress vide HCCC No. 2931 of 1997 claiming Kshs 97,283,585.85;
- (ix) when the above mentioned case was ongoing, Jagar Consultants on 11<sup>th</sup> December 1997 filed an application for summary judgment. However before the same could be argued the Authority objected, citing that the claim was statutory time barred. The application was dismissed on 11<sup>th</sup> June 1998. The Authority then moved to the Court of Appeal with an application for stay of proceedings. The Court of Appeal delivering its ruling on 13<sup>th</sup> November 1998 refused stay, and ruled that the claim was not statutory time barred;
- (x) thereafter in his ruling of 22<sup>nd</sup> March 1999, Judge A. Mbogholi Msagha awarded M/s Jagar Consultants their claim of Kshs 97,283,585.85 plus costs and interest;
- (xi) the Authority, thereafter appealed against this ruling vide the Court of Appeal Civil Application No. 106 of

1999. A ruling was made in favour of Jagar Consultants on 2<sup>nd</sup> July 1999;

- (xii) owing to the poor cash flow, the management entered into an agreement with M/s. Jagar Consultants to settle the decretal amount by installments of Kshs.5 million per month with an initial payment of Kshs.10 million. On 17<sup>th</sup> July, 2001 the two parties again agreed to settle the outstanding amount on three installments of Ksh. 57.5 million (twice) and 57 million; and
- (xiii) following the above mentioned judgment other consultants in the project negotiated fees payable to them with the Authority on *Quanta Merut* basis;

The Committee noted that even though M/s. Multi Consult had confirmed that the building could support the extra weight if supported structurally, the project was abandoned because the Authority could not meet its financial implication. Further it had not been budgeted for neither had it been sanctioned by the parent Ministry.

In view of the above new evidence the Committee held that:-

- (i) by failing to inform the Board of its earlier resolution of its 163<sup>rd</sup> sitting of August 24, 1994, the then Ag. Board Secretary, Mr. George Dulu (now Judge of the High Court) abdicated his duties of advising and guiding the Board;
- (ii) pursuant to Architects and Quantity Surveyors Act, Cap 525, it is a professional mis-conduct for an Architect or a Quantity Surveyor to undertake or accept instructions for professional work on the basis that if a successful result is not attained , a reduction of the fee laid down on the scale of charges will be made and no fee will be charged. It therefore would have been wrong for any such consultant to accept offer by the Lead Consultants on the basis of payments being made when construction commences;
- (iii) by its own nature the work of a Quantity Surveyor in this project was to prepare Bills Of Quantities, which would aid the Authority to prepare tender documents for the construction to commence. Commencement of construction was pegged on availability of funds- a process that none of the consultants had control over; and

- (iv) it is not the role of a Quantity Surveyor to determine whether or not a building would support extra weight;

Arising from its recommendation in the 12<sup>th</sup> Report, the Committee noted that the matter of probable receiving of unlawful payments amounting to Kshs 315,691,200 by M/s Jagar Consultants and the conduct of the then Managing Director and Company Secretary of KPA had been forwarded to Kenya Anti-Corruption Commission for investigation.

It was also noted that the Director of Kenya Anti-Corruption Commission had Vide Gazette Notice No. 3355, reported that:

*“KACC/FI/NQ/55/06: Investigations by KACC established that Jagar consultants were appointed through the lead consultant of the project and the appointment was approved by the Management of K.P.A. The investigation also established that in 1994, there were no clear procurement guidelines as to the manner in which consultants would be engaged. Further, the K.P.A. Rules of Procurement had given the Chief Civil Engineer a free hand to make appointments in civil engineering projects. It was also noted that the matter regarding the payment of the consultancy fee was taken to Court in civil case No. 2931/1997 and orders were made in favour of the firm.*

*The file was forwarded to the Attorney-General on 23<sup>rd</sup> March, 2007 with recommendations that the same be closed in view of the fact that there were no procurement regulations regulating procurement of consultancy services and further that the issues relating to the consultancy were addressed by both the High Court and Court of Appeal. The Attorney-General’s advice on the matter is awaited”*

Whilst taking cognizance of the Report by KACC, the Committee therefore recommends that this House asks the Attorney General to act on the file with view to concluding the matter.

### **3. ACCRUED PENSION LIABILITY**

Included in the non-current liabilities as at 30 June 2001 is accrued pension liability figure of Kshs. 4,241,079,542. Although this figure is based on 1998 Final Actuarial Report, the Interim Actuarial report as at 31 December 2000 revealed that the liability could rise up to Kshs. 6,885,000,000.00. Although the Authority had submitted to the Retirement Benefits Authority a remedial Plan for containing the pension deficit, the proposals in the plan have not been produced for audit review.

Consequently, it was not possible to express an opinion on the implementation timetable and the reduction of the deficit to acceptable levels.

**The Committee heard the evidence given by the Chief Executive that the accrued liability figure of Kshs.4,241,079,542 included in the non-current liability during the year under review was based on a 1998 actuarial report and that an interim actuarial report as at 31<sup>st</sup> December 2000 revealed that liability could rise to Kshs.6,885,000,000.**

**The Committee was informed that the Authority has since started implementing the RBA approved plan, containing a deficit of Kshs.6.8 million in conjunction with the scheme sponsors and trustees.**

**The Committee further heard that the Authority has submitted the RBA Approved Plan to the Kenya National Audit Office for verification.**

#### **4. STOCKS**

The balance sheet stock figure of Kshs. 1,455,795,748 includes Kshs. 73,877,513 and Kshs. 59,900,029 for goods in transit and unaccounted for stocks respectively. Included in the goods in transit figure are goods worth Kshs. 18,864,786 which had been in transit between 1993 and 1999. Although the Authority claims that the goods had been received and used, only stores worth Kshs. 12,805,105.89 have been ascertained as having been received even though no records existed to confirm receipt of the goods in the stores records. Further the Authority wrote off Kshs. 18,020,000 out of the figure of Kshs. 59,900,029 under unaccounted for stock as shortage. Under the circumstances, therefore, it was not possible to ascertain the completeness of the stock figure of Kshs. 1,455,795,748 as reflected in the financial statements as at 30 June 2001.

**The Committee heard the evidence given by the Chief Executive that the issue of unaccounted for stocks worth Kshs.12,805,105.89 and the differential stock worth Kshs.6,059,68.11 has since been reconciled and that stock worth Kshs.600,000 has not been accounted for.**

**The Committee recommends that:-**

- (i) the Kenya National Audit Office verifies the completeness of the stock figures of Kshs.73,877,513 shown on the balance sheet and report to the Committee by the 31<sup>st</sup> of December 2007; and**
- (ii) the Chief Executive ensures that stocks and stores at the Authority are accounted for on timely basis and documents in support of such stores be availed to auditors for verification as and when required.**

**REPORT OF THE CONTROLLER & AUDITOR GENERAL ON THE  
ACCOUNTS OF KENYA PORTS AUTHORITY FOR THE YEAR ENDING 30  
JUNE 2002**

**1. FINANCIAL POSITION**

During the year ended 30 June 2002 the Authority realized a profit of Kshs. 867,777,464 which was a reduction of Kshs. 385,967,271 from the previous year's profit of Kshs. 1,255,744,735. The reduction in profit was mainly due to increase in staff cost of Kshs. 238.25 million and finance and legal cost of Kshs. 296.82 million. Further the finance and legal cost of Kshs. 951,871,373 charged to profit and loss includes Stock Write Off figure of Kshs. 497,996,260 which had not been provided for in the budget. The stock write off accounted for 52.3 percent of the total finance and legal costs.

**The Committee heard the evidence given by the Chief Executive that the Authority realized a profit of Kshs.867,777,464 which was a reduction of Kshs.385,967,271 from the previous years profit of Kshs.1,255,744,735 and that this reduction in profit was mainly attributed to increase in staff costs of Kshs.238.25 Million and finance and legal cost of Kshs.296.82 Million.**

**The Committee further heard that:-**

- (i) the increased staff overheads was occasioned by overtime payment and dilapidated and unreliable equipment at the port at the time, issues which have since been addressed by way of containing increase in staff costs by controlling the overtime payment to a policy amount not exceeding 20% of basic salary. Further, the Authority has been implementing its April 2001 Equipment Replacement Plan, which has seen the port acquire new machinery including gantry cranes, and terminal tractors;**
- (ii) the Authority maintains 5% general provision for stock obsolesce under its accounting policies, which translates to the budget figure of Kshs. 50 million on average stock holding as at the year 2001/2002. To comply with the International Accounting Standards, management undertook a valuation and physical verification exercise, which established that 34% of stock amounting to Kshs.487 million was obsolete subsequent to which the Authority wrote off the stock on authority of the Board.**
- (iii) arising from change of working hours at the port, a dispute was registered with the Trade Disputes Court No. 5200202 and that the case was heard from 11<sup>th</sup> September 2002. On 3<sup>rd</sup> February 2004, the management brought the matter to the attention of the Attorney General, requesting that the dispute**

**be resolved speedily. The AG communicated the concerns of the Authority to the Chief Justice on February 15, 2004. The matter is yet to be resolved.**

**The Committee observed with concern that it has taken inordinately long for the Trade Disputes Court to resolve the case No. 520/02 to the detriment of the Authority.**

**The Committee recommends that:-**

- (i) the Chief Executive in conjunction with the Attorney General, pursues the case No. 520/02 at the Trade Dispute Court to its soonest and logical conclusion and ensures that the interests of the Authority are safeguarded; and**
- (ii) the Authority endeavours towards reducing staff costs by having a lean workforce in the long run.**

## **2. ENERGY SAVING SYSTEM - KSHS. 28,004,561**

The Authority commissioned M/s. Collins Mercantile Services Limited to carry out a survey to determine the effectiveness of an electrical energy saving system covering the Mombasa Dock Area, Embakasi ICD, Kisumu ICD and Cannon Towers without inviting competitive tenders. The results and recommendations of the survey were delivered to the Management during the month of February 1998 and agreement for the project implementation signed on 04 September 2000 at a cost of Kshs. 28,004,561. It is however doubtful that the Project was successfully implemented especially because the contractor did not issue the Kenya Ports Authority (KPA) with a certificate of completion as was required by the Contract Agreement. The contractor did not also correct any faults resulting from defects in materials and manufacturing repairs or replacement that were noted in the Mombasa and Nairobi ICD Power Savings Units, and did not issue KPA with equipment warranty and Insurance of Saving Certificate through the American International Group (AIG) as was required by the contract agreement. It was also observed that between January 2002 and June 2004, the resultant power saving was only 569,220 KWH Units, or a total saving of Kshs. 9,949,254 from an installation that had cost KPA Kshs. 28,004,561. The Project was capitalized in the financial year under review. In the absence of competitive tenders and in the view of the systems failure in Mombasa where the results were below expectation by Kshs. 18,261,655 it was not possible to confirm that the Authority obtained value for money spent.

**The Committee heard the evidence given by the Chief Executive that M/s. Collins Mercantile Services Limited was commissioned by the Authority to carry out a survey to determine the effectiveness of an electrical energy saving system covering Mombasa Dock Area, Embakasi ICD, Kisumu ICD, and Cannon Towers without inviting open**

tenders and that the results and recommendations of the survey were delivered to the management during the month of February 1998. An agreement for the project implementation was signed on 4<sup>th</sup> September 2000 at a contract fee of Kshs.27,761,051 itemized as follows:-

Port Area	23,403,193
Embakasi Inland Container Depot	2,199,686
Kisumu ICD	1,363,957
Canon Towers	794,674
Total	<u>27,761,051</u>

The Committee further heard that:-

- (i) at implementation stage, Bandari College was left out as it was realized that it would be uneconomical to carry out the installation there although the completion certificates for the project were later signed and issued in 2002. The Contractor did not correct any faults resulting from defects in materials and manufacturing, neither were repairs or replacements that were noted in the Mombasa and Nairobi ICD Power Savings Units done. Further, the contractor did not issue the Authority with Equipment Warranty and Insurance of Saving Certificate as required by the contract agreement; and
- (ii) due to failure of the entire energy system and the above-mentioned non-performance by the contractor, the Authority entered Civil Suit No.17 of 2005 against the contractor M/s. Collins Mercantile Services of P. O. Box 25110 Nairobi for breach of contract, seeking compensation for damages (special) amounting to Kshs.20,676,909. The case is on-going.

The Committee observed with concern that the then Chief Executive single sourced M/s. Collins Mercantile Services Ltd to carry out survey of effectiveness of the Electrical Energy Saving System and went ahead to offer the contract for installing the Electrical Energy Saving System to the same company, which would appear to have been associated with an immediate former Chairman of the Authority's Board, Mr. Alfred C. Juma, again without inviting competitive tenders.

The Committee noted that the justification offered by the management that the contract was awarded to M/s Collins Mercantile Services Ltd. since they were the country's representative of Energy Saving Inc. of USA and pioneers of the technology at the time was unfounded in the absence of competitive bidding.

The Committee recommends that:-

- (i) the then Chief Executive and the Board of Directors who awarded the contract to M/s. Collins Mercantile Services Ltd

be held responsible for irregularly committing the Authority to incur the expenditure of Kshs.27,761,051 on the failed Energy Saving System;

- (ii) the amount of Kshs.27,761,051 be recovered from the then Chief Executive and the Board;
- (iii) the Director of Kenya Anti Corruption Commission institutes investigations into the role played by Mr. Alfred C. Juma, the then immediate former Chairman of the Authority in the award of the contract; and
- (iv) the Chief Executive pursues the Civil Case No. 17 of 2005 to its logical conclusion and ensures that the interests of the Authority are safeguarded in the case.

### **3. MERCHANT SHIPPING SUPERINTENDENT (M.S.S) ACCOUNT.**

The Creditors figure of Kshs. 796,447,115 as at 30 June 2002 includes Kshs. 50,393,491 under Merchant Shipping Account which is the net balance of revenue collected by the Kenya Ports Authority on behalf of the Government. As at 30 June 2002, the Authority had collected a total amount of Kshs. 274,456,047 out of which Kshs. 224,062,556 was spent by the Authority on behalf of the parent Ministry in respect of allowances and cost of foreign travels for official of the Ministry, No authority sanctioning the use of money collected from the Merchant Shipping Superintended account in this manner was produced for audit review. Consequently it was not possible to confirm the propriety of the amount so spent totaling Kshs. 224,062,556.

The Committee heard the evidence given by the Chief Executive that out of the total amount of Kshs.274,456,047 collected by Kenya Ports Authority on behalf of the government on the M.S.S. Account, Kshs.224,062,556 was spent by the Authority on behalf of the parent Ministry in respect of allowances and cost of foreign travel for officials of the ministry without being sanctioned by the Treasury.

The Committee was informed that:-

- (i) payments from M.S.S. Account by the Authority were honoured under written instructions by the Ministry of Transport;
- (ii) following the ratification of UNCTAD Code of Conduct for Linear Conferences Convention by Kenya, the Merchant Shipping Superintendent which existed as one of the departments of Kenya Ports Authority, was designated as the

appropriate authority to supervise the implementation of the Shipping and Maritime affairs in the Ministry of Transport;

- (iii) however, Gazette Notice No. 25 of 29<sup>th</sup> April 1994, which operationalized the collection of levy to M.S.S. office, recognized the Managing Director, KPA as the operator of the MSS Fund;
- (iv) although the expenditure of Kshs.224,062,556 was in support of the following activities provided for under the UNCTAD Code of Conduct for Linear Conferences, the normal budgetary process was not followed:-

Operational budgeted including staff costs	148,547,847.00
Training and Allowances	15,731,898.50
Transfers to Ministry of Transport	35,000,502.50
Subscriptions to Northern Corridor	24,782,305.00

The Committee noted that MSS was part of the Shipping and Maritime Affairs Department of the Ministry of Transport, even though expenditure from the account ought to have been sanctioned by the Treasury.

The Committee noted that M.S.S. account is now managed by the newly established Kenya Maritime Authority, effective 1<sup>st</sup> July 2005.

The Committee recommends that the Accounting Officer, Ministry of Transport seeks post facto authority from the Treasury for the expenditure of Kshs.224,062,556 from the M.S.S. Account during the period 1994 to 2002.

**REPORT OF THE CONTROLLER AND AUDITOR GENERAL ON THE  
FINANCIAL STATEMENTS OF KENYA PORTS AUTHORITY FOR THE  
YEAR ENDED 30 JUNE 2003**

**PROCUREMENT OF FAULTY TUG ENGINE GENERATORS**

Without qualifying my opinion, I draw attention to the acquisition of four engine-generating sets for the Authority's tugboats at a cost of Kshs.8,511,108. Three (3) of those engines failed in August, September and December 2002 respectively after installation and are lying unutilized in the Authority's dockyard while the fourth, which was collected by the supplier for repairs was never returned. As a result and in order to continue providing tug services, the Authority, without competitive bids, single sourced two (2) engines at a cost of Kshs.21,149.057 including airfreight and installation charges. Apart from the fact that the recoverability of the cost of the failed engines could not be ascertained, it was not possible to confirm that the Authority obtained value for money for the second acquisition in the absence of competitive bids.

**The Committee heard the evidence given by the Chief Executive that the Authority procured 4 engine generating sets for the Authority's tug boats at a cost of Kshs.8,511,108 and that three of those engines failed in August, September and December 2002 respectively after installation.**

**M/s. Bauman Engineering Ltd had been contracted to supply the engine generating sets, which were supplied from the manufacturers, M/s. Perkins Sabre (UK).**

**The Committee further heard that three of the four Perkins Sabre Generators TWGM, failed due to poor quality of water intercoolers. The manufacturers acknowledged this and supplied new intercoolers, which also failed. Subsequently, the management demanded replacement of the engines with new ones but the supplier, Bauman Engineering Ltd, declined to do so forcing the management to engage a marine engineering consultant to investigate and provide an independent report.**

**The Committee was informed that:-**

- (i) the Independent Consultants, M/s. D. K. Kariuki Marine & Survey Consultancy concluded that the Perkins Sabre generators could only operate efficiently in fresh water environment; the supplier, M/s. Bauman Supplied faulty engines which could not cope with sea environment, especially corrosion and turbulence;**
- (ii) the Authority wrote to M/s. Bauman Engineering Ltd on 11<sup>th</sup> March 2003 and 4<sup>th</sup> March 2004, demanding admission of liability and subsequent compensation for damages caused and associated with failure of the engines which had been installed**

on Tug EI Lamy and Tug Nguvu II and commissioned by the contractor;

- (iii) due to the above mentioned failure of the engine between the years 2001 and 2003, the Port was operating on one tug instead of the normal four. Subsequently, without competitive bidding, the Authority single sourced M/s. Damen Shipyards to supply two Caterpillar Engines at a cost of Kshs.21,149,057 including flight and installation charges. This was done on emergency basis;
- (iv) the decision to purchase the two Caterpillar Generators from M/s. Damen Shipyards of Netherlands, was influenced by the fact that Tug EI Lamy, was manufactured by the firm and had proved to be the best of all the five tug boats at the time; and
- (v) the Authority's Corporation Tender Committee (CTC) recommended the award of the tender to M/s Damen Shipyards after evaluating quotation for Caterpillar and Man Diesel Engines, which had been recommended by the firm.

The Committee noted that arising from the fact that the four generator sets that were supplied, installed and commissioned by M/s Bauman were faulty, the Authority on November instructed M/s Kaplan & Stratton Advocates to pursue compensation. The matter is yet to be finalized.

The Committee observed with concern that:-

- (i) even though the Authority directly procured the two Caterpillar generators on basis of urgency, the management failed to seek the approval of the Directorate of Public Procurement prior to purchase; and
- (ii) the management is inept in pursuing compensation from the supplier of the faulty engine generating sets.

The Committee recommends that:-

- (i) the Chief Executive employs all means possible, including litigation, and ensures that the Authority is compensated for the losses and associated damages occasioned by the failure of the four generator engines supplied by M/s. Bauman Engineering Ltd;
- (ii) m/s Bauman be precluded from award of contracts associated with State Corporations and the Government of Kenya; and
- (iii) the Chief Executive ensures that the government procedures in relation to procurement of goods and services are followed.

**REPORT OF THE CONTROLLER & AUDITOR GENERAL ON THE  
ACCOUNTS OF POSTAL CORPORATION OF KENYA FOR THE YEAR  
ENDING 30<sup>TH</sup> JUNE 2001**

**1. LAND AND BUILDINGS.**

The Land and Buildings balance of Kshs.2,971,877,004 as at 30 June 2001 includes 43 parcels of land valued at Kshs.313,210,000 for which the Corporation does not hold title deeds to and on which some of the Regional Post Offices stand. The balance sheet figure, however, excludes undetermined value of some ten(10) surveyed and unsurveyed parcels of land also without title deeds. The Corporation has another parcel of land along Jogoo Road measuring 0.160 hectares and valued at Kshs.1,500,000 whose ownership status could not be established and which, according to the Corporation, has been taken by a third party. Although the Corporation has explained that it has made sufficient efforts to obtain ownership documents, no evidence of such efforts or measures taken to safeguard its property, particularly land, have been seen. As a result, it was not possible to confirm that the Corporation's property is secure or that the fixed assets balance of Kshs.3,243,806,231 as at 30 June 2001 is fairly stated.

**The Committee heard the evidence given by the Chief Executive that the Corporation's Land and Buildings figure of Kshs.2,971,877,004 included 43 parcels of land valued at Kshs.313,210,000 for which the Corporation does not hold title deeds and on which some of the Regional Post Offices stand.**

**The Committee was informed that arising from its directive of April 8, 2005 during its meeting with Permanent Secretary Ministry of Transport and Communication the Transitional Management Committee (TMC) embarked on separation and vesting of assets of defunct Kenya Posts and Telecommunications Corporation (KP&TC) to successive corporations including Postal Corporation of Kenya (PCK). Subsequently out of the 43 parcels of land, the Corporation has since acquired 9 title deeds while it is pursuing processing of title documents for the following remaining 33 parcels as one of them (Bomet Post Office) was not vested to PCK;**

NO.	LOCATION	LOCALITY	CURRENT STATUS AND REMARKS
1.	Mogotio Post Office	Mogotio Centre	Lease preparation is complete. Awaiting registration at District Lands Office
2.	Mgange Post Office	In Government Land	In government land, PCK looking for alternative site
3.	Mtito Andei Post Office	Mtito Town	Letter of allotment under preparation.
4.	Lokitaung Post	Lokitaung	Yet to be surveyed.

	Office	Town	
5.	Voi Post Office	Voi Town	Letter of Allotment obtained. Processing title
6.	Kabete/Gikuni	Gikuni Town	Double vested to PCK & TKL in 1999. Forwarded to TMC for decision
7.	Narok Post Office	Narok Town	Survey has been approved. Lease to be drawn
8.	Menengai Post Office	Njoro Menengai	Not surveyed. Part of the plot in private hands and part on Railway land, Kenya Railways has agreed to excise portion.
9.	Rongai Post Office	Rongai Centre	Under process
10.	Kangari Post Office	Kangari Town	This is a new site. Surveyor liaising with Director of Physical Planning to obtain letter of allotment.
11.	MN/VI/2971 - Changamwe Post Office	Changamwe (MSA)	Surveyor is compiling ground survey data.
12.	Vipingo Post Office	Vipingo Plantation Centre	Awaiting allocation of plot from Kilifi Council
13.	548/X/5	Londiani Town	Survey approved, lease to be drawn by Director of Survey
14.	Khayega Post Office	Khayega Market	Registry Index map to be redrawn by Director of Survey
15.	52317/11/5A	Kangundo Township	Survey in progress
16.	Siaya Post Office	Siaya Town	Title delayed due to new allocation to be amalgamated to existing Post Office.
17.	Ukwala Post Office	Ukwala Town	Not surveyed. Part of Post Office building on private land. Requires sorting by way of sale/surrender.
18.	Kagio Market	Kagio Market	Processing title documents
19.	MSA South /1/61	Likoni- Lunga - Lunga Road	Survey done. Surveyor in the process of obtaining indent in order to prepare deed plan
20.	MSA/XXII/206	Ganjoni	Surveyor compiling ground survey data.
21.	209/9347/NBI	Jogoo Road	Pursuing documents at Lands Office
22.	209/11921	Upper Hill area	Surveyor searching for data. Problem of missing files.

23.	7288/103 Sotik Post Office	Sotik Township	Surveyor searching for data
24.	Litein Post Office	Litein Township	Surveyor searching for data.
25.	Chepkerio	Chepkerio Trading Centre	Registry index map amendment under way.
26	Mosoriot	Mosoriot Trading Centre	Awaiting replanning of the centre.
27	Kobujoi	Kobujoi trading centre	Surveyed, awaiting new Part Development Plan (PDP)
28	Sugotek Post Office	Sugotek S.T.T. Township	Registry Index Map being processed.
29.	Plot No. 46	Masii	Awaiting land adjudication section to finalize registration
30.	Plot No. 48	Kivingoni	Awaiting Adjudication section to finalize registration
31	Plot No. 47	Kithimani Town	Awaiting for Adjudication section to finalize registration
32	Plot No. 410	Mbembani	Awaiting for Adjudication section to finalize registration
33	Plot No. 408	Mutyambo	Awaiting for Adjudication section to finalize registration

The Committee further heard that:-

- (i) the defunct KP&TC held a letter of allotment and a map in respect to the Jogoo Road Plot;
- (ii) the Corporation has since found out that the Jogoo Road Plot L.R.No. 209/9347 which was valued at Kshs.1.5million (0.1993 ha.) was allocated to M/s. Prestine Enterprises (Kenya) Ltd of P. O. Box 526141 before the split of the defunct KP&TC vide Grant No. IR. 57834 of October 1, 1992; and
- (iii) M/s Prestine Enterprises, whose directors were Mohamed Yusuf Ali, Anverali Mohamed Ali, Iqbal Hussein and Laila Mohamed (all appointed in 1998) transferred the ownership of the plot to M/s. Samuel Njoroge Karanja on 26<sup>th</sup> February 1998 and that on 30<sup>th</sup> September 1998 the property was charged to National Bank of Kenya Ltd.

The Committee observed that it would appear that the Corporation has no case pursuing ownership of the Jogoo Road Plot L.R. No. 209/9347

The Committee recommends that:-

- (i) the Postmaster General, in conjunction with the Ministry of Lands expedites surveying and adjudication of the 33 parcels of land to facilitate issuance of the deeds to PCK;**
- (ii) the Commissioner of Lands expedites issuance of title documents to the Corporation for the 33 pieces of land mentioned above;**
- (iii) the Corporation stops incurring any further expenditure in pursuit of the Jogoo Road Plot L.R. No. 209/9347 and stops reflecting it and its value in its books.**

## **2. CASH AND BANK BALANCES**

The Cash and Bank balance figure of Kshs.571,476,236 as at 30 June 2001 included an amount of Kshs.14, 918, 794 in respect of Crown Agent and Universal Postal Union Account whose statements and supporting details were not produced for audit review. In addition the cash on hand figure of Kshs.70,622,584 includes an amount of Kshs.8,726,047 in respect of various shortages and theft. Further, the bank balance figure of Kshs.452,439,236 differs from balances reflected by the Corporation's cashbooks of Kshs.428,735,170 thereby resulting in unexplained difference of Kshs.23,704,066. The Corporation did not also make available documents to support remittances made between 20 July 1999 and 23 April 2001 to various stations amounting to Kshs.50,100,000. Consequently, it was not possible to confirm the accuracy and correctness of the Cash and bank balances figure of Kshs.571,476,236 as at 30 June 2001.

**The Committee heard the evidence given by the Chief Executive that:-**

- (i) Crown Agent Services of the United Kingdom had been commissioned by the defunct KP&TC to sell stamps on its behalf and the proceeds were captured under postal department of KP&TC. After the split, the Agent continued selling stamps and that the confirmed balance in respect of this account as at 30<sup>th</sup> June 2001 was £116,803.20 equivalent to Kshs.12,993,854, which has since been confirmed by the Controller and Auditor General;**
- (ii) PCK is a member of Universal Postal Union a United Nations Agency to which all postal administration world over are accountable in terms of operations, accounts and management and that the confirmed account as at 30<sup>th</sup> June 2001 was 7,234.90 Swiss Franc equivalent to Kshs.1,924,940 which has since been verified and confirmed by the Auditors.**
- (iii) that the amount of Kshs.452,439,256 in respect at bank balance as at 30<sup>th</sup> June 2001 has since been reconciled and verified by the Auditors.**

- (iv) the amount of Kshs.50,100,000 related to cash in transit from the Headquarters to various branches and that the remittance has since been established to be Kshs.48,600,000 since a cheque of Kshs.500,000 erroneously posted to Kitui was cancelled. The amount has since been verified and confirmed by the Auditors.
- (v) the amount of Kshs.8,726,047 included in the cash in hand figure of Kshs.70,622,524 represented an amount which had been stolen by employees of PCK between 1999 and June 2006 in its Coast, North Rift and Northern region for which an amount of Kshs.7,439,394 has since been recovered from staff salaries (4,650,461) and insurance, (2,788,933) leaving an outstanding balance of Kshs.1,286,553 for which the Corporation is pursuing with the insurance company and through the court.

The Committee observed that the amount of Kshs.8,726,047 included in the cash at hand figure was a wrong accounting procedure as the cash was no longer in the Corporation's custody.

The Committee recommends that the Post Master General:-

- (i) should ensure that all supporting documents relating to cash and bank balances are availed to the Controller and Auditor General for verification as and when required;
- (ii) ensure that the accounts of the Corporation are prepared according to International Accounting Standards; and
- (iii) pursues the recovery of the Kshs.1,286,653 (being the outstanding balance of the amount stolen by its staff) with the insurance company and the staff involved.

### **3. BUDGETARY CONTROL**

During the year under review, the Corporation did not exercise adequate Budgetary control and as a result it overspent its budget by Kshs.498,335,144 on four (4) of its expenditure items, which also contributed to the overall loss of Kshs. 40,084,704 realized for the year ended 30 June 2001. The Corporation did not provide any evidence to show that the over-expenditure was sanctioned by the Board of Directors, Parent Ministry or the Treasury, as required by Section 12 of the State Corporation Act (Cap. 446).

The Committee heard the evidence given by the Chief Executive that during the year under review the Corporation exceeded its approved budget by Kshs.377,412,106 and not Kshs.498,355,144 through telephone and telegraph, administration, maintenance and

miscellaneous expenses and that this over expenditure was neither sanctioned by the Parent Ministry nor Treasury, contrary to Section 12 of the State Corporations Act.

The Committee observed that even though the Board approved the expenditure, this approval was inadequate as the sanction of the parent Ministry and the Treasury was not sought.

The Committee recommends that the Chief Executive:-

- (i) seeks Post Facto authority from the Parent Ministry and Treasury to regularize the over expenditure of Kshs.377,412,106 incurred during the year; and
- (ii) ensures that any future expenditure is within the approved budget.

#### **4. SERVICE DEBTORS.**

The net Service Debtors figure of Kshs.514,431,098 as at 30 June 2001 includes foreign administration debts totaling Kshs.479,722,157 which could not be confirmed as the schedules provided for audit reflected debts amounting to Kshs.469,466,262 thereby resulting in an unexplained difference of Kshs. 10,255,895. Further, the Corporation wrote off amounts totaling Kshs.13,760,257 owed by two firms, without the approval by the Board. Consequently, it was not possible to confirm that the Corporation's service debtors of Kshs.574,431,098 as at 30 June 2001 are fairly stated in the financial statements.

The Committee heard the evidence given by the Chief Executive that the foreign administration debtors balance as at 30<sup>th</sup> June 2001 of Kshs.479,722,157 could not be confirmed as there was a difference of Kshs.10,255,896 which arose due to an overstatement of foreign exchange gains. The error was attributed to late confirmation of accounts by foreign administration and was adequately corrected, verified and confirmed by the Controller and Auditor General and adjustments made in the accounts of the Corporation in the year 2001/2002.

The Committee further heard that the amount of Kshs.13,760,257 was owed by M/s. Kenya Times Media Trust (Kshs.12,648,987) and M/s. Chapex Ltd (Kshs.111,270) which were outstanding from 1985 and that the Board of the defunct KP&TC had given approval to provide for the debts as bad and doubtful.

The Committee noted that the agreement between Kenya Times Media Trust Ltd and defunct KP&TC did not involve a written contract in respect of the services, thereby making it difficult for PCK to pursue the debt.

The Committee further observed that in the absence of express evidence, the approval of the Board on 26/9/2000 under Min. No. 20/00 to provide for the debt as bad and doubtful did not amount to authority for write off of the debt and that Kenya Times Media Trust and M/s. Chapex Ltd should be pursued to repay the outstanding debts.

The Committee recommends that the Postmaster General ensures that all supporting documents and schedules relating to the financial statements of the Corporation are availed to the auditors as and when required.

**REPORT OF THE CONTROLLER AND AUDITOR GENERAL ON THE  
FINANCIAL STATEMENTS OF THE POSTAL CORPORATION OF KENYA  
FOR THE YEAR ENDING 30<sup>TH</sup> JUNE 2002**

**1. FIXED ASSETS**

The net fixed assets figure of Kshs.3,136,777,911 as at 30 June 2002 excludes an undetermined value of some of the Corporation's surveyed and unsurveyed lands not valued as at 30 June 2002. The figure on the other hand includes land valued at Kshs.313,210,000 for which the Corporation does not hold title deeds. In addition, available information indicates that a potential developer has moved in to take possession of the Corporation's land on plot No.209/1934 situated along Jogoo Road, Nairobi and fenced it off. Although it has been explained that this parcel of land has not been registered to a third party as yet, the Corporation has not secured title documents to the property and the outcome of the dispute remains uncertain. In the circumstances therefore, its ownership could not be established. Arising from the foregoing, it was not possible to establish that the Corporation's properties without titles are secure and safeguarded from private developers, and that the tangible assets net value of Kshs.3,146,777,911 was fairly stated, in the financial statements.

**The Committee heard the evidence given by the Chief Executive that the Corporation's Land and Buildings figure of Kshs.2,971,877,004 included 43 parcels of land valued at Kshs.313,210,000 for which the Corporation does not hold title deeds and on which some of the Regional Post Offices stand.**

**The Committee was informed that arising from its directive of April 8, 2005 during its meeting with Permanent Secretary Ministry of Transport and Communications the Transitional Management Committee (TMC) embarked on separation and vesting of assets of the defunct Kenya Posts and Telecommunications Corporation (KP&TC) to successive corporations including Postal Corporation of Kenya (PCK). Subsequently out of the 43 parcels of land, the Corporation has since acquired 9 title deeds while it is pursuing processing of title documents for the following remaining 33 parcels as one of them (Bomet Post Office) was not vested to PCK;**

NO.	LOCATION	LOCALITY	CURRENT STATUS AND REMARKS
1.	Mogotio Post Office	Mogotio Centre	Lease preparation is complete. Awaiting registration at District Lands Office
2.	Mgange Post Office	In Government Land	In government land, PCK looking for alternative site
3.	Mtito Andei Post Office	Mtito Town	Letter of allotment under preparation.
4.	Lokitaung Post	Lokitaung	Yet to be surveyed.

	Office	Town	
5.	Voi Post Office	Voi Town	Letter of Allotment obtained. Processing title
6.	Kabete/Gikuni	Gikuni Town	Double vested to PCK & TKL in 1999 Forwarded to TMC for decision
7.	Narok Post Office	Narok Town	Survey has been approved. Lease to be drawn
8.	Menengai Post Office	Njoro Menengai	Not surveyed. Part of the plot in private hands and part on Railway land, Kenya Railways has agreed to excise portion.
9.	Rongai Post Office	Rongai Centre	Under process
10.	Kangari Post Office	Kangari Town	This is a new site. Surveyor liaising with Director of Physical Planning to obtain letter of allotment.
11.	MN/VI/2971 Changamwe Post Office	Changamwe (MSA)	Surveyor is compiling ground survey data.
12.	Vipingo Post Office	Vipingo Plantation Centre	Awaiting allocation of plot from Kilifi Council
13.	548/X/5	Londiani Town	Survey approved, lease to be drawn by Director of Survey
14.	Khayega Post Office	Khayega Market	Registry Index map to be redrawn by Director of Survey
15.	52317/11/5A	Kangundo Township	Survey in progress
16.	Siaya Post Office	Siaya Town	Title delayed due to new allocation to be amalgamated to existing Post Office.
17.	Ukwala Post Office	Ukwala Town	Not surveyed. Part of Post Office building on private land. Requires sorting by way of sale/surrender.
18	Kagio Market	Kagio Market	Processing title documents
19	MSA South /1/61	Likoni- Lunga - Lunga Road	Survey done. Surveyor in the process of obtaining indent in order to prepare deed plan
20	MSA/XXII/206	Ganjoni	Surveyor compiling ground survey data.
21	209/9347/NBI	Jogoo Road	Pursuing documents at Lands Office
22.	209/11921	Upper Hill area	Surveyor searching for data. Problem of missing files.
23.	7288/103 Sotik Post Office	Sotik Township	Surveyor searching for data

24.	Litein Post Office	Litein Township	Surveyor searching for data.
25.	Chepkerio	Chepkerio Trading Centre	Registry index map amendment under way.
26	Mosoriot	Mosoriot Trading Centre	Awaiting replanning of the centre.
27	Kobujoi	Kobujoi trading centre	Surveyed, awaiting new Part Development Plan (PDP)
28	Sugotek Post Office	Sugotek S.T.T. Township	Registry Index Map being processed.
29.	Plot No. 46	Masii	Awaiting land adjudication section to finalize registration
30.	Plot No. 48	Kivingoni	Awaiting Adjudication section to finalize registration
31	Plot No. 47	Kithimani Town	Awaiting for Adjudication section to finalize registration
32	Plot No. 410	Mbembani	Awaiting for Adjudication section to finalize registration
33	Plot No. 408	Mutyambo	Awaiting for Adjudication section to finalize registration

The Committee further heard that:-

- (i) the defunct KP&TC held a letter of allotment and a map in respect to the Jogoo Road Plot;
- (ii) the Corporation has since found out that the Jogoo Road Plot L.R.No. 209/9347 which was valued at Kshs.1.5million (0.1993 ha.) was allocated to M/s. Prestine Enterprises (Kenya) Ltd of P. O. Box 526141 before the split of the defunct KP&TC vide Grant No. IR. 57834 of October 1, 1992; and
- (iii) M/s Prestine Enterprises, whose directors were Mohamed Yusuf Ali, Anverali Mohamed Ali, Iqbal Hussein and Laila Mohamed (all appointed in 1998) transferred the ownership of the plot to M/s. Samuel Njoroge Karanja on 26<sup>th</sup> February 1998 and that on 30<sup>th</sup> September 1998 the property was charged to National Bank of Kenya Ltd.

The Committee observed that it would appear that the Corporation has no case pursuing ownership of the Jogoo Road Plot L.R. No. 209/9347

The Committee recommends that:-

- (i) the Postmaster General, in conjunction with the Ministry of Lands expedites surveying and adjudication of the 33 parcels of land to facilitate issuance of the deeds to PCK;

- (ii) **the Commissioner of Lands expedites issuance of title documents to the Corporation for the 33 pieces of land mentioned above; and**
- (iii) **the Corporation stops incurring any further expenditure in pursuit of the Jogoo Road Plot L.R. No. 209/9347 and stops reflecting it and its value in its books of accounts.**

## **2. DORMANT PROJECTS**

The Postal Corporation of Kenya inherited two projects in Kisumu and Malindi from the defunct Kenya Posts and Telecommunications Corporation under Legal Notice No. 155. No development is on-going and the projects have stalled, even though the former Kenya Posts and Telecommunications Corporation had spent a total of Kshs.40,619,552 on the two projects. Although the Corporation has indicated that the Malindi project is subject of a court case, the outcome of the case remains uncertain and the amount of Kshs. 18,238,046 already paid on the project by the defunct KPTC in respect of professional fees could not be confirmed as correct in the absence of supporting documents. Further, although the Corporation has explained that the Kisumu project is under consideration for construction of a Regional Head Post Office, it is not clear when the project is likely to be implemented and the expenditure of Kshs. 22,381,506 already incurred on this project is likely to go to waste, if the project is not implemented.

**The Committee heard the evidence given by the Chief Executive that the Postal Corporation of Kenya inherited two projects in Kisumu and Malindi from the defunct KP&TC where the Corporation had spent Kshs.22,381,506 and Kshs.18,238,046 for the two projects respectively, as consultancy fees.**

**The Committee heard that:-**

- (i) **the cost for the Kisumu Headquarters Post Office (HPO) at Kisumu/KSM/6/Block 73 was estimated at Kshs.800 million for 15 floors and that currently PCK does not intend to proceed with construction of the building due to financial commitments and also that the building is not a priority;**
- (ii) **M/s. Kam Consult Limited, who were consultants in the Kisumu HPO project had gone to court claiming Kshs.250 million on mechanical and electrical works and that judgment was obtained vide HCCC No.262 & 267 of 2002 dated 17<sup>th</sup> September 2001, in favour of PCK.**
- (iii) **a team of consultants consisting of M/s. Paul G. Ndarua, Gathaiya & Partners, Ngilu Associates, Nyambane & Magane Associates and Emkay Designers were contracted by the defunct KP&TC for consultancy services for the Malindi Post Office project and paid consultancy fees. Later, the consultants sued**

PCK for breach of contract claiming Kshs.138 million, which case Corporation successfully defended in the year 2000, since the project was based on non-existent land as it had been allocated to Malindi Ginneries.

The Committee observed with concern that the two projects would appear to have been conceptualized for the sole purpose of defrauding the Corporation, as no feasibility studies had been done and budgetary approvals had not been granted for the projects, while the Malindi Post Office for which Kshs.18,238,046 was sunk on a non-existent land.

The Committee was informed that the directors of KP&TC at the time of conceptualizing the two projects were M/s. Mr. Arap Ng'eny (Managing Director), Mr. M. M. Kimuya, Mrs. W. K. Onsando, Mr. M. S. K. Arap Kirui, Mr. W. K. Arap Letting, Mr. Simeon Sabwa, Mr. J. K. Wanjau and Mr. G. M. Mitine.

The Committee recommends that:-

- (i) the respective Board Members and Management of the defunct KP&TC who made and/or influenced the decisions to initiate the two projects at Kisumu and Malindi be investigated by the Kenya Anti-Corruption Commission with a view to recovering the amounts spent in the two projects and preferring criminal charges against them if culpable; and
- (ii) the Chief Executive ensures that before commencement of any project, adequate feasibility studies are carried out and financial allocation sourced; and
- (iii) any Board member or member of staff who commits the Corporation to expend on unplanned projects be disciplined.

### **3. IRREGULAR BORROWING**

In August 2001, the Postal Corporation of Kenya approved purchase and installation of IPS Track and Trace System Software at a total cost of USD 243,959 to be funded through a loan from the East African Development Bank. Another software for Automation of Counter Services was also to be acquired through another loan from the Canadian Post International Ltd (CPIL) for USD.1,323,00 or USD.1,802,963 including interest. The purchases were to be made under Phase I and II of the East African Automation Project. However, no approval was sought from Treasury for the borrowing as required under Section 5 (2) of the State Corporations Act. Further, the Corporation paid a firm of advocates Kshs.2,566,562 for professional services rendered in respect of the contract agreement between the Corporation and Canada Postal International Ltd. However, one of the partners in the firm of Advocates was also a Director of the Corporation thus raising the question of conflict of interest. In the circumstances therefore, it

was not possible to confirm whether the amount paid of Kshs.2,566,562 was a proper charge to public funds for professional services rendered to the Corporation.

**The Committee heard the evidence given by the Chief Executive that during the year under review, PCK approved purchase and installation of IPS Track and Trace System Software at a total cost of US\$243,959 to be repaid through a loan from East African Development Bank (EADB) and another software for Automation of Counter Services for US\$1,802,963 including interest, whose loan was sourced from Canadian Post International LTD (CPIL).**

**The Committee further heard that PCK did not seek the authority of the Treasury prior to borrowing the loans, contrary to Section 52 of the State Corporations Act.**

**The Committee was also informed that:-**

- (i) the finance arrangement with CPIL did not constitute a loan in the context of resource mobilization in favour of the Corporation since it deferred payment in purchase of software over a period of customization and pilot running and that the whole amount was settled in year 2004/2005 from internal resources of the Corporation; and**
- (ii) PCK paid an amount of Kshs.2,566,562 to M/s Kiogora Mutai & Company in which one of its partners, Kiogora Mutai, was a member of PCK Board of Directors.**

**The Committee observed with concern that:-**

- (i) the Board flouted Section 5(2) of the State Corporations Act by failing to seek the sanction of the Treasury prior to borrowing the funds to finance the two projects; and**
- (ii) Mr. Kiogora Mutai flouted Rule No. 4 of the Rules of Conduct of the PCK Board by failing to declare his interest and exclude himself from meetings of the Board, which deliberated on the award of the professional services contract.**

**The Committee recommends that:-**

- (i) the Post Master General seeks post facto authority from the Treasury to regularize the borrowing; and**
- (ii) the PCK Board member, Mr. Kiogora Mutai, be investigated for possible surcharge.**

#### **4. DEPOSITS IN EURO BANK OF KENYA.**

The Corporation placed a short-term deposit amounting to Kshs.50,000,000 with Euro Bank, whose operations were later suspended by the Central Bank of Kenya. The deposit appears to have been made contrary to Treasury Circular No. 10 of 15 July, 1992 which requires State Corporations to invest surplus funds in Treasury Bills and Bonds. The deposit was made under terms and conditions, which have not been clarified or explained by the Corporation. The Bank has since been placed under receivership and recoverability of the deposit by the Corporation appears doubtful and a provision ought to have been made in these financial statements.

**The Committee heard the evidence given by the Chief Executive that the Corporation on 5<sup>th</sup> March 2002 placed a short term deposit amounting to Kshs.50,000,000 in M/s. Euro Bank, whose operations were later suspended by the central Bank and that the action had not been sanctioned by the Treasury, contrary to Treasury Circular No. 10 of 15<sup>th</sup> July 1992.**

**The Committee was informed that:-**

- (i) on 5<sup>th</sup> February 2002, the then Postmaster General Mr. F. M. Chahonyo wrote to the Board Chairman seeking his "authority and concurrence" to place Kshs.50 million (out of its Kshs.100 million in a current account) on a call account with Euro Bank for three months ending 4<sup>th</sup> June 2002 "at an interest rate to be agreed upon";**
- (ii) the then Board Chairman, on March 5, 2002 concurred with the proposal of the Postmaster General;**
- (iii) on 5<sup>th</sup> March 2002, the Postmaster General Mr. F. M. Chahonyo wrote to the Managing Director, Euro Bank, vide Letter Ref DF.5260, forwarding Cheque No. 0036727 of Kshs. 50,000,000 to be drawn from Kenya Commercial Bank; and instructing that the amount be invested on a call deposit for a period of 90 days at an "agreed" interest rate of 10.5%. This forwarding letter was countersigned by the A.G.M. (Finance & Accounts) and Manager, Accounts at PCK M/s. J. E. Musumba and F.W. Muigai respectively. Euro Bank acknowledged receipt of the cheque the same day; and**
- (iv) following the first maturity of the deposit on 11/06/2002, the then Postmaster General vide his letter RE: DF:5260 of July 31<sup>st</sup> 2002 again instructed Euro Bank that "the Management has decided to re-invest the deposit for the next 90 days at an interest rate of 10.5% with effect from 12<sup>th</sup> June, 2002"; this letter was countersigned by J. F. Musumba and T.K. Nyasimi**

both PCK's AGM (Finance & Accounts) and Assistant Manager (Treasury), respectively, at the time.

**The Committee observed that:-**

- (i) depositing the amount in Euro Bank was contrary to Treasury Circular No. 10 of July 15, 1992, which required state corporations to invest surplus funds in Treasury Bills and Bonds;
- (ii) the deposit was contrary to Section 21(2) of PCK Act which provides that the Board may deposit with such bank or banks as it may determine, any moneys not immediately required for the purpose of the Corporation. As at the time of placement, the Board had not passed a resolution to this effect; and
- (iii) the concurrence of the Board Chairman of March 5, 2002 to place the amount in a call account at Euro Bank did not constitute authority as required by Section 21(2) of PCK Act.

The Committee noted that Mr. F. M. Chahonyo had been sued on matters relating to abuse of office in connection with the foregoing issue.

**The Committee recommends that:-**

- (i) the Chief Executive ensures that future placement of surplus funds is done in accordance with Treasury Circulars;
- (ii) the Corporation should fast track the pending suit; and
- (iii) the Attorney General reactivates prosecution of the case against Mr. F. M. Chahonyo.

**REPORT OF THE CONTROLLER AND AUDITOR GENERAL ON THE  
ACCOUNTS OF ELECTRICITY REGULATORY BOARD FOR THE YEAR  
ENDED 30 JUNE 2001.**

**1. FINANCIAL PERFORMANCE**

During the year ended 30 June 2001, the Board recorded a deficit of Kshs.12,065,812 compared to a surplus of Kshs. 45,512,587 in the previous year, thus reducing the General Fund Balance from Kshs.100,018,797 to Kshs.87,952,985 as at 30 June 2001. Apparently contributing to the deficit are the reduced total income during the year which fell from Kshs.118,858,667 to Kshs.94,057,866 and additional expenditure on staff salaries, benefits and consultancy services all totaling Kshs.19,892,121.

**The Committee heard the evidence given by the Chief Executive that the deficit of Kshs.19,892,121 included in the figure of Kshs.94,057,866 was attributed to additional expenditure arising from staff salaries, benefits and consultancy services. The Committee was informed that:-**

- (i) the consultancy was sourced during the year to assist in drafting rules and regulations under the Electric Power Act, 1997; whose funding was to be financed by the Board and the World Bank on a 50:50 basis;**
- (ii) the consulting firm, which was a consortium namely Messrs; Rachier & Company Advocates, Buddle Findlay, Sinclair Knight Merz and Deloitte and Touché was to be paid a total of Kshs.28 million in stages for the services, although the rules and regulations drawn by them were incomplete and did not meet the user requirements;**
- (iii) arising from (ii) above, the Board stopped making further payments to the consortium subsequent to which the latter sought arbitration. The Board lost and therefore was obliged to make payments. the Board lost in the arbitration partly because the contract with the consortium was not 'well worded' and failed to safeguard the interest of the Board; and**
- (iv) at the time, the World Bank had frozen its aid to the Energy Sector and the Board had to meet the full amount. The rules and regulations, having been completed by the Board, are awaiting gazettelement, (as at August, 2006).**

**The Committee was concerned that:-**

- (i) some officers in the Board appeared to have occasioned the loss in respect of the inadequate services rendered by the**

consortium as the Board did not realize full value for money in the entire transaction; and

- (ii) the review of staff salaries was irregular as the State Corporation Advisory Committee (SCAC) did not sanction the same.

**The Committee recommends that:-**

- (i) the Chief Executive should ensure that the interests of the Board are safeguarded in all future contracts and that such contracts are drawn in consultation with the office of the Attorney General; and
- (ii) that the Chief Executive should ensure that any review of staff salaries should be done according to the law.

**2. IRREGULAR PAYMENT OF SALARY AND ALLOWANCES TO THE BOARD CHAIRMAN.**

As in the previous year, the Board irregularly paid its non-Executive Chairman salary and other allowances totaling Kshs. 4,859,580 instead of the recommended honorarium of Kshs. 40,000 per month or Kshs. 480,000 per annum as communicated to the Board by the parent Ministry in a letter dated 14 March 2001. No justification has been provided for ignoring the Ministerial authority.

**The Committee heard the evidence given by the Chief Executive that:-**

- (i) during the year under review, the Board paid its non-executive chairman salary and allowances totaling Kshs.4,859,580, instead of an honorarium of Kshs.480,000 per annum as directed by the parent Ministry vide letter Ref: ME/SEC/4/1/9C/(17) of March 14, 2001.
- (ii) in its meeting of May 25, 2001, the Board, and without recourse to the directive of the parent Ministry, sat and approved a remuneration package for its chairman at the rate of Kshs.200,000 and Kshs.60,000 for basic salary and house allowance respectively and other benefits which included Utilities (Kshs.20,000), Domestic Help (Kshs.20,000 p.m.), Medical Cover (Kshs.200,000 p.a.) , Gratuity (25%) and Official Transport. In arriving at this decision, the Board purported to be acting within Sec.3 of the Electric Power Act that stipulates *"the Board shall pay to its members and staff salaries and allowances at rates comparable to those obtaining in other public sector institutions performing similar regulatory functions"*; and

- (iii) that on December 11, 2000, the Chairman of the Board had received a letter from the head of public Service Ref No. OP.9/179A advising that he may continue receiving the emoluments pending approval by State Corporation Advisory Committee.

The Committee observed that:-

- (i) the then Chairman of the Board purported to clothe himself with executive authority in excess of the provisions of Electric Power Act 1997;
- (ii) although the Board in its meeting of April 29, 1999 and May 25, 2001 approved its remunerations for the non-executive chairman, the approval was null and void since it contravened Sections 6(1) and 27(10) of the State Corporations Act (Cap 446), which supersedes the Electric Power Act of 1997; and
- (iii) the Board in its sitting of May 25, 2001, acted ultra vires by setting and approving remuneration for its chairman contrary to the directive of the parent Ministry of March 14, 2001.

The Committee reiterates its recommendation in the 13<sup>th</sup> report that the Board should recover the differential amounts from the then Board Chairman and officers concerned.

### **3. IRREGULAR PAYMENTS TO OTHER BOARD MEMBERS**

As was previously reported, the Members of the Board other than the Chairman were each paid Directors fees at a rate of Kshs.50,000 per month, all amounting to Kshs. 3,500,000 net of tax. The tax totaling Kshs. 1,041,089 for the year which ought to have been deducted from each Board Members' monthly and other taxable allowances was not so deducted, but was instead directly borne and paid by the Board. The Board has not explained why Board Members were not paid at the rates approved by the Government or why tax deductions were not made. The Board also paid Kshs. 103,807 for an insurance cover of its Board members during the year. There was no evidence to show that the insurance cover is provided for in the terms and conditions of appointment of the Board Members. Consequently, and in view of the above, it has not been possible to confirm the propriety of the total expenditure of Kshs. 4,644,896 incurred on Board Members Allowances.

The Committee heard the evidence given by the Chief Executive that during the year under review, the Board paid Board Members other than the Chairman, Directors fees amounting to Kshs.3.5 million, which included a tax amount of Kshs.1,041,089 that the Board should have deducted from the fees and that the tax due was directly borne by the Board. This arose from a resolution of the Board during its sitting of May 19, 1999 that the allowances be paid net of tax.

The Committee also heard that the Board also paid Kshs.103,807 for an insurance cover of its Board Members in accordance with circular No.1/87 dated July 12, 1987, Ref No. OP.9/21/2A/Vol.31(85) that stated "*Each Corporation should take an accident (not life) cover for its Chairman and Board Members in the event of an accident while on the business of the State Corporation up to such limits as may be approved by this office*". While observing the Government circular No.1/87 Ref No. OP/9/21/2A/Vol.31(85), the Board acted unilaterally by basing the directors' fees on recommendations of an Inter-Ministerial Committee, which had not been approved.

Noting that the Executive Chairman had forwarded the matter to the Commissioner of Income Tax for reconciliation and resolution, and that the inspector General (State Corporations) had been requested to deal with the matter for possible surcharge of the directors, the Committee observed that the tax equalization was irregular and that this was a matter of recovery rather than surcharge.

The Committee reiterates its 13<sup>th</sup> Report recommendations that:-

- (i) the Board should honour its tax obligations according to the law and that no tax equalization payment is ever made on behalf of the Board members or employees;
- (ii) the Board should recover the tax due from the Board Members and officers concerned; and
- (iii) the Board should ensure that before paying traveling and accommodation allowances to its members, mechanisms are put in place to confirm that the members traveled and were accommodated as claimed.

#### **4. OVERPAYMENT OF STAFF SALARIES AND ALLOWANCES**

During the year, the Board overpaid its staff, salaries and allowances amounting to Kshs. 4,050,146 in disregard of a directive issued by the Office of the President in March 2001, and contrary to section 5 (3) of the State Corporations Act (Cap 446). In the absence of the justification for the overpayments and the propriety of the expenditure of Kshs. 4,050,146 could not be ascertained.

The Committee heard the evidence given by the Chief Executive that during the year under review, the salaries and allowances approved by the Board and thereby paid to the staff were significantly lower than those recommended by the government vide Circular No.1/87 and letter from the Ministry of Energy Ref: ME/SECC/4/1/9c/(C17).

**The Committee was further informed as follows:-**

- (i) that except for the Chief Power Engineer / Consumer Affairs Manager, all the other employees were paid within the lower scales established by the Board, and which were relatively lower than the scales recommended by the Government;**
- (ii) that later, on receipt of communication from the Head of the Civil Service and from the Permanent Secretary for Energy, the Board implemented the recommended scales on 1<sup>st</sup> July 2001, thereby raising the salary account by Kshs.63,868,500 and the matter communicated to the latter vide letter ref. ERB/CON.SEC/2001, dated 12<sup>th</sup> September, 2001, which letter was copied to the Inspector of State Corporations; and**
- (iii) that had the Board implemented the Circular from the Office of the President without any modifications, its total salary account would have increased by Kshs.251,396.**

**The Committee noted with concern that supporting documents were not availed at the time of audit. The Committee therefore recommends that the Chief Executive should ensure that in future, all supporting documents are made available to the Auditor General as and when required, pursuant to the Exchequer and Audit Act.**

#### **5. CONSULTANCY FEES**

During the year ended 30 June 2001, the Board incurred expenditure on Consultancy amounting to Kshs. 22,566,285. Out of this figure, an amount of Kshs. 15,841,975 was paid to a Consortium of Consultants to assist the Board in drafting rules, regulations, procedures, licensing and operational procedures. However, there was no evidence to show how the consultants were identified or how the consultancy fees paid were determined. Consequently, it has not been possible to confirm the propriety of the total expenditure of Kshs. 15,841,975 paid to the Consortium.

**The Committee heard the evidence given by the Chief Executive that during the year under review and through open tendering, which was advertised in the press on September 6, 2000, the Board awarded a contract for drafting Rules and Regulations, Licensing and Operational Procedures to a consortium, namely, Rachier and Co. Advocates, Buddle Findlay, Sinclair Knight Merz and Deloitte and Touché at a contract sum of Kshs.15,841,975.**

**The Committee further heard that:-**

- (i) at the close of deadline for submission of proposals, the consortium presented their proposals, which were**

subsequently subjected to evaluation by an evaluation team comprising the Electricity Regulatory Board's Chief Power Engineer, Financial Analyst, Power Economist and Legal Counsel, which recommended the consortium of Rachier and Co. Advocates, Buddle Findley, Sinclair Knight Merz and Deloitte and Touché, after bids for five companies were found to be unsealed while the other four firms scored poorly against parameters of general experience, adequacy of proposed work, approach in responding to terms of reference, qualifications and competence of the personnel proposed for the assignment; and

- (ii) the Board consequently signed the contract with the preferred bidder, Ms. Rachier & Co. Advocates, Buddle Findlay, Sinclair Knight Merz and Deloitte and Touché consortium.

The Committee noted that details of the tendering including ten evaluation reports of the consultancy service have since been forwarded and verified by Kenya National Audit Office, thereby resolving the audit query.

The Committee observed that had the above outlined evidence of how the consultants were identified been provided for verification by auditors from Kenya National Audit Office, the accounts for the year under review would not have been qualified on basis of this reservation.

The Committee recommends that the Executive Chairman should ensure that all documents and/or evidence relating to procurement are availed to auditors as and when required for verification.

## **6. PROCUREMENT OF SERVICES**

The Board procured insurance and advertisement services at a cost of Kshs.1,938,811 and Kshs.78,074 respectively without competitive bidding contrary to the laid down procurement procedures. Consequently, it was not possible to confirm how the Insurance firm and the promotions Company were identified. Information available however, indicates that two members of the Board have ownership interests in the companies. In the circumstances, the propriety of the total expenditure of Kshs.2,016,885 could not be confirmed.

**The Committee heard the evidence given by the Chief Executive during the year under review that:**

- (i) the Board single sourced M/s. Thabiti Insurance Brokers to provide Insurance Brokerage Services at a cost of Kshs.1,938,811 and that Mr. Dalmas A. Otieno, a member of the Board, had interest in the firm, which he failed to declare and disqualify himself from the matter. The Committee was

informed that the firm deducted its commission before making onward payment to the underwriters; and

- (ii) the Board also single sourced M/s. Asis Promotions, an Advertising Agency, to act as an intermediary for advertising services which cost Kshs.78,074 and further that the then Chairman of the Board, Mr. Moses Wetangula, had interests in the firm which he failed to declare.

The Committee observed with concern that whilst the understanding of the Board at the time was that any commissions payable to the broker would be met directly by the underwriter while commissions payable to the advertising agencies would be borne by the media house, the two firms deducted their respective commissions before remitting the monies to the principal.

The Committee noted that the parent Ministry, in mitigation to the tendency of the Board to disregard procurement procedures, had on March 14, 2001 directed vide letter Ref No. ME/SEC/4/1/9c/(17) that *“Procurement of goods and services should be awarded competitively. Directors who wish to tender for the same should declare their interest and bid within the competitive framework. It may therefore be necessary to cancel existing contracts where directors and close relatives are involved directly”*.

The Committee observed that the two Members of the Board would appear to have used their positions on the Board to influence award of contracts to firms associated with them.

The Committee recommends that the Chief Executive should employ all means possible and ensure that the commission deducted by the two firms M/s. Asis and M/s. Thabiti Insurance are recovered from Hon. Moses Wetangula and Hon. Dalmas A. Otieno and they be surcharged to the extent of the commissions charged.

The Committee further recommends that “Government procurement regulation are followed while procuring for goods and services and any officer or member of the Board who contravenes Government procurement procedures should be held responsible, dismissed from service and surcharged for all costs and incidentals thereof.

#### **7. ENERGY SECTOR REFORM AND POWER DEVELOPMENT PROJECT - INTERNATIONAL TRAINING ON UTILITY REGULATION**

The Board incurred over-expenditure of Kshs.1,578,534.80 under IDA Credit No. 2966-KE to train staff on utility regulation under the Energy Sector Reform and Power Development project. When the parent Ministry declined to refund the over-expenditure, the amount was written off without approval of Board of Directors.

**The Committee heard the evidence given by the Chief Executive that the Board incurred an expenditure of Kshs.1,578,534.80 to train its staff, which was not reimbursed by the Ministry of Energy and that the Board in its 57<sup>th</sup> sitting of 26<sup>th</sup> September 2002 gave post facto authority for writing off the expenditure, thereby resolving the audit query.**

**REPORT OF THE CONTROLLER AND AUDITOR GENERAL ON THE  
ACCOUNTS OF ELECTRICITY REGULATORY BOARD FOR THE YEAR  
ENDED 30 JUNE 2002**

**1. BOARD MEMBERS EXPENSES**

During the year under review, the Board irregularly paid tax amounting to Kshs. 1,525,851.60 on behalf of the Board Members. The tax that ought to have been deducted from taxable allowances was not so deducted but was instead irregularly borne and paid by the Board on behalf of the Board Members. Further, the Board members were paid Kshs. 820,000 as sitting allowances while on overseas travel in addition to per diem payment. The sitting allowance is, however, only payable during scheduled Board meetings. In the circumstances, therefore, the propriety of the total payments made of Kshs. 2,345,851.60 cannot be confirmed.

**The Committee heard the evidence given by the Chief Executive that the Board did not deduct a total of Kshs.1,525,851.60 from the Board Members taxable allowances.**

**The Committee also heard that the Board paid a total of Kshs.820,000 to members as sitting allowance while on overseas travel, in addition to per diem payment, in accordance with Circular No. 187 Ref. No. OP/9/21/2a/Vol.31(85) Section 36 which states "*sitting allowance is payable to directors or members when on official tours or trips and outside the country*".**

**The Committee noted that the Chairman had forwarded the matter of tax equalization for the Members of the Board to the Commissioner of Income Tax for reconciliation and resolution, and that the Inspector General (State Corporations) had been requested to deal with the matter for possible surcharge of the concerned directors.**

**The Committee observed that the tax equalization was irregular and that it is a matter of recovery and not surcharge.**

**The Committee therefore reiterates its recommendation that:-**

- (i) the Board should honour its tax obligations according to the law and that no tax equalization payment is ever made on behalf of the Board members or employees;**
- (ii) the Board should recover the tax due from the Board members concerned; and**
- (iii) the Board should ensure that before paying traveling and accommodation allowances to its members, mechanisms are put in place to confirm that the members traveled and were accommodated as claimed.**

## **2. BOARD MEMBERS TRAINING**

During the year ended 30 June 2002, the Board incurred expenditure totaling Kshs. 5,043,852 on air tickets, per diem allowances and tuition while training Board Members locally and overseas. The Board members also traveled business class and spent a total of Kshs. 2,224,090 on air travel.

**The Committee heard the evidence given by the Chief Executive that during the year under review, the Board incurred expenditure totaling Kshs.5,043,082 on air tickets, per diem allowances and tuition, while training Board members locally and overseas and the Board Members also traveled on business class and spent a total of Kshs.2,224,090 on air travel.**

**The Committee was also informed that:-**

- (i) following the inauguration of ERB on 2<sup>nd</sup> September 1998, the bulk of staff were recruited the following year, and as such, extensive capacity building of both members and staff were undertaken in financial years 1998/99, 1999/2000 and 2000/2001;**
- (ii) in May 2001, new Board Members were appointed in the ERB necessitating training on tailor-made courses, which included courses on Utility Regulation and Strategy, which are pertinent for proper execution of the Board's mandate; and**
- (iii) the Board members traveled business class in accordance with Section K.4(240) of the Code of Regulations, which states that "Job Group Q and above should be booked with Kenya Airways on First Class"**

**Whilst observing that the Permanent Secretary, Ministry of Energy, who is in Job Group "Q" and above sits on the ERB Board, the Committee observed with concern that Sec. K4(2) of the Board's Code of Regulation is in conflict with letter Ref. No. ME/SEC/4/1/9C/(17) dated 14<sup>th</sup> March 2001 which required that Board Members travel Economy Class.**

**The Committee recommends that the Ministry, in consultation with the Board and the State Corporation Advisory Committee, reviews Sec. K4(2) of the Board's Code of Regulation to ensure that it is in harmony with government regulations.**

**REPORT OF THE CONTROLLER AND AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF KENYA ELECTRICITY GENERATING COMPANY LIMITED FOR THE YEAR ENDED 30 JUNE 2003.**

**1.0 CONVERSION OF AMOUNT DUE FROM KPLC INTO EQUITY**

As stated in note 9 to the financial statements in September 2003, Government through a Cabinet Resolution, approved the conversion of Kshs.12,260,000,000 out of a total debt of Kshs.15,631,000,000 owed by KPLC to KenGen as at 30 June 2003 into equity in the form of Preference Shares in KPLC. Consequently, this amount was transferred out of the debtors account and disclosed in the Balance Sheet under non-current assets as investment funds pending formal issue and allotment of the Preference Shares to KenGen by KPLC. It is also observed that loans lent to KenGen by Government of Kenya totaling Kshs.15,784,584,000 were also to be converted into Government Equity in KenGen. The circumstances under which KPLC accumulated the debt of Kshs.15,631,000,000 even though it actually sold the power to its customers but failed to pay KenGen thereby adversely affecting the operations of KenGen have not been explained. However, Parliamentary approval for these transactions has not been seen.

**The Committee heard the evidence given by the Chief Executive that following the restructuring of the Power Sub-Sector in 1997, the generation function on the one part and transmission and distribution on the other part were split and mandated to KenGen and KP&LC respectively. The two firms entered into an Interim Purchase Agreement (IPPA) in August 1999, which spelt out and governed commercial relations between the two companies.**

**Under the IPPA, KenGen supplied power to KP&LC and raised invoices at the month end, which KP&LC was supposed to honour within 40 days of receipt, failure to which KenGen levied interest on unpaid amount at ruling base rate of Standard Chartered Bank, who were the Bankers of both companies.**

**The Committee further heard that:-**

- (i) since 1999, KP&LC failed to honour the IPPA such that as at 1<sup>st</sup> July 2002, the outstanding debt obligation was Kshs.14.4 Billion including accrued interest of Kshs.1.18 Billion;**
- (ii) at the time KP&LC was undergoing financial setbacks compounded by the effects of drought of the year 2000, to improve its Balance Sheet and therefore requested KenGen to reschedule the outstanding debt obligation and accrued interest;**
- (iii) the office of the Attorney General on 23<sup>rd</sup> October 2002 advised that in accordance with Section 11 and Section 13 of**

State Corporations Act, the process of rescheduling of debt and waiver of interest is solely within the mandate of the Minister;

- (iv) through the parent Ministry and the Ministry of Finance, a Memorandum was prepared and presented to the cabinet for approval; and
- (v) the cabinet approved the Memorandum subsequent to which the Permanent Secretary for Energy communicated the approval of the cabinet, directing that the approved arrangement for restructuring of KP&LC and KenGen debts be sustained up to June 30, 2003 in order to provide critical financial relief to KP&LC.

**This entailed:-**

- (a) rescheduling of Kshs.11,246 Billion owed to KenGen by KP&LC at an interest rate of 7% p.a.;
- (b) waiver of interest penalties of Kshs.1,182 Million levied by KenGen on KPLC on late settlement of electricity bills;
- (c) conversion of Kshs.2.865 Million in loan repayment arrears to GOK into equity in KenGen;
- (d) conversion into equity of Kshs. 660 Million given to KenGen by GOK in budget support in May 2002 to bridge the financing gap of Olkaria II, scheduled for commissioning by October 2003, (due to KPLC's inability to pay KenGen for electricity);
- (e) conversion by KenGen of Kshs.12,260 Million owed by KPLC as at 30<sup>th</sup> June 2003 into preference shares in KPLC to sharply reduce the huge negative equity position as at June 30, 2003;
- (f) conversion by GOK of Kshs.12,260 Million out of a total on-lent loans of Kshs. 2.6 billion owed by KenGen, to equity in KenGen;
- (g) conversion by GOK of Kshs.3,639 million on-lent to KPLC to additional preference shares in KPLC to fully convert the balance sheet from negative to positive equity as at June 30, 2003; and

- (h) KenGen cedes Kshs. 0.60 per kWh of its current tariff of Kshs.2.36 per kWh to KPLC in order to reverse KPLC's current loss making trend.

Subsequently, during its meeting of 23<sup>rd</sup> September 2003, KenGen Board undertook to implement the approved cabinet Memorandum and resolved that the sum of Kshs.12.260 Million then owed by KPLC as at 30<sup>th</sup> June 2003, (after effecting the resolutions of the cabinet Memorandum) be converted into preferential shares, out of which 4% or 7% are cumulative with the rest being non-voting redeemable and of convertible rights.

The Committee noted that due to the debt then owed by KPLC to KenGen, the government in financial year 2002/2003 made a direct cash injection of Kshs.660 Million into KenGen.

The Committee observed that in accordance with Section 13 of State Corporations Act, KenGen only required the Ministry's approval to restructure the debt. The restructuring did not constitute direct borrowing or on-lent loan to KenGen and therefore the approval of the Cabinet was adequate.

The Committee recommends that:-

- (i) in furtherance of its undertaking in the Cabinet's Memoranda, the Government assists KenGen by ensuring implementation of conversion of Kipevu Gas Turbine into a combined cycle (which was due for completion in July 2005), raising of Masinga Dam and completion of OlKaria IV Geothermal Plant both due for completion by July 2009); and
- (ii) the Chief Executives KenGen and KPLC ensure that the latter meets its financial obligation to KenGen as and when they fall due.

Further, the Committee reiterates its recommendation in the 12<sup>th</sup> Report page 134 that the contracts entered with the existing Independent Power Producers (IPPs) be renegotiated with a view to achieving substantial reduction in tariffs.

## **2.0 INSURANCE PREMIUMS**

During the year under review, the Company incurred a total of Kshs.303,523,946 on Insurance Premiums, an increase of Kshs.101,221,760.00 or 50% compared to the Kshs.202,302,186.00 paid in the previous year. The very substantial increase could be attributed to the Company's failure to evaluate its insurance with a view to minimizing its cost through such measures as self-insurance for policies with low incidence rankings, reduce benefits on the Group Life Policy, and increase deductibles

on the large risk programs. Irregularities were observed during the audit in the awarding of the Insurance Tenders in that Insurance companies which did not meet the mandatory requirements as per the tendering procedures were awarded tenders. Cases in point were companies declared technically insolvent in the financial evaluation reports. Further, other insurance companies which did not appear in the financial evaluation reports were also awarded tenders. Furthermore, an insurance broker, who had been disqualified during the tender evaluation stages for brokerage services was contracted. The Company was, therefore, in breach of rules and regulations. Additionally, the negotiations, as stipulated in the Insurance Tender Documents, between the KenGen Insurance Tender Committee and the qualified Insurance brokers to fine-tune the proposals and the contract before signing were not done. Under the foregoing circumstances, it was not possible to confirm propriety of the Insurance expenditure amounting to Kshs.303,523,946.

**The Committee heard the evidence given by the Chief Executive that during the year under review, the Company incurred a total of Kshs.303,523,946 on insurance premiums, which reflected an increase of 50% compared to the previous year.**

**The Committee was informed that:-**

- (a) the increase was attributed to enhancement of Group Life Benefits, whereby death benefits and disabilities increased from 3 and 2 years respectively to 5 years, while the Company increased salary for its employees in the same year. Group Life enhancements increased the year's premium by Kshs.60,806,018;**
- (b) the increase was also due to the increase in the fire policy premium due to September 11, 2001 terrorist attack in the US. The effect was an increase in the year's fire premium by Kshs.57,008,002; and**
- (c) the increase was also attributed to increase in Employer Liability, Public Liability, Contractors Plant, Motor and Fidelity Gamble Premium. The net effect of the above increases in premiums was a comparative upshot of the previous year's expenditure by Kshs.101,424,967 (50% increase).**

**The Committee further heard that:-**

- (i) the Company advertised for Insurance Brokerage Services for the financial year 2002/2003 in the Daily Nation and East African Standard newspapers on 4<sup>th</sup> and 9<sup>th</sup> of April 2002 respectively. 42 firms purchased the tender documents. At the close of tenders, 7<sup>th</sup> May 2002, 33 firms had responded;**

- (ii) an Insurance Tender Committee (User Department Committee), was constituted by the Managing Director to oversee the tender evaluation subsequent to which the Insurance Committee constituted an evaluation sub-committee comprising of the then Procurement Manager Mr. Munga, then Principal Legal Officer, Mr. R. Miano, Insurance Officer Mr. E. Kimosop, Finance Manager R. Temesi and Mrs. B. Soy, the Chief Manager, Human Resource and Administration, to evaluate the tenders;
- (iii) on preliminary evaluation, 19 firms did not adhere to basic requirements and were thus disqualified. The remaining 14 firms were qualified for a further detailed evaluation on parameters of:-
- (a) Premium Data - which included criteria on the tenderer's bid on applicable commission and on proposed fees; specification of preferred underwriters, adherence to format of presenting premium data as per the tender; premium rate of commission / fees.
  - (b) Technical and Supervisory qualification of the principal staff.
  - (c) Past performance.
  - (d) Service facilities.
- (iv) on initial evaluation of the 14 firms against the above mentioned criteria, the evaluation sub-committee found 10 firms to be materially responsive, while four firms M/s Sifa Insurance Brokers, Kabage & Mwirigi Insurance Brokers, Clarkson Notcutt Insurance Brokers and Kenbright Insurance Brokers were disqualified for failing in criteria "(b)" and "(c)" above. Accordingly they recommended award of insurance tenders to the following 10 firms:-

- Alexander Forbes Insurance Brokers Limited
- AON Minet Insurance Brokers Limited
- Avocet Insurance Brokers Limited
- Consolidated Insurance Brokers Limited
- Disney Insurance Brokers Limited
- Boma Insurance Brokers Limited
- Simba Insurance Brokers Limited
- Primeken Insurance Brokers Limited
- Vike Insurance Brokers Limited
- Zawaam Insurance Brokers Limited

The recommendation was presented to the Insurance Committee on June 4<sup>th</sup> 2002 in a meeting attended by the then Managing Director, Engineer Isaac Bondet. At this level,

then Managing Director, Engineer Isaac Bondet. At this level, the Insurance Committee prepared a preliminary Board Paper for consideration by the Central Tender Committee (CTC);

- (v) before the paper was presented to the CTC, a gazette notice dated June 13<sup>th</sup> 2002, which abolished the payment of fees to brokers, was published. This in effect meant that entities procuring the services of Insurance Brokers could only be charged on commission. Consequently, the insurance sub-committee requested the tender evaluation sub-committee to review their proposals on strength of the effect of the Gazette Notice;
- (vi) on re-evaluation, the Tender Evaluation Sub-Committee realized that the basis of disqualifying the bidders on criteria of applicable commission and proposed fees was null and void. In their recommendation to the insurance Committee, they included M/s. Kabage & Mwirigi (who had been initially disqualified on the basis of commission fees) in addition to the initial 10 firms;
- (vii) subsequently, the Insurance Committee prepared a paper on June 21, 2002 for consideration by CTC recommending award of the insurance tenders to the 11 firms; and
- (viii) in its meeting of June 25, 2002, the CTC, Chaired by the then Managing Director, Eng. Bondet, authorized award of the tenders to the 11 firms.

The Committee noted that:-

- (i) none of the companies that were awarded the tenders was technically insolvent as the auditor has since received the accounts of the underwriters and brokers and ascertained them to be technically solvent; and
- (ii) even though the Insurance Tender Documents provided for negotiation to fine-tune the proposals and contracts submitted by the tenderers before signing, such 'fine tuning and negotiations' were in contravention of Public Procurement Regulations.

The Committee observed that during audit, the management failed to provide the Controller and Auditor General with the requisite information in respect of the tenders and as such the Controller & Auditor General relied on the preliminary paper prepared the then Principal Legal Officer and Insurance Officer on behalf of Insurance Evaluation Committee, which paper was later revised before presentation to the CTC. The qualification of the Report and Accounts

on basis of the foregoing reservation was therefore due to negligence on part of the then management.

The Committee recommends that:-

- (i) the Chief Executive ensures that supporting documents in respect of procurement of goods and services in the company are availed to the Controller and Auditor General as and when required; and
- (ii) statutes, rules and regulations governing procurement of goods and services in public institutions are adhered to without exemption and that any officer who contravenes such requirements should be held responsible.

### **3.0 LOSS OF US\$100,000**

On 8 August 2001, KenGen Ltd instructed the Co-operative Bank of Kenya to transfer a sum of US\$ 2 million to the World Bank for repayment of a World Bank Loan. However, a fraudulent instruction using forged KenGen Ltd letterhead was also issued to the Co-operative Bank instructing them to transfer the US\$2million to a foreign account in Washington State, USA. Out of the US\$ 2 Million, US\$ 100,000 was fraudulently withdrawn. The fraud was however, discovered before the accomplice could withdraw the balance of US\$ 1.9 Million, which sum has seen been credited to the Company's account at the Co-operative Bank of Kenya. Although three officers from KenGen Ltd and three from the Bank were charged with the fraud under criminal case number 1869/2001, and subsequently acquitted for lack of evidence, the Bank through which the forged documents were facilitated should have accepted the responsibility and credited KenGen Ltd with the US\$ 100,000 that was fraudulently transferred. No such recovery from the Bank has been received and the outcome of negotiations for recovery has not been seen.

**The Committee heard the evidence given by the Chief Executive that US\$ 100,000 was fraudulently transferred to a foreign account in Washington, USA.**

**The Committee was informed that KenGen entered into an agreement with Co-operative Bank of Kenya on 16<sup>th</sup> May 2002 on how to recover the US\$100,000. Under the agreement, it was stipulated that the party whose employee(s) are held liable for initiation, production, processing or any other part of the process by fraudulent transfer of the US\$ 2.0 Million was carried out and transferred to M/s. Sayla Tech. Inc, shall reimburse the other party for all the losses, expenses and other consequential / incidental losses.**

**The Committee further heard that a judgment was given under Criminal Case No. 1869/2001 on 16<sup>th</sup> July 2002 and all KenGen**

**employees charged with having been party to the fraud were absolved. Consequently, KenGen demanded US\$100,000 from Co-operative Bank as per the terms of the agreement and the amount paid on 20<sup>th</sup> February 2004, thereby resolving the audit query.**

**REPORT OF THE AUDITOR GENERAL (CORPORATIONS) ON THE  
ACCOUNTS OF THE KENYA TOURIST DEVELOPMENT CORPORATION  
FOR THE YEAR ENDED 30 JUNE 1998**

**1. PRIVATIZATION PROCEEDS**

As at 30 June 1998, the Corporation held a total of Kshs.527,999,542 of privatization proceeds as fixed deposits in four banking institutions. All the four (4) fixed deposits accounts were, however, operated by the Corporation alone contrary to Treasury Circular No. 351/03 dated 26 April 1993 which required privatization proceeds to be held in accounts operated jointly by the State Corporation concerned and the Permanent Secretary, Treasury. It was also noted that the sale proceeds were first banked and held in a current account and it was out of this current account that transfers to fixed deposits were subsequently made. Since the current account was also operated by the management of KTDC alone, it has not, however, been possible to confirm that all the withdrawals or transfers from the account were effected for the purposes stated in the Treasury Circular under reference.

**The Committee heard the evidence given by the Chief Executive that during the year under review, the Corporation held a total of Kshs.527,999,542 in Prime Bank(106,028,917.50); Daima Bank (75,207,313.95); ABC Bank (216,304,968.00) KCB Harambee Plaza (130,458,342.55) contrary to Treasury Circular No. 351/03 of 26<sup>th</sup> April 1993 which required that privatization proceeds be held in accounts operated jointly by the State Corporations concerned and the Permanent Secretary, Treasury.**

**The Committee was informed that:-**

- (i) the sale proceeds were first banked and held in current accounts from where fixed deposits were made;**
- (ii) the purpose of these accounts were to clear any overdraft account of the holding company and re-injection of funds in new investments; and**
- (iii) the privatization proceeds were then utilized for different purposes on approval of the Board or the Managing Director as shown below:-**

April	1994	TPS (Serena Group) (approved by Board)	7,540,000.00
June	1996	KNTB Project (approved by Board)	30,000,000.00
Sept	1996	KHP Rights Issue (approved by Board)	101,925,320.00
Nov	1996	Transferred to Administration a/c/(approved by MD)	7,041,139.70
Dec	1996	Transferred to Administration a/c/(approved by MD)	14,795,879.10
Dec	1997	Transferred to Administration a/c/(approved by MD)	2,500,000.00
July	1998	Professional Fees Sunset Hotel (Githongo & Co.)	470,488.00

		(approved by MD)	
Nov	1998	Ministry of Tourism (for KTB to revive Tourism Industry) Ref MTW.8/03(56) dated 13/11/98	25,000,000.00
Nov	1998	International Hotels (Rights Issue Shares) (Directed by PS Tourism)	109,089,192.00
May	1999	KSLH Ltd (Loan disbursed) (Approved by Board)	64,267,195.50
Nov	1999	ESTU (KTDC's 50% share in advert of Meru, Sunset, Golf, Kabarnet) (Approved by MD)	963,645.50
Dec	1999	Transferred to Administration Account to pay Kipkorir Titoo & Kiara (Sirikwa legal fees) (approved by MD)	1,140,130.00
Dec	2000	P.M. Communications of London (Advert. Contract with Ministry) Ref. MTTI80/01(55) DATED 14 April 2000.	15,455,200.00
Aug	2000	ESTU (KTDCs share in advert of Buffalo Springs (approved by MD)	504,196.50
Oct	2000	Collector of Income Tax (approved by MD)	20,000,000.00
Nov	2000	Collector of Income Tax (approved by MD)	20,000,000.00
Dec	2000	Transferred to administration (approved by MD)	5,000,000.00
Jan	2001	The Treasury (payment of GOK Com. Loan) (approved by MD)	30,025,725.30
Mar	2001	Collector of Income Tax (Approved by MD)	25,218,602.00
Mar	2001	The Treasury (payment of GOK Com. Loan) (approved by MD)	26,725,878.70
April	2001	Garden Hotel Ltd, Machakos (loan) approved by MD)	18,500,000.00
June	2001	Church Road Dev. Co. Ltd (loan) (approved by MD)	19,500,000.00
Oct	2001	Church Road Dev. Co. Ltd (loan) (approved by MD)	8,500,000.00
Nov	2001	Transferred to Administration Account (approved by MD)	20,000,000.00
Feb	2002	Transferred to Administration Account (approved by MD)	20,000,000.00
April	2002	Collector of Income Tax (Approved by MD)	5,000,000.00
Aug	2003	Transferred to Administration Account (approved by MD)	15,000,000.00
Feb	2004	Transferred to Administration – House Loan to R. Kiattu (approved by MD)	5,000,000.00
Sept	2004	Transferred to Administration – House Loan to P. Mutemi (approved by MD)	5,783,000.00
Sept	2005	Transferred to Administration Account (approved by Board)	9,000,000.00
Nov	2004	To commercial current – Jacaranda Hotel (Msa) (approved by Board)	100,000,000.00
Nov	2004	Transfer of interest to Commercial Current a/c (approved by MD)	929,533.40
Dec	2004	To Commercial A/c to disburse Cross Culture & Sunset Hotel Loans (approved by Board)	11,852,318.80
Mar	2005	Transfer to Commercial to disburse KSLH loan Shs.1.8m (approved by Board)	12,250,696.55
May	2005	Transfer to Commercial to disburse Metro Enterprises loan (approved by Board)	18,000,000.00
		Total Utilized	776,978,167.55

**The Committee observed with concern that:-**

- (i) most of these transfers were approved by the Managing Director without the approval of the Board and the Treasury as required;**
- (ii) some of the proceeds were later transferred to administration accounts, thus making it difficult to ascertain and verify; and**
- (iii) in its allocation of the divestiture proceeds to different usage, the Corporation further flouted the circular on "allocation of proceeds of privatization" which prioritized the purposes for making the allocations.**

**The Committee recommends that:-**

- (i) the Chief Executive complies with Treasury Circulars; and**
- (ii) all necessary accounting information be availed to the Auditors as and when required.**

## **2. REVOLVING FUND LOANS**

Concern was expressed in previous year's report regarding the poor performance on the recovery of Revolving Fund Loans. A review of the matter during the year 1997/98 showed that the situation had not improved. Out of the Revolving Fund outstanding loan balance of Kshs.142,483,686 as at 30 June 1998, the principle current balance was only Kshs. 36,870,006 while the balance of Kshs.105,613,680 was in respect of arrears of loan and interest repayment of Kshs.38,402,555 and Kshs.67,211,125 respectively. Although these loans are secured against borrowers' assets and personal guarantees, the slow rate of loan recovery is, however indicative of possible problems in the realization of these loans.

**The Committee heard the evidence given by the Chief Executive that during the year under review, out of the Corporation's Revolving Fund's outstanding loan balance of Kshs.142,483,686.00, the principal current balance of Kshs.105,613,680 was in respect of arrears of loan and interest repayment of Kshs.38,402,555 and Kshs.67,211,127 respectively.**

**The Committee was informed that:-**

- (i) the poor rate of loan recovery was mainly attributed to a slump in the Tourist Industry, which resulted in closures, receiverships and inability to service loans;**
- (ii) out of the 44 loan beneficiaries in the Audit Certificate, 16 have since redeemed their loans in subsequent years, while the**

**balance of 28 include those servicing their loans and those who obtained court injunctions barring the Corporation from realizing their securities; and**

**(iii) in general, the loan recovery has been enhanced from Kshs.6,172,073.90 in the previous financial year to over Kshs.17,694,040.**

**The Committee was also informed that the outstanding loans for the 44 funds in the Audit Certificate are as follows:-**

LOANEE	1997 KSHS	1996 KSHS	LOAN GRANTED	DATE granted	REDEEMED (RECOVERED)
J. M. Investments Ltd	(64,925.10)	(64,925.10)	774,760.00	1972	Cleared in full
Hotel Strand Ltd	473,589.00	670,939.00	1,140,000.00	1975	Cleared in full
Tsavo Motel Ltd	357,505.00	357,505.00	1,020,000.00	1971	-
Ikolomani Enterprises Ltd	2,807,706.00	2,348,331.00	245,000.00	1973	-
Sportsview Hotel Ltd	209,630.00	175,333.00	620,000.00	1974	Cleared in full
Kibo Safaris Ltd	3,151,852.00	2,636,167.00	1,000,000.00	1972	-
Meru Hotel Ltd	942,560.65	879,553.00	400,000.00	1976	-
Kisumu Hillside Inn Ltd	5,069,723.00	4,240,253.00	620,000.00	1975	
Uyundo Enterprises Ltd	3,006,980.00	2,515,001.50	300,000.00	1975	
New Milimani Inn	(71,181.00)	(71,181.00)	500,000.00	1977	
Milima Agencies Ltd	342,380.45	312,152.00		1980	-
Kokonya Investments Ltd	(95,959.00)	(95,959.00)	2,000,000.00	1980	Cleared in full
Diani Tourist Enterprises Ltd	12,570,747.00	10,414,015.00	2,000,000.00	1980	
Jomima Tours and Travels Ltd	3,331,174.00	2,786,153.00	600,000.00	1985	
Lake Turkana El Molo Lodges	7,014,238.00	5,819,399.00	1,600,000.00	1980	
Kentur Tours & Travels Ltd	1,119,388.00	936,243.00	770,000.00	1987	
New Broadways Restaurant Ltd	3,894,929.00	3,452,635.00	3,036,000.00	1989	Cleared in full
Kenya International Hotel Ltd	-	343,012.00	1,600,000.00	1989	Cleared in full
Mwingi Viewpoint Ltd	4,153,281.00	3,571,547.00	3,100,000.00	1990	Cleared in full
Bush Bar Ltd	5,565,822.00	4,616,652.00	2,500,000.00	1990	
Kijabe Holdings Ltd	2,397,343.00	2,005,108.00	1,600,000.00	1991	Cleared in full
Gypsum Works Ltd	2,987,765.00	3,009,604.00	2,500,000.00	1990	Cleared in full
Naivasha Hill park Ltd	5,983,826.00	4,893,469.90	2,500,000.00	1991	Cleared in full
Jamii Investments Ltd	5,718,352.00	5,658,519.00	3,750,000.00	1990	
Park view Restaurant Ltd	3,049,171.00	2,488,148.00	1,500,000.00	1990	Cleared in full
Wandune Holdings Ltd	6,952,929.00	5,815,341.00	4,000,000.00	1991	
Top in One Co. Ltd	671,262.00	1,496,679.00	1,600,000.00	1991	
Delight Dreamland Hotel Ltd	5,147,684.25	4,184,728.55	2,900,000.00	1993	
Wajir Tourist Hotel Ltd	5,363,223.00	4,485,733.00	3,000,000.00	1993	
New Garden Hotel, Bondo	1,467,257.00	1,500,536.00	1,100,000.00	1988	
Monalisa Ltd	1,246,786.00	1,042,795.00	1,200,000.00	1988	
Solar Hotel Ltd	2,828,709.00	2,523,350.00	1,600,000.00	1989	
Githuku Investments Ltd	5,538,010.00	3,730,695.00	4,000,000.00	1991/96	
Kenya Agro Business Ltd	3,543,518.00	2,963,755.00	2,500,000.00	1993	
Miseru Investments Ltd	2,867,157.00	3,487,370.00	3,000,000.00	1994	Cleared in full
Mt. Elgon Agencies Ltd	4,390,510.00	2,070,613.00	4,000,000.00	1995	
Gasden Company Ltd	5,219,303.00	4,872,842.00	3,000,000.00	1992	

Narokville Enterprises Ltd	956,493.00	800,000.00	800,000.00	1994
Alnasi Tours & Travels Ltd	2,065,250.00	-	2,103,750.00	1996
Kitui Tourist Hotel Ltd	3,284,964.00	-	3,000,000.00	1995
Farmview Hotel Ltd	4,417,781.00	-	4,000,000.00	1996
Motto Tours & Travel Ltd	17,435.50	Professional fee paid on their behalf by KTDC		
Kisumu Tourist Hotel	26,730.00	Professional fee paid on their behalf by KTDC		
Kendu Bay Country Hotel Ltd	500,000.00	-	500,000.00	1996
Total	130,420,898.75	-	77,979,510.00	

**The Committee further heard cases of recovery related to the following firms/hotels are being pursued by the Corporation's lawyers; Ikolomani Hotel; Kibo Safaris Ltd; Kisumu Hillside; Uyundo Enterprises; New Milimani Hotel (Loanee placed an injunction in 1999 barring Corporation from selling its property by public auction for which the Corporation have filed a citation for reviving the case); Jomima Tours (Loanee has made a commitment on oath to liquidate the loan on installments); Lake Turkana El Molo; Naivasha Hill Park; Wandune Holdings; Top in One; Delight Dreamland; Wajir Tourist; New Garden (Bondo); Mona Lisa; Solar Hotel; Kikuyu Guest House; Kenya Agro Business; Gasden Company Ltd; Kitui Tourist Hotel; Farm View Hotel Ltd; Motto Tours Ltd; Tsavo Motel Ltd; Kentur Tours & Travel Ltd and Kendu Bay Country Hotel.**

**The Committee noted that the Corporation had from 1983 to 2004 advanced commercial loans to:-**

LOANEE	LOAN AMOUNT	DATE OF APPROVAL	AMOUNT OF OUTSTANDING	REMARKS
Cross Cultural Crafts Ltd	3,500,000	2004	3,191,579	Payment Regular
Jacaranda Hotel	100,000,000	2004	103,029,213	Paying but irregular
Kithyululu Farm Ltd	17,570,100	1997	40,880,498.50	Paying but irregular
Garden Hotel Machakos	20,000,000	2000	41,631,110.30	Paying but irregular
Church Road Dev. Ltd	28,000,000	2000	56,331,280	Paying but irregular
Golf Hotel	15,587,725	1982	559,438,698.00	Restructuring in progress to enable us to recover the loans
Meru Mulika Lodge	1,849,626	1983	96,536,177.05	Lodge burnt down
Bomas of Kenya	12,304,355	1983	69,161,505.00	Conflict of ownership being sorted out
African Tours and Hotels	6,148,983	1983	156,678,501.10	Process of winding up in progress
Buffalo Springs Lodge	1,000,000	1980	117,199,845.85	In process of leasing to recover loan
Marsabit Lodge Ltd	500,000	1988	12,027,958	Balance being sort from the current owners who were to take liability
Mt Elgon Lodge Ltd	620,000	1987	28,236,714.85	In process of leasing to recover the loan
Sunset Hotel	1,815,176	2001	9,852,760	In process of restructuring to recover the loan
Metro Enterprises	30,000,000	2004	30,375,000	Disbursement going on

**While noting that most of these loans are secured, the Committee expressed concern that the loan recovery rate of 4.6% to 6.4% realized by the Corporation is far below expectation of prudent commercial practices.**

**The Committee recommends that the Chief Executive should continue pursuing recovery of all outstanding loans using all cost effective means at the disposal of the Corporation.**

### **3. DEBTORS AND PREPAYMENTS**

The Balance Sheet Debtors Prepayments balance of Kshs.85,423,875 as at 30 June 1998 incurred trade debtors of Kshs.49,984,659 out of which debtors of Kshs.19,157,121 have been dormant for a period of between three and eight years. In the circumstances, it is not possible, therefore, to ascertain and confirm the collectability of such dormant debts as at 30 June 1998.

**The Committee heard the evidence given by the Chief Executive that during the year under review, the balance sheet debtors and prepayments balance of Kshs.85,423,875 included an amount of Kshs.19,157,121 which have been dormant mainly resulting from non-performing ex-tenants and the Corporation has since provided for them as bad and doubtful debts in its accounts for the year 2004/2005, while at the same time pursuing recovery of the debt through its lawyers.**

**The Committee reiterates its recommendation in the 13<sup>th</sup> Report that the Chief Executive continues in efforts of recovering the debts.**

### **4. WATALII STREET PROJECT**

In the Report for the year 1995/1996, concern was expressed on the expenditure of Kshs.34,193,888 incurred on the now abandoned Watalii Project. It was also indicated that the expenditure related to consultancy services on a proposed Travel-Cum-Tourist Centre Project on Plot No. L.R. 209/9733 along Utalii Street in Nairobi had been incurred before a feasibility study was done. Additional expenditure of Kshs. 3,918,939 for Value Added Tax and Kshs.437,000 on feasibility study done after the project had been started was incurred during 1996/1997 thereby increasing total investment in this Project to Kshs.38,549,827 as at 30 June 1997. During the year 1997/1998, additional expenditure of Kshs.109,250 was incurred towards further feasibility study on the Project, which increased total cost on the Project to Kshs.38,659,077 as at 30 June 1998. As this Project still remains abandoned, the Corporation, most likely, stands to lose the total amount of Kshs.38,659,077 already spent on the Project.

**The Committee heard the evidence given by the Chief Executive that the Corporation incurred an expenditure of Kshs. 34,193,888 on consultancy services from four professional firms on Watalii Street**

Project, Kshs. 3,918,939 as Value Added Tax and Kshs. 546,250 for a feasibility study.

The Committee further heard that: -

- (i) the Corporation was expected to identify investors and undertake a feasibility study to ascertain the project viability before commissioning consultants;
- (ii) the Corporation failed to get an investor.

The Committee was informed that the necessary Nairobi City Council approvals have been obtained and that the Corporation is negotiating with a number of investors to undertake the project.

The Committee observed with concern that laid down financial regulations were disregarded in the initiation of the project, leading to a possible loss of public funds amounting to Kshs. 38,549,827.

The Committee recommends that the Corporation should continue to look for investors to undertake the project to ensure funds already utilized do not go into waste.

#### **5. IRREGULAR PAYMENTS OF ALLOWANCES TO PUBLIC SERVANTS**

During the year 1997/1998, a total amount of Kshs. 416,000 was paid in form of sitting allowances and bonuses to public servants in receipt of salary from public funds including the Corporation's Chief Executive, contrary to provisions of Section 10 of the State Corporations Act, (Cap 446).

The Committee heard the evidence given by the Chief Executive that during the year under review, the Corporation expended an amount of Kshs.416,000 in form of sitting allowances and bonus to public servants in receipt of salary, contrary to Section 10 of the State Corporations Act.

The Committee was informed that the amount was expended on the following public officers:-

	<b>NAME</b>	<b>DEPT/MINISTRY</b>	<b>AMOUNT</b>
1	Dorothy Achapa	Attorney General Chambers	65,000.00
2	Sarah Wainaina	Treasury	10,000.00
3	Edward Ngigi	Inspectorate of State Corporations	65,000.00
4	William Chelashaw	Kenya Tourist Development Corporation	71,000.00

5	George Githae	Ministry of Environment and Natural Resources	70,000.00
6	Nduati Thiabii	Ministry of Tourism	10,000.00
7	Barua Chele	Ministry of Tourism	60,000.00
8	J. B. Kijira	Treasury	60,000.00
9	Rashid Ali	Ministry of Tourism	5,000.00
	<b>TOTAL</b>		<b>416,000.00</b>

**The Committee recommends that the Inspector General (State Corporations) should immediately execute recovery of the Kshs.416,000 irregularly expended by the above named public officers in receipt of a salary, contrary to Section 10 of State Corporations Act.**

**REPORT OF THE AUDITOR GENERAL (CORPORATIONS) ON THE  
ACCOUNTS OF KENYA AIRPORTS AUTHORITY FOR THE YEAR ENDED  
30 JUNE 1999.**

**1. ACCURACY OF THE ACCOUNTS**

As was the case in previous years, the Authority's Accounts for the year 1998/1999 include balances brought forward which were adjusted without supporting documents. These Accounts, therefore, contain numerous overstatements and understatements, thus reflecting poor maintenance as well as inaccurate postings of the Authority's records. The Accounts, for instance, reflect a total amount of Kshs.252,416,657 against capital cost which was erroneously charged to recurrent expenditure under Repairs and Maintenance. Further, the Accumulated Reserve Account was revised upwards by Kshs.20,054,165, a figure which was said to relate to understatements of Cashbooks for 1992/93 but without any supporting documents as to the nature of the adjustment. The Authority was also unable to identify a cash equivalent in support of the adjustment. In addition, a total of Kshs.245,737,400 was also indicated as transferred from Capital Works-in-Progress to Repairs and Maintenance Item while the total expenditure reflected in the Profit and Loss Account on this Item amounted to only Kshs.226,735,624. The Authority has not, however, explained where the excess expenditure was charged to. Resulting from the poor manner in which the records of the Authority were maintained, it has not been possible to determine to what extent the understatements, overstatements and/or the unsupported adjustments have effected the accuracy of the Accounts of the Authority for the year 1998/99.

**The Committee heard the evidence given by the Chief Executive that the accounts for the year under review contained numerous adjustments, which were not supported and which affected the accuracy of the accounts.**

**The Committee was informed that supporting documents have since been submitted and verified by the Controller and Audit General and necessary adjustments made in the Accounts of the Authority for the year 2000/2001 thereby resolving the audit query.**

**2. REHABILITATION OF JOMO KENYATTA INTERNATIONAL  
AIRPORT (JKIA)**

In February, 1999 and apparently without following proper procurement procedures, the Authority signed and awarded a contract for the rehabilitation of JKIA to a Belgium firm at a negotiated contract price of Kshs.2,600,000,000. According to records, the scope of the works for the rehabilitation project covered provision of security equipment, supply and installation of six new boarding bridges, rehabilitation of baggage handling conveyors at Units 1,2, and 3, installation of check-in counters at Unit 3, rehabilitation of lifts and escalators, rehabilitation of lighting and internal

power distribution, heating, ventilation and air-conditioning system at passenger terminal building, preventive maintenance management systems provision and management services. It would appear that the Authority negotiated the lower price of Kshs.2.6 Billion against the contractor's original quotation of Kshs.3,051,796,000 for the works. Available records further indicate that four international firms had been contacted to tender for the project with the lowest bidder quoting Kshs.2,051,384,000 or about Kshs.548,616,000 lower than the contract offer price of Kshs. 2.6 Billion. Audit evaluation of the contract has revealed that:-

- (i) The lowest tenderer for the contract was also the firm which had been contracted to carry out the study, whose report formed the basis of the contract. It was, therefore, not clear as to why the tender from a firm that was most conversant with the job was rejected, particularly in view that the firm was described at tender evaluation stage as being capable of performing the work;
- (ii) The only reason given for the rejection of the lowest tender was that the tenderer had offered inflexible procurement schedule of buying raw materials required from Britain, France and South Africa as compared to the winner firm, which offered more sources of such materials. It has, however, not been possible to accept that this reason was good enough to justify the decision to forgo possible saving of Kshs.548,616,000, which would have been realized had the contract been awarded to the lowest bidders at their quotation of Kshs.2,051,384,000;
- (iii) The Authority had opened correspondence including negotiations with the winner firm immediately on receipt of their bid while no such evidence is available relating to the tender from the lowest bidder;
- (iv) The Contract agreement signed between the Authority and the successful tenderer provided for exemption of goods and services from taxation in Kenya while there was no evidence that prior exemption from such Kenya taxation had been granted by Kenyan tax authorities;
- (v) The Authority's own engineering pre-tender estimate of Kshs.2,600,000,000, at which the contract was awarded, was not supported by priced details of the works involved (BQ) stage by stage and only global figures were provided for the main components in making up the overall pre-tender estimate of Kshs. 2.6 Billion, it is not possible to make an objective appraisal regarding the reliability or acceptability of the pre-tender Estimate;
- (vi) At the price of Kshs. 2,600,000,000 and taking account of the scope of the work to be undertaken, this contract appeared abundantly excessive, in our view, this level of expenditure could

very well finance full construction of a complete new and modern airport. Consequently, the justification for this highly excessive expenditure on the rehabilitation of the Airport is, therefore, yet to be provided.

The Committee heard the evidence given by the Chief Executive that in 1989 the French Government provided a grant for a study on the capacity of Jomo Kenyatta International Airport (J.K.I.A), which was carried out by a French Company that recommended rehabilitation of specific areas in the Airport. However, plans to rehabilitate the facility were shelved due to budgetary constraints. The Authority signed a contract for the rehabilitation in February 1999.

The Committee further heard that:-

- (i) during the year under review the Authority experienced financial constraints and as such rehabilitation of facilities at the airport was only possible as a turnkey project comprising financing, consultancy service, construction and supervision;
- (ii) the Authority invited the following five firms who had shown interest through enquiries and previous participation to undertake a detailed study and submit technical and financial proposals based on a broad scope of the rehabilitation works:-
  - (a) M/s Siemens Air Traffic Management and Airports
  - (b) M/s Sofrearia/Basil Read
  - (c) M/s L. M. Chapeaux/Beac.
  - (d) M/s S.E.E.E Group-(who had previously participated under French/Kenya Protocols)
  - (e) M/s Mitsubishi Corporation;
- (iii) on technical evaluation, M/s. S.E.E.E Group & Mitsubishi Corporation failed to submit technical and financial proposals. M/s. Siemen's financial proposal was found to be unacceptable as it provided that airport tax would be applied on loan repayment. The bids for M/s. L.M. Chapeaux/Beac and M/s. Sofreavia/Basil Read were found to be acceptable;
- (iv) whereas M/s. Sofreavia/Basil Reads tied procurement of goods for the rehabilitation to France, the bid for L.M. Chapeaux/Beac was found to be more flexible as it proposed to source the equipment from various countries i.e. Belgium, Britain, Netherlands and Germany. The proposal of M/s. Sofreavia/Basil Reads was found to be unfavourable as the Authority's experience on similar equipment from France showed that they were not durable. M/s. L. M. Chepeaux/Beac was therefore contracted to carry out the rehabilitation project on turnkey basis at a negotiated contract price of Kshs.2.6 Billion; and

- (v) on 22<sup>nd</sup> August 2000 the Permanent Secretary, in the office of the President vide letter ref: OP. 9/17/A, advised the Authority that the Ministry of Finance had declined to waive duty on the equipment.

The Committee noted that:-

- (i) the Authority at the time did not have adequate capacity to do Bills of Quantities for the work and the management failed to seek the assistance of Ministry of Roads and Public Works; and
- (ii) the Authority failed to seek prior exemption of taxation of the goods and services on the works on assumption that duty would be granted since the works would be done on the airside. On request later, the Treasury declined to grant duty waiver. Subsequently, the Authority met the duty obligation by paying part of it directly while the other part was pegged on loan repayment. Eventually the cost of the whole project including tax rose to Kshs.4.1 Billion.

The Committee recommends that the Chief Executive ensures that government procurement procedures are adhered to in sourcing of goods and services and that future rehabilitation projects of the Airports are done in accordance with sound business principles and prudent commercial practices.

### **3. REHABILITATION OF AIRFIELD LIGHTING SYSTEMS**

In 1997, the Authority tendered for the rehabilitation of Airfield Lighting System at the Jomo Kenyatta International Airport and thereafter awarded the contract to an engineering firm on 21 October 1997, at a contract sum of Kshs.177,714,586 while the lowest bid received for the job was at Kshs.78,007,954 which was therefore, Kshs.99,706,632 lower than the accepted contract price. The Authority seems to have also varied items on the Bill of Quantities by removing from the contract certain items considered not too necessary for the purpose of saving related expenditure totaling Kshs. 13,000,000. Other items, which had not been earlier quantified, were also introduced into the Bill of Quantities at a cost of Kshs. 10,140,260. But more importantly and on the same date that the contract was signed, 24 December 1997, the Authority advanced Kshs. 38,610,266 to the Contractor even when no work had started, a payment which in effect constituted a pre-financing of the contractor by the Authority. Between 04 February 1998 and 07 September 1999, the Authority paid the contractor a total of Kshs. 206,036,632 against the contract sum of Kshs.177,714,586,000 thereby resulting in an overpayment of Kshs.28,322,086. Records also show that the Authority appointed a firm of Consultants to supervise the Project at a cost of Kshs.3,027,089 while at the same time, the Authority has assigned its

Electrical Engineer the same supervisory work. The Authority has not justified the appointment of a consultant to supervise the job particularly when it had already appointed its own engineer to perform the same job. Arising from the foregoing, the Authority would have made a possible saving of Kshs.123,559,842 had the contract been awarded to the lowest bidder and the job supervised by the Authority's own engineers.

**The Committee heard the evidence given by the Chief Executive that:-**

- (i) **five contractors were invited to tender for the works of Rehabilitation of Airfield Lighting Cables and Associated Works at JKIA through Tender No. KAA/JKA/352/E and that the following submitted their bids- M/s. M. J. Vekaria Electrical Ltd (Kshs.94,923,034), M/s. Rivelco International Ltd (Kshs.199,849,615) M/s. Polyphase Systems Ltd (Kshs.78,007,953), M/s. Esese Engineering Ltd and M/s. Azicon Engineering Ltd (Kshs.189,164,586);**
- (ii) **on evaluation M/s. Esese Engineering Ltd was disqualified for submitting a late tender. M/s. Polyphase Systems Ltd (78,007,954) and M/s. M.J. Vekaria Electrical Ltd (94,923,034) were found to be non-compliant since the supplier of the British Cables proposed by the former was found to be non-existence while the latter failed to submit tender surety. M/s. Rivelco & Azicon were found to be compliant with most tender conditions;**
- (iii) **on further evaluation, M/s. Rivelco International Ltd's bid of Kshs.199,849,615 was found to be 4.83% higher than the engineer's estimate. At the same time, M/s. Azicon Engineering Ltd tender figure of Kshs.189,164,586 was found to have had a computation error of about Kshs.13 million which when corrected brought the tender sum to Kshs. 177,714,586. The Tender Evaluation Committee recommended the award of the tender to M/s. Azicon Engineering Ltd at the corrected figure;**
- (iv) **on 24<sup>th</sup> December 1997 being the date the contract was signed, M/s. Azicon Engineering Ltd was given an advance payment of Kshs.38,610,266 to enable them obtain a letter of credit with overseas suppliers. The advance payment was considered on its merit and was granted after the contractor provided an irrevocable bank guarantee;**
- (v) **between February 4<sup>th</sup> 1998 and 7<sup>th</sup> September 1999 the Authority had paid the contractor a total sum of Kshs.206,036,632, which constituted an over payment. Subsequently an independent consultant M/s. Runji and Partners Consulting Eng. were engaged by the Authority to**

conduct project technical and financial audit. The findings of the consultant indicated that the contractor had been overpaid by Kshs.19,195,852.20. In January 2001 the contractor (M/s. Azicon Engineering Ltd) refunded the overpayment vide cheque Nos. 003425 (Kshs.17,195,852.20) and cheque No. 000865 (Kshs. 2,000,000); and

- (vi) despite the fact that at the time of carrying out the rehabilitation, the Authority had competent electrical engineers in its employment, M/s. Kisa & Partners were appointed on 28<sup>th</sup> November 1997 vide letter Ref: KAA/JKIA/352/E/CONS to carry out supervisory works at their tender figure of Kshs. 2,784,000.00. However, the Authority inexplicably paid Kshs.3,027,089 as supervisory fees.

The Committee observed with concern that it was imprudent for the Authority to hire a consultant to carry out supervisory works for the contract No. KAA/JKIA/352/E while its own staff in Engineering Department could have competently carried out the same work.

The Committee recommends that the amount of Kshs. 3,027,089 being the amount paid to M/s. Kisa & Partners Consulting Eng. for supervisory works under contract No. KAA/JKIA/352/E/CONS. which works could have been carried out by the Authority's staff, be recovered from the then Chief Executive Mr. Peter K. Lagat.

#### **4. REPAIR OF LIGHTING SYSTEMS**

In March 1998, an Egyptian cargo plane crashed and damaged the 21 Approach Lighting System at Moi International Airport, Mombasa. Although the resultant damage was assessed by the Insurance Company at Kshs. 55,546,944, the Authority for reasons not clearly indicated, appointed a firm of consultants at a fee of Kshs.3,118,003 to also assess the same damage, which reported a value of Kshs.64,449,752 against the damage. Thereafter and apparently without invitation of open competitive tenders and through selective bids, the Authority again appointed the same engineering firm, which had rehabilitated the Airfield Lighting System at Jomo Kenyatta International Airport to repair and reinstall the lights at a contract sum of Kshs. 68,634,333 while the lowest bidder had quoted Kshs.58,409,940. The Authority would have made a possible saving of Kshs.10,224,393 had this contract been awarded to the lowest bidder. Further, the Insurance Company paid only an amount of Kshs.38,015,234 against its assessed damage of Kshs. 55,546,944, arguing that the asset was under-insured and that it could only be compensated to the extent of Kshs.38,015,234. It is not, however, clear how the Authority accepted this argument. The consultants were also paid fees of Kshs. 5,084,570, which resulted in an unexplained over payment of Kshs. 1,966,537 against the fee of Kshs.3,118,033 originally agreed for the job. The Authority further pre-

financed the contract through an advance payment of Kshs.27,453,733 (40% of contract sum) without Board approval. Arising from the foregoing, it would not appear that the Authority made an apparent loss of a total Kshs. 33,070,012 as follows:-

Loss through Insurance under-compensation	Kshs. 17,531,709
Loss through unnecessary consultancy for damage assessment	Kshs. 5,084,510
Loss on possible saving if contract awarded to lowest bidder	Kshs. 10,453,733
Total apparent loss	Kshs. 33,070,012.

**The Committee heard the evidence given by the Chief Executive that:-**

- (i) on 10<sup>th</sup> March 1998 an Egyptian Cargo Plane crashed and damaged the Approach Lighting System for Runway 21 at Moi International Airport, Mombasa. Since the repair of the lighting system was urgent, the Authority subsequently appointed M/s. Aviation & Engineering Company Ltd (APEC) on March 12, 1998 to evaluate the extent of the damage and estimate the cost of repair works;**
- (ii) APEC submitted their report on 17<sup>th</sup> March 1998 estimating the cost of repair works at Kshs.55,546,943.90 subsequent to which tenders were invited. On opening of the bids, 8 firms had tendered, out of which M/s. Supreme Engineering Services (at Kshs.58,409,940) and M/s. Azicon Engineering Services (at Kshs. 68,634,333) were found to be technically responsive, while the other six were disqualified;**
- (ii) on further evaluation, the bid for M/s. Supreme Engineering Services was found to contain arithmetical errors of Kshs.13,701,210 (24% of the tender sum) which when corrected brought their tender sum to Kshs.72,111,150 making the bid higher than that of M/s Azicon Engineering Services, who bid the lowest at Kshs.68,634,333. The works were subsequently awarded to M/s. Azicon Engineering Services on 9<sup>th</sup> April 1998 at the quoted fee;**
- (iii) on award of the contract, M/s. Azicon Engineering Services was advanced Kshs.17,43,733 on their request and recommendation of the consultant (APEC). This was after they provided a bank guarantee of similar amount, which constituted 40% of the contract price; and**

- (iv) immediately after the crash, the Authority informed the insurer M/s. ALICO who confirmed that the assets of KAA were under-insured at a sum of Kshs.13,538,191,109. On engaging an Independent Loss Adjustor, M/s. Larens Toplis, the recoverable damage fee was reached at Kshs.38,015,234, which was duly paid by the Insurance Company.

The Committee noted that the variance of Kshs.17,531,709 represented the difference between the figures of assessment estimated by the Consultant M/s APEC (Kshs.55,449,752) and the figure of Insurance Company (Kshs.38,015,234). Further, the Insurance Company only considered the damaged portion of the system, whereas the consultant assessment was for replacement of the entire system to achieve uniformity in accordance with the ICAO Standards.

The Committee also noted that at the time of commencement of the repair works, the consultancy rate was based on the then concluded consultancy contract for the expansion of Malindi Airport. The contractor's quotation for this period was Kshs.5,084,570 and therefore there was no overpayment.

The Committee observed that even though the evidence adduced by the management exonerated misgivings in the way the urgent repair works were executed, *papers laid* before the Committee indicated that the consultants M/s APEC Ltd and the contractor M/s Azicon Engineering Ltd were formally contracted after they had commenced the repair works.

The Committee recommends that the Chief Executive ensures that government procurement procedures and regulations in force are adhered to in acquisition of goods and services.

The Committee further recommends that the Authority ensures that its assets are comprehensively insured.

## **5. PURCHASE OF FIRE FIGHTING EQUIPMENT**

In my previous year's report, reference was made of the fact that the Authority ordered a fire fighting equipment at a contract sum of Kshs.270,040,795 which was later varied to Kshs.327,419,000. Examination of contract documents during the year under review indicated that the contract was again varied to Kshs.356,679,008 without any supporting justification. This latest price changes resulted in an unexplained contract variation of Kshs.29,260,000. The Authority's records further show that the total payments made for this equipment amounted to Kshs. 361,367,866 as at 30 June 1999. The resultant payment of Kshs.4,688,866 over and above the revised price of Kshs.356,679,008 has not been explained while the Authority has not justified the total variations of Kshs.91,327,071 on this simple procurement contract. In addition,

physical inspection of the fire fighting equipment revealed that there were two badly damaged trucks which formed part of the equipment and which were still lying uncollected at the Mombasa Port. As the two trucks formed part of the fire fighting equipment package, it was not clear how the equipment was assembled and commissioned without the trucks. Arising from the foregoing, I am not able to confirm the propriety of the total expenditure of Kshs.361,367,866 incurred by the Authority on the procurement of Fire fighting equipment, particularly in view that the contractor had initially tendered to supply the equipment in good condition and at an all inclusive cost of Kshs.270,040,795.

**The Committee heard the evidence given by the Chief Executive that:-**

- (i) the Authority sought fire fighting equipment from M/s. S. K. Fire Pti; M/s. Rosenbauer (ATS) Reynolds; M/s. R. Boughton; M/s. Kronenburg (NLG) and M/s. Zeigler. M/s. Kronenburg (NLG) which quoted Kshs.327,419,000 was the best evaluated and the lowest tenderer;**
- (ii) M/s. Kronenburg (NLG) was awarded the tender at the quoted sum of Kshs.10,197,967.00 Dutch Guilders or Kshs.327,419,000;**
- (iii) Authority's Board on 16<sup>th</sup> October, 1997 approved procurement of the equipments at tender sum of Kshs.327,419,060. However, by 30<sup>th</sup> June 1999, the firm had been paid a total of Kshs.361,367,806 representing further variation of the contract price by Kshs.91,327,071;**
- (iv) the equipment was delivered and is operational but with difficulties. Two of the trucks were damaged on the high seas while they were being transported and were repaired by the insurance company;**
- (v) most of the supporting documents for the contract have since disappeared from the Authority; and**
- (vi) the Chief Executive officer of the Authority when the equipment was bought and payments made was Mr. Peter Lagat.**

**The Committee observed with concern that in absence of any supporting documents on the tender procedures followed including bills of quantities which appear to have been deliberately misplaced to conceal information, it would be difficult to confirm the propriety of the total sum of Kshs. 361,367,806 expended on the project.**

**The Committee recommends that:-**

- (i) the Director of Criminal Investigations Department immediately institutes investigations on the matter of**

procurement of the fire fighting equipment and the circumstances under which documents relating to the adjudication and award of the tender disappeared from the Authority, with a view to preferring appropriate charges against any person(s) found culpable in connection with the matter; and,

- (ii) the Authority adheres to procurement procedures and regulations currently in force in acquisition of goods and services.

## **6. SUPPLY OF FINANCIAL MANAGEMENT SOFTWARE**

A contract for the supply of Financial Management Software was awarded to a South African Company under contract No. KAA/II/377/SW/04 at a price of Kshs.51,777,565 exclusive of VAT, which according to the agreement, was to be borne and paid for by the Authority. The Bill of Quantities for this contract included an amount of Kshs. 14,650,800 being the cost of two (2) IBM Computer Serves and Kshs.9,527,595 being payments covering annual user license, two persons on call for four (4) months, travel, accommodation, car hire and meals. Instead of supplying the two IBM computer serves as per the contract, the Contractor, however, sub-contracted a local computer firm to supply two (2) Compaq 6000 Computer Servers (with a total value of Kshs.7,760,600.40) at a cost of Kshs. 22,485,682.45 inclusive of VAT of Kshs.3,077,222. On this transaction alone, the Authority not only accepted and received different computer equipment from the one quoted for, but also paid an excess cost of Kshs.14,725,082 for such equipment. In addition, the Authority had to respectively pay Kshs.4,136,165 and Kshs.8,927,166 to cover VAT and Withholding tax thereon. The Authority has not, however, explained why it paid the total taxes of Kshs.16,140,553 on behalf of the contractor, particularly when no recoveries were made from the payments made to the contractor to cover the taxes. Records also show that the foreign firm was paid Kshs.9,527,595 instead of the quoted amount of Kshs.8,927,166 for the annual license and allowances for two persons on call for four (4) months. Apart from the overpayment of Kshs.600,429 on this item of the contract, the justification for the expenditure has not been provided, particularly in view that the hardware equipment appears to have been locally supplied and should, therefore, have been possible to also service and maintain it locally.

**The Committee heard the evidence given by the Chief Executive that:-**

- (i) the contract was part of a major computerization project at the Authority, which was awarded to M/s. Dynatech International, (in which Dr. Merlyn Ketering of Anglo Leasing Ltd was a Director) and Executive Support Consultants Limited of Gailey and Roberts Complex, Lusaka Road, Nairobi, to provide consultancy services in March 1999 at a total cost of US\$760,000. The consultancy service was to be provided in

four phases namely:- Needs Assessment, Implementation, Diagnosis and Evaluation and Performance Review;

- (ii) the following aspects of the project at Kenya Airports Authority Headquarters and Jomo Kenyatta International Airport were implemented and paid for:-
- (a) Local Area Network infrastructure by Azicon Engineering Services Ltd at Kshs.26,957,260.00;
  - (b) Clustering hardware and software by Circuit Business Systems at Kshs.18,800,791;
  - (c) Computer servers and hardware by Copy Cat at a cost of Kshs.22,961,620.00;
  - (d) Lotus Messaging System (Lotus Domino) and Microsoft Office Automation packages by Copy Cat at a cost of Kshs.7,470,168;
  - (e) Financial Management Information System and Aircraft Movement Management System by Macola of South Africa at a cost of US\$752,000;
  - (f) Financial Management System and Aircraft Movement Management System by Enterprises Software Solution at a cost of Kshs.13,362,320 (Moi International Airport, Mombasa);
  - (g) Ms Office Automation and Messaging by Copy Cat at a cost of Kshs.2,392,782 (Moi International Airport, Mombasa).
- (vi) even after paying the full amount of US\$760,000 to Dynatech International, some aspects of phase 3 and 4 which included Implementation & Evaluation and Performance were not completed;
- (vii) even though the cabling and hardware provided were in good condition as at March 2006, the management realized that the Integrated Financial Management System (Macola) and Aircraft Movement Management System (Ammslite), both supplied by M/s. Enterprise Software Solution did not meet user requirements. This compelled the Authority work manually, despite the annual license fees demanded by the firm to the tune of US\$90,266.40 per year. By March 2003, the Authority had spent Kshs.21,371,487.00 as annual license fees on top of Kshs.67,918,118 incurred on supply and installation of the software;

- (viii) due to non performance of the system, the Authority in April 2003 declined to pay license fees leading to denial of access to the system. M/s Enterprise Software Solutions Limited later sued the Authority for breach of contract and the matter is pending before the High Court (as at the time of hearing the evidence); and
- (ix) tenders were awarded during the tenure of Mr. Peter K. Lagat as the Chief Executive Officer of the Authority.

The Committee recommends that:-

- (i) the Chief Executive ensures that government regulations regarding to procurement of goods and services are adhered to without exception;
- (ii) the Director of Kenya Anti-Corruption Commission immediately conducts investigations into the manner in which the Computerization Consultancy Tender was adjudicated and awarded to M/s. Dynatech International with a view to preferring charges against any person(s) found culpable;
- (iii) the Chief Executive follows closely on the High Court case with M/s Enterprise Software Solution and ensures that the interests of the Authority are safeguarded; and
- (iv) by all means possible, the Chief Executive ensures that M/s. Enterprise Software Solution Ltd compensates for the non-performance of the work done.

## **7. TENDER EVALUATION CONSULTANCY**

In June 1997, the Authority contracted an international firm to evaluate tenders for the computerization of its Airport and Head Office operations at an agreed price of Kshs.55,480,000 (US\$760,000). The contract was apparently awarded without invitation of open tenders and it was not, therefore, clear how the firm was identified for contracting in the first place. Although records show that the contractor was exempted from all forms of taxation in Kenya, certificates for such tax exemptions were not obtained from the Minister of Finance and as a result, the Authority had to pay Kshs.5,007,469 and Kshs.4,885,435 to cover both VAT and Withholding Tax respectively. The Authority has not explained why it purported to give tax exemptions to the contractor when it was well aware of the provisions of tax laws in the country. In addition, the consultant did not appear to have given a report on the evaluation assignment as no such report was availed for audit review. Instead, records show that the consultant cancelled bids submitted through opening tendering apparently without giving explanations and replaced them with quotations received through selective tendering.

The Committee heard the evidence given by the Chief Executive that:-

- (i) the contract was part of a major computerization project of the Authority, which was awarded to M/s. Dynatech International, (in which Dr. Merlyn Ketering of Anglo Leasing Ltd was a Director) and that Executive Support Consultants Limited of Gaily and Roberts Complex, Lusaka Road, Nairobi, were to provide consultancy services in March 1999 at a total cost of US\$760,000. The consultancy service was to be provided in four phases namely:- needs assessment, implementation, diagnosis and evaluation & performance view;
- (ii) the following aspects were implemented and paid for at Kenya Airports Authority Headquarter and Jomo Kenyatta International Airport:-
  - (a) Local Area Network infrastructure by Azicon Engineering Services Ltd at Kshs.26,957,260.00.
  - (b) Clustering hardware and software by Circuit Business Systems at Kshs.18,800,791.
  - (c) Computer servers and hardware by Copy Cat at a cost of Kshs.22,961,620.00.
  - (d) Lotus Messaging System (Lotus Domino) and Microsoft Office Automation packages by Copy Cat at a cost of Kshs.7,470,168.
  - (e) Financial Management Information System and Aircraft Movement Management System by Macola of South Africa at a cost of US\$752,000.
  - (f) Financial Management System and Aircraft Movement Management System by Enterprises Software Solution at a cost of Kshs.13,362,320 (Moi International Airport, Mombasa).
  - (g) Ms Office Automation and Messaging by Copy Cat at a cost of Kshs.2,392,782. (Moi International Airport, Mombasa).
- (iii) even after paying the full amount of US\$760,000 to Dynatech International, some aspects of phase 3 and 4 which included Implementation & Evaluation and Performance were not completed;
- (iv) even though the cabling and hardware provided were in good condition as at March 2006, the management realized that the Integrated Financial Management System (Macola) and Aircraft Movement Management System (Ammlite), both supplied by M/s. Enterprise Software Solution did not meet user requirements. This compelled the Authority work manually, despite the annual license fees demanded by the firm to the tune of

US\$90,266.40 per year. By March 2003, the Authority had spent Kshs.21,371,487.00 as annual license fees on top of Kshs.67,918,118 incurred on supply and installation of the software;

- (v) due to non performance of the system, the Authority in April 2003 declined to pay license fees leading to denial of access to the system. M/s Enterprise Software Solutions Limited later sued the Authority for breach of contract and the matter is pending before the High Court (as at the time of hearing the evidence); and,
- (vi) tenders were awarded during the tenure of Mr. Peter K. Lagat as the Chief Executive Officer of the Authority.

From the evidence adduced before it, the Committee noted that the tenders for the Computerization Project were first invited for pre-qualification through open tender, advertised on 14<sup>th</sup> October 1996 and that the same was re-advertised on 24<sup>th</sup> January 1997 when M/s. Dynatech International was awarded at the tender sum of US\$760,000 (Kshs.55,480,000) on recommendation of a Board Tender Committee, which sat on 21<sup>st</sup> March 1997.

The Committee observed that:-

- (i) it is not clear how the decision to re-advertise the tender was arrived at, nor is it clear how the decision to award the tender to M/s. Dynatech International was reached as the present management alluded that documents relating to the entire transaction have since disappeared from the custody of the Authority;
- (ii) in the light of a recommendation by an unsigned *paper laid* titled "Tender Evaluation Report on Computerization Project" to award the tender to M/s. Finsiel East Africa Ltd and OSIAS at Kshs.38,101,992.00 and Kshs.25,429,125.00 respectively, it would appear that M/s. Dynatech International conspired with part of the then Authority's management, Central Tender Committee, Chief Executive and members of Board's Tender Committee to defraud the Authority in the entire computerization project; and
- (iii) the Authority paid the total contract fee of US\$760,000 to the contractor M/s Dynatech International, even when the contractor failed to complete phases 3 and 4 (Implementation & Evaluation and Performance Review) of the entire project.

**The Committee recommends that:-**

- (i) the Chief Executive ensures that government regulations regarding procurement of goods and services are adhered to without exception;**
- (ii) the Director of Kenya Anti Corruption Commission immediately conducts investigations into the manner in which the Computerization Consultancy Tender was adjudicated and awarded to M/s. Dynatech International with a view to preferring charges against any person(s) found culpable;**
- (iii) the Chief Executive follows closely on the High Court case with M/s Enterprise Software Solution and ensures that the interests of the Authority are safeguarded in the case;**
- (iv) the Chief Executive by all means possible, ensures that M/s. Enterprise Software Solution Ltd compensates for the non-performance of the works done;**
- (v) the Director of Kenya Anti Corruption Commission immediately conducts investigations on the role played by the then Chief Executive, management and members of the Central Tender Committee and Board's Tender Committee individually and collectively in adjudicating and awarding the tender to M/s Dynatech International Ltd with a view to preferring appropriate charges against them, if culpable; and**
- (vi) the Inspector General (State Corporations) identifies the Board members of the Authority who sat to adjudicate and award the tenders to M/s Dynatec International Ltd with view to commencing surcharge on them.**

**8. ADVERTISING EXPENSES – KSHS.20,052,333**

The Administrative Costs figure of Kshs. 283,414,585 reflected in the Accounts for 1998/99 includes payments totaling Kshs.20,052,333 made to a firm, which was commissioned by the Authority to promote its various airports through publicity advertising. However, and apart from the fact that the Authority has not clearly explained how the airports were to be promoted through this type of venture, evidence of any benefits received by the Authority resulting from this very expensive contract has not been seen. The Authority has also not explained how this firm was identified for commissioning or even explained how the sum of Kshs.20,052,333 was determined. Arising from the foregoing, it has not been possible to confirm the propriety of the expenditure of Kshs.20,052,333 reportedly incurred on the publicity for the Authority's airports.

**The Committee heard the evidence given by the Chief Executive that during the year under review, the Authority, without open tendering, contracted M/s. Bushdrum to carry out promotion of its various airports through publicity advertising at a contract fee of Kshs.7,203,600 and not Kshs.20,052,333.**

**The Committee also heard that to date, the Authority is not able to ascertain how the airports were to be promoted, neither can it ascertain what benefits, if any, it had received from the expenditure.**

**The Committee recommends that the Inspector General (State Corporations) surcharge Kshs.7,203,600 from the then Chief Executive which was expended ostensibly for the advertisement contract.**

## **9. RETRENCHMENT OF STAFF**

The Authority's personnel records indicate that during the year 1997/98, Government approved retrenchment of some 131 employees of the Authority, who had been declared redundant after the Authority ceased to offer services to airbases and airstrips in the country. When approving this retrenchment, Government indicated that officers who qualified for pension and who had served for ten (10) or more years would get normal pension and gratuity benefits under the Pensions Act. The Authority also retrenched an additional 635 staff under the Second Phase of the exercise at a total cost of Kshs.323,304,302. Available records show that staff who were only 10 months short of the compulsory retirement age of 55 years were also paid severage compensation at the rate of 3 months for every year worked at current salaries plus 2 months salary in lieu of notice as well as payment for leave not taken. Eight such officers were paid a total of Kshs.9,545,000 as compensation. Had these officers been retained for the remaining 10 months to attain the mandatory retirement age, the Authority would have paid pension totaling Kshs.1,138,250 and a saving of Kshs.8,406,750 would have been realized. Other officers who had attained the ages of 52 and 53 were also retrenched and paid a total of Kshs.30,504,615 instead of being retained for the remaining short period to qualify for normal pension. Of more significance, however, is the fact that while the Authority retrenched its staff, most of whom were in the Cleansing Departments, two firms were awarded two-year contracts to provide cleaning services at JKIA and MIA, Mombasa with effect from October 1998.

The JKIA contract was awarded to a company which was the fourth lowest bidder at Kshs. 43,680,978 per annum while the lowest bidder quoted Kshs.22,454,196 p.a. In the case of MIA, the contract was awarded to a firm which quoted Kshs.14,830,252 p.a. while the lowest tenderer for the same job quoted Kshs.9,267,542 p.a. There does not, however, appear to have been good reasons for not awarding each of the two contracts to the lowest bidders as both the contracts were subsequently cancelled and rewarded after only three months. It was further noted that JKIA cleansing contract was cancelled and another one awarded at Kshs.20,516,748 p.a.

with the Authority paying the earlier contractor Kshs.10,920,244 for three months services. Had the Authority not awarded the contract to the fourth lowest bidder, the quotation of Kshs.43,680,978 p.a., the Authority would have realized a possible saving of Kshs.5,306,695 for the three months the original contract was in place. Arising from the foregoing, I am not able to confirm that the whole process of retrenching staff at very considerable cost to the Authority and later appointing private firms to provide cleaning services at yet another considerable cost per year had properly been evaluated or even confirmed as an appropriate and effective cost control measure.

**The Committee heard the evidence given by the Chief Executive that during the year under review and in line with the Government Retrenchment Programme, the Authority retrenched a total of 766 of its employees, including those who were only 24 to 10 months short of the compulsory retirement age of 55 years.**

**The Committee also heard and acknowledged that even though the compensation package looked quite high, the Authority has in the long run gained against staff costs, which would have been incurred by retaining the excess staff. The exercise was therefore, prudent.**

**The Committee was also informed that following retrenchment of staff in the cleaning department, two firms were awarded two-year contracts to provide cleaning services at JKIA and Moi International Airport at Kshs.43,680,978 and Kshs.22,434,196 per annum respectively, and that the two contracts were later cancelled and re-awarded. This was due to the questionable manner in which the initial contracts were awarded.**

**The Committee observed that had the Authority employed due diligence in awarding the initial cleaning contract, the Authority would have saved Kshs.10,920,244, which was paid for the three months services with the initial cleaning agent at JKIA.**

**The Committee recommends that the Chief Executive ensures that the interests of the Authority are safeguarded in procurement of goods and services and that rules and regulations relating to procurement are adhered to without exception.**

#### **10. UNACCOUNTED FOR STORES AND SPARES**

The Stores and Spares balance of Kshs.135,635,000 reflected on the Balance Sheet as at 30 June 1999 excludes spares of an unknown value which were handed over to the Authority by a contractor at the Eldoret Airport after the Completion of his contract. It is not understood, however, why these assets were not valued and included in the Authority's books of account. Arising from this omission, it has not been possible to confirm the

correctness of the Authority's Stores and Spares balance of Kshs.135,635,000 as at 30 June 1999.

**The Committee heard the evidence given by the Chief Executive that the stores and spares balance of Kshs.135,635,000 reflected on the Balance Sheet excluded spares of an unknown value, which were handed over to the Authority by a contractor at the Eldoret Airport after the completion of this contract. The Committee further heard that when the government handed over Eldoret Airport to the Authority in 1996, details of assets and stocks register were not provided. The management of Kenya Airports Authority however, subsequently valued the stores and the values were included in the accounts of 2000/2001 thereby resolving the audit query.**

#### **11. CASH AND BANK BALANCES**

The Balance Sheet as at 30 June, 1999 reflects Cash and Bank balance figure of Kshs.562,930,000 while the Cash Book shows a Bank Overdraft figure of Kshs.62,180,439. The nature of the resultant difference of Kshs.625,110,439 has not been explained. In addition, there were receipts in the Cash Book but not entered in the Bank Statement for a period of between four to five years, totaling to Kshs.26,128,584 whose detailed supporting analyses were not availed for audit verification. The Authority has not explained why these very substantial amounts have remained uncredited by the Bank for such a long time. Further, there were payments (direct debits) in the Bank Statement not entered in the Cash Book totaling Kshs.15,292,376 whose nature was similarly not explained as the Authority did not provide letters of authority or debit advice notes to support the Bank's action to debit the Authority's accounts. In the absence of any such authority from the expenditure as represented by the direct debits, it is not possible to establish the propriety of the expenditure or even to confirm the correctness of the Cash and Bank balance figure of Kshs.562,930,000 shown on the Balance Sheet as at 30 June 1999.

**The Committee heard the evidence given by the Chief Executive that the Balance Sheet reflected a cash and bank balance figure of Kshs.562,930,000 while the cashbook shows a bank overdraft figure of Kshs.62,180,439.**

**The Committee heard that owing to its recommendation in its 10<sup>th</sup> Report, all adjustments have been reconciled and incorporated in the accounts of 2000/2001 and have subsequently been audited and verified by the Controller and Auditor General, thereby resolving the audit query.**

**REPORT OF THE CONTROLLER AND AUDITOR GENERAL ON THE  
ACCOUNTS OF KENYA AIRPORTS AUTHORITY FOR THE YEAR ENDED  
30 JUNE 2000.**

**1. PURCHASE OF AIRCRAFT FIRE FIGHTING & RESCUE VEHICLE.**

In April, 2000 the Authority ordered an aircraft fire fighting and rescue vehicle for the Lokichogio Airport from a supplier, whose bid was ranked 4<sup>th</sup> lowest at Kshs. 51,309,297, (DM1,248,964). The lowest bidder had quoted Kshs. 25,733,947 a bid which was within the budgeted estimate of Kshs. 25,000,000 for the vehicle. A review of the tender documents indicated that the lowest bidder complied with 8 of the 35 pre-tenders specifications but was disqualified reportedly for uncertainty in after sales service as well as his offer of uncommon Detroit Diesel Engine. Both the 2<sup>nd</sup> lowest and the 3<sup>rd</sup> lowest bidders who quoted Kshs. 40,039,021 and Kshs. 49,131,088 and who complied with 29 out of the 35 pre-tender specifications and 22 out of the 35 pre-tender specifications respectively were disqualified allegedly because their offer was considered unsatisfactory. The 4<sup>th</sup> lowest bidder who complied with 7 out of the 35 pre-tender specifications was awarded the contract on the grounds that its after sales service was excellent and that the make of the fire engine it offered was common in the country.

Available information indicated that although the supplier had requested for payment arrangement of 20%, 60% and 20% on order, shipment and delivery, respectively, the Authority paid the supplier the whole amount in advance allegedly because the order could not be slotted in by the overseas manufacturer unless upfront payment was made. The vehicle was, however, not delivered until April 2002, a year after the expected date of delivery and two years after the date when the contract was awarded. Apart from the fact that the reason given for the advance payment for the equipment before it was supplied was not disclosed before the tender was awarded, the decision to buy the equipment from the 4<sup>th</sup> lowest bidder at twice the price quoted by the lowest bidder is unjustifiable and clearly extravagant.

**The Committee heard the evidence given by the Chief Executive that:-**

- (i) owing to obsolescence of its then existing fire engines, the Authority drew specifications and placed adverts in the local dailies on the tender No.KAA/14/99/2000 for delivery of an Aircraft and Rescue Vehicle for Lokichogio Airstrip. The tender was closed on 23/9/99 where out of the 18 firms who bought tender documents, only 8 submitted bids. Of these, M/s Kenya Fire Appliance and Marshals had not quoted and therefore only six firms qualified for evaluation;**
- (ii) on Financial Evaluation, M/s. Fire Control Systems, M/s. E-One and M/s Mather & Platt were the first, second and third**

lowest at Kshs.25,733,947, Kshs.40,039,021 and Kshs.49,131,088 respectively;

- (iii) M/s DT Dobie was the fourth lowest bidder at Kshs.51,309,279 which was above the budgeted estimate of Kshs.25 million; and
- (iv) on technical evaluation, the bid for M/s Fire Control Systems was considered unsatisfactory as the firm declined to extend the validity on the price while those of M/s E-One and M/s Mather & Platt were disqualified on grounds of installation problems and uncertainty in after sales service. The Tender Committee therefore recommended M/s DT Dobie for the works at their tender fee of Kshs.51,309,279.00 on the grounds that the engine offered was common in the country and after sales service was excellent and available throughout the country.

The Board in its sitting of April 13, 2000 approved the award of the tender to M/s. DT Dobie for supply of a Mercedes Benz engine Fire Fighting and Rescue Vehicle model No.1848 AK 4x4 at their quoted fee of Kshs.51,380,279 (exclusive of taxes) including all incidental costs of delivery.

On award of tender, the contractor M/s DT Dobie on 26<sup>th</sup> April 2000, requested for 100% upfront payment ostensibly because the KAA order could not be slotted in by the principal Suppliers, M/s Daimler - Chrysler AG due to heavy booking for bigger orders at the manufacturing factory. The Authority later granted the Local Purchase Order amount against a bank guarantee for the same.

The Committee noted that the difference between Kshs.51,380,279 and Kshs.51,309,279 being the final offer price and bid price respectively was occasioned by fluctuations in foreign currency exchange rate.

The Committee observed with concern that:-

- (i) even after the supplier was paid the entire amount in advance, the equipment was delivered twelve months after the due delivery date; and
- (ii) that the offer price of Kshs.51,309,279 was far above the budgeted price of Kshs.25 million and that express authority to exceed the budget was not sought.

The Committee recommends that Government procurement rules and procedures should be followed and all procurement be made within the approved budget.

The Committee heard the evidence given by the Chief Executive that:-

- (i) after opening tender no. KAA/ES/MIA/355/E, seven firms- M/s. Burhani Engineers, M/s Azicon, M/s Rivelco, M/s. ABB, M/s. Philafe, M/s. Aircon and M/s Tudor, were subjected to financial evaluation. M/s. Burhani, M/s. ABB and M/s Azicon were qualified and subjected to technical evaluation;
- (ii) M/s Azicon with a bid of Kshs.99,831,503 was disqualified for gross under quoting on some items. Of the remaining two firms, M/s. ABB bid for Kshs.109,760,973 was recommended for their proven experience in similar works elsewhere;
- (iii) in accordance with the contract terms, the Authority paid an advance payment of 50% of the contract fee against an irrevocable Bank Guarantee of equivalent amount;
- (iv) M/s Professional Consultants was first appointed in Feb. 1999 without inviting open tenders to assist in tendering and supervision of the construction works by the Authority and that since the initial works were not executed, the appointment of the Consultant was renewed on re-advertisement. By June 30, 2000, the Authority had paid the consultants a total of Kshs.3,105,178, which was in accordance with letter of appointment and the Association of Civil Engineers (ACE) scale of fees;
- (v) the quality of control cable required for Mombasa Airport was 7km long. By this time, a 4km similar cable had been left over at JKIA and was available for use. The Bill of Quantities for the works at the Mombasa International Airport included only 3 km length of control cable, which was to be supplied by the contractor, hence the additional 4km was to be transported from JKIA to Mombasa Airport. At implementation, however, the Airfield Lighting Control System was substituted with a superior quality, which does not use the normal control cable, which had already been transported from JKIA at a cost of Kshs.233,000;
- (vi) the Authority expended a total of Kshs.1,158,081 on traveling and accommodation for its Head Office-based Project Engineers, who attended site meetings on behalf of the employer. Tickets and accommodation for the Project Engineers were however, not part of the contract with the Supervising Consultants; and
- (vii) at the commencement of the project, the item on the provision of project car was not spelt out and was silent on who the car should revert to at completion. On expiry of

had been appointed by the Authority in October, 1997 to provide consultancy services at a cost of Kshs.6,380,000. The information further indicates that due to the extension of contract time as indicated above, the consultant claimed further supervision fees of Kshs.3,027,234 thus bringing total fees payable to the consultant to Kshs.9,407,234. The Authority therefore paid the contractor Kshs.36,935,915 for work which was poorly done, and in addition paid the Consultants fees totaling Kshs.9,407,234 for what is clearly poor and inadequate supervision of works. Further, and in view of the poor performance of the contract the Authority's stated justification of the appointment of the contractor over the lowest bidder was invalid and the resultant additional contract costs of Kshs.9,250,841 and the supervision fees unjustified.

**The Committee heard the evidence given by the Chief Executive that:-**

- (i) during evaluation of tenders by M/s Gibbs (Africa) Ltd, it was recommended that M/s NBLI (S.A.) Ltd, be awarded the contract No. KAA/ES/JKIA/CK/FH for rehabilitation of fire hydrant and sewerage pumping system at the revised amount of Kshs.36,638,926.78. This was on condition that the tenderer obtains a performance guarantee of 35% of the tender sum instead of the 10% stated in the tender advert, due to the failure of the firm to provide information to justify the low rates in the bids. This increased security guarantee reflected the difference between his tender and the 2<sup>nd</sup> lowest bidder's;**
- (ii) on failure of M/s NBLI (S.A.) Ltd to accept this condition, the consultant recommended the second lowest tenderer M/s Spenkon (K) Ltd. at the quoted fee of Kshs.45,898,767. Spenkon was therefore awarded the contract;**
- (iii) the project was completed and handed over on 22<sup>nd</sup> March 2005, 70 months after the due date of completion. The delay was attributed go to six variation orders and protracted dispute between the Consultant and the contractor as to who was responsible for malfunctioning and inoperability of some of its aspects at implementation stage. The resultant defect liability period ended on 22<sup>nd</sup> March 2006.**
- (iv) the consultant, M/s Gibbs Africa Ltd, who initially in 1997 had been irregularly contracted to offer consultancy services at the Authority had his contract extended to cover supervision of the contract No. KAA/ES/JKIA/CK/FH at contract fee of Kshs.3,027,234, which was based on time spent on supervising the new project; and**
- (v) prior to completion of the project, six variation orders were authorized to cover additional works, which included**

4. **TERMS AND CONDITIONS OF SERVICE FOR MANAGING DIRECTOR AND DEPUTY MANAGING DIRECTOR.**

In March, 1999 the Board of Directors of the Authority approved Consolidated salaries for the Managing Director and the Deputy Managing Director at Kshs.804,000 and Kshs.564,466 respectively effective from 1 January 1999. The Board further approved leave allowance of Kshs.93,000 per annum for each of the two officers in addition to utility security and car allowances among other payments. Although the car allowances of Kshs.140,000 and 100,000 per month for the Managing Director and Deputy Managing Director respectively were payable to the officers on condition that they do not use official transport, available information shows that the officers were provide with official transport which they used throughout the year while they still continued drawing car allowances, thereby resulting to irregular payment totaling Kshs.4,320,000 to both officers for the eighteen months period to 30 June, 2000. There is also no evidence that these allowances were taxed as provided for in the Income Tax Act and relevant Regulations. Similarly, the Board approved salary increases for its senior managers effective from 1 January, 1999 and salary increases to all employees with effect from 1 January 2000. Salary records show that the Authority paid arrears totaling as much as Kshs.2,454,233 to some of the employees which were backdated to 1999. However, detailed workings of these arrears were not made available for audit review and it was not, therefore, possible to ascertain the propriety of the payment. The Authority has not provided for audit review, evidence of approval of these salary awards as well as new terms and conditions of service for the Senior Management by the Minister for the Parent Minister as required under Section 11(c) of the Kenya Airports Authority Act, (Cap 395).

**The Committee heard the evidence given by the Chief Executive that car allowances for the Managing Director (MD) and the Deputy Managing Director (DMD) of Kshs.140,000 and Kshs.100,000 per month respectively were consolidated on their salaries on condition that they would not use official transport after working hours.**

**The Committee further heard that the allowances were introduced on understanding that the two vehicles attached to the officers would be released to the pool and as such, they would only use them on official business.**

**The Committee further heard that salary increase for the senior managers with effect from January 1999 was done in accordance with Section 10(B) of KAA Act, which provides that "in exercise of its duty under Section 8 and subject to any directions of a general nature which may be given by the Minister, the Board may approve any minor alteration in salaries, wages and other terms and conditions of service of employees" The detailed computations of arrears in respect to the increase have since been submitted to the Controller and Auditor General for audit review.**