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REPUBLIC OF KENYA  
THE NATIONAL ASSEMBLY  
THIRTEENTH PARLIAMENT – SECOND SESSION – 2023

THE FIRST REPORT OF THE  
PUBLIC INVESTMENTS COMMITTEE ON SOCIAL SERVICES, ADMINISTRATION  
AND AGRICULTURE

ON CONSIDERATION OF THE AUDITOR GENERAL'S REPORTS:  
NON -COMPLIANT STATE CORPORATIONS

DIRECTORATE OF AUDIT, APPROPRIATIONS & OTHER SELECT COMMITTEES  
CLERK'S CHAMBERS  
PARLIAMENT BUILDINGS  
NAIROBI

AUGUST 2023

i

*23 AUG 2023 WEDNESDAY*  
*Hon Emmanuel Wangwe, MP*  
*Chair PIC - Social Services,*  
*Administration and Agriculture*  
*Miriam Mado*

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## LIST OF ABBREVIATIONS AND ACRONYMS

AIA	Appropriation in-Aid
AIE	Authority to Incur Expenditure
AIRC	Agricultural Information Resource Centre
ATC	Animal Technicians Council
CBK	Central Bank of Kenya
COC	Clinical Officers Council
CPB	Counselors and Psychologists Board
EACC	Ethics and Anti-Corruption Commission
EARB	Estates Agents Registration Board
HRIMB	Health Records and Information Managers Board
KECOPAC	Kenya Consumers Protection Advisory Committee
KFIC	Kenya Fish Industries Corporation
KFIC	Kenya Fishing Industries Corporation
KFMA	Kenya Fish Marketing Authority
KHHRAC	Kenya Health Human Resource Advisory Council
KHPOA	Kenya Health Professions Oversight Authority
KNCCSS	Kenya National Commission for Culture and Social Services
KNDI	Kenya Nutritionists and Dieticians Institute
MCC	Media Complaints Commission
MNTRH	Mathari National Teaching and Referral Hospital
NHC	National Heroes Council
OAG	Office of the Auditor-General
PCK	Physiotherapists Council of Kenya

PFM Act	Public Finance Management Act
PHOTC	Public Health Officers and Technicians Council
RAB	Refugees Appeals Board
SCAC	State Corporations Advisory Committee
TCB	Tobacco Control Board
USAC	Universal Service Advisory Council
VRB	Valuers Registration Board

## CHAIRPERSON'S FOREWORD

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

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

In examining the accounts of the Auditor General, the Committee invited accounting officers in each of the twenty three (23) State Corporations under review to adduce evidence before it. The accounting officer for sports Kenya appeared before the committee to shed light on existence of the Kenya sports Authority.

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

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

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

Despite the State Corporations being established with Semi-Autonomous Government Agencies (SAGAs) status by their respective establishing Acts of Parliament, Executive Orders or legal notices some years ago, the Committee discovered that:

- i) Some State Corporations still operate under the control of the parent ministries or state departments as directorates.
- ii) The budgets of some State Corporations are still managed by the Parent Ministry or other State Corporations.
- iii) Some State Corporations were never operationalized even after their establishing Acts were assented to and commencement date realized.
- iv) Some other entities operated under the control and management of other State Corporations.

In view of their questionable autonomy, the affected State Corporations did not prepare annual financial statements for each of the financial years they have been in existence in contravention of Article 226 of the Constitution which provides as follows;

- (1) An Act of Parliament shall provide for—
  - (a) the keeping of financial records and the auditing of accounts of all governments and other public entities, and prescribe other measures for securing efficient and transparent fiscal management; and
  - (b) The designation of an accounting officer in every public entity at the national and county level of government.
- (2) The accounting officer of a national public entity is accountable to the National Assembly for its financial management, and the accounting officer of a county public entity is accountable to the county assembly for its financial management.
- (3) Subject to clause (4), the accounts of all governments and State organs shall be audited by the Auditor-General.

Further, section 68 (1) of the Public Finance Management Act, 2012 provides that an accounting officer for a National Government entity, Parliamentary Service Commission and the Judiciary shall be accountable to the National Assembly for ensuring that the resources of the respective entity for which he or she is the accounting officer are used in a way that is lawful, authorised, effective, efficient, economical and transparent.

Section 68 (2) (b), (c) and (k) of the Public Finance Management Act, 2012 states that in the performance of a function under subsection (1), an accounting officer shall:-

- (b) ensure that the entity keeps financial and accounting records that comply with this Act;
- (c) ensure that all financial and accounting records the entity keeps in any form, including in electronic form are adequately protected and backed up;

- (k) prepare annual financial statements for each financial year within three months after the end of the financial year, and submit them to the Auditor-General for audit, and in the case of a national government entity, forward a copy to the National Treasury;

This report contains observations, findings and recommendations arising from twenty three (23) State Corporations that have never prepared and submitted Financial Statements to the Auditor-General for audit as required by Section 68 (2) (k) of the Public Finance Management Act, 2012. The report is structured as follows:

- i) General observations and recommendations arising from recurring and cross-cutting issues
- ii) Issues identified by the Committee in each of the State Corporation;
- iii) Management submissions for each entity.
- iv) Committee Observations / findings and recommendations on each entity.

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

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

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

On behalf of the Public Investments Committee on Social Services, Administration and Agriculture and pursuant to National Assembly Standing Order 199(6), it is my pleasant duty and honour to present the 1<sup>st</sup> Report of the Public Investments Committee on Social Services Administration and Agriculture on the examination of the Reports of the Auditor General on the Financial Statements of twenty three Government Agencies.

**HON. EMMANUEL WANGWE CBS, MP**  
**CHAIRPERSON – PUBLIC INVESTMENTS COMMITTEE ON SOCIAL SERVICE,**  
**ADMINISTRATION AND AGRICULTURE**

## **EXECUTIVE SUMMARY**

The 1<sup>st</sup> Report of the Public Investments Committee on Social Services, Administration and Agriculture contains the Committee's examination of 23 non-compliant State Corporations.

In its examination and scrutiny of the evidence adduced by the accounting officers of the various State Corporations, the Committee's primary approach was to elicit background information as to why particular course of financial and/or management actions were or were not taken. This was done with the relevant laws in mind including, the Constitution, the Public Finance Management Act, 2012 and Regulations, the Public Audit Act, 2015, the State Corporations Act, 1986, and Public Procurement & Asset Disposal Act, 2015.

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

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

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

## **1.0 PREFACE**

### **1.1 ESTABLISHMENT AND MANDATE OF THE COMMITTEE**

1. The Public Investments Committee is established under the National Assembly Standing Order (S.O.) 206B and is responsible for the examination of the working of public investments based on their audited reports and accounts. It is mandated to –
  - a. examine the reports and accounts of public investments;
  - b. examine the reports, if any, of the Auditor General on public investments; and
  - c. examine, in the context of the autonomy and efficiency of public investments, whether the affairs of the public investments are being managed in accordance with sound financial or business principles and prudent commercial practices.
  
2. The Committee, in considering the audited accounts of State Corporations, was guided by the Constitution of Kenya and the following statutes and regulations in carrying out its mandate;

The Public Finance Management Act, 2012;

The Public Audit Act, 2015;

The State Corporations Act, 1986;

The Public Procurement and Assets Disposal Act, 2015;

The National Assembly Standing Orders; and

The National Assembly (Powers and Privileges) Act, 2017.

## 1.2 COMMITTEE MEMBERSHIP

3. The Committee membership comprises -

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

### 1.3 COMMITTEE SECRETARIAT

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

Mr. Aden Abdullahi  
**Principal Clerk Assistant II-Head of Secretariat**

Mr. Mark Namaswa  
**Clerk Assistant III**

Ms. Mercy Kinyua  
**Legal Counsel II**

Ms. Christine Kemunto Mariita  
**Clerk Assistant III**

Mr. Thomas Ogwel  
**Fiscal Analyst II**

Ms. Esther Kariuki  
**Hansard Officer III**

Mr. Wesley Abugah  
**Research Officer III**

Mr. Moses Esamai  
**Audio Officer**

Ms. Lily Cherotich  
**Communication Officer**

Mr. Benson Muthuri  
**Sergeant-At-Arms**

Mr. Noah Chemweno  
**Sergeant-At-Arms**

Mr. Kevin Ojiambo  
**Media Relations Officer**

### **Committee Proceedings**

5. In its inquiry into whether the affairs of public investments are managed in accordance with sound business principles and prudent commercial practices, the Committee received both oral and written evidence from Cabinet Secretaries of various Ministries, Principal Secretaries of various State Departments and Chief Executive Officers, Directors and Registrars of State Corporations.
6. To produce this report, the Committee held twenty six (26) sittings in which it examined the evidence adduced by the accounting officers of the twenty three (23) State Corporations.
7. The recommendations are found under various sections of the report on each of the State Corporations examined.

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

8. In consideration of management submissions of the various State Corporations, the Committee noted crosscutting matters that informed these general observations and recommendations. Specific observations and recommendations are however made in relation to the respective State Corporations in the subsequent sections of the report.
9. The Committee was guided by Article 95 of the Constitution on the role of the National Assembly as well as its mandate under the National Assembly Standing Order (S.O.) 206B and strategic objectives that each of the State Corporation is expected to achieve.
10. The Committee was further guided by section 15(2) of the State Corporations Act, 1986 which states that the chief executive of a state corporation may be summoned by the Public Investments Committee to answer on behalf of the Board any question arising from a report, including a special report, of the Auditor-General concerning the state corporations.

### **Lack of Autonomy in Budgeting, Appropriations and Budgetary Control**

11. The Committee observed that Article 226 (1) (b) of the Constitution and section 67(3) of the Public Finance Management Act, 2012 provides that the Cabinet Secretary National Treasury shall ensure that at any time there is an accounting officer in each national government entity.
12. However, the operating State Corporations have been receiving funds as itemized budgets in the line ministries rather than receiving grants directly. Consequently, the entities lack autonomy to control their budgets as payments are basically made by the line ministries as and when the need arises.
13. The respective State Corporations establishing Acts, provides that the entities should prepare budgets that are approved by respective Boards and submitted to the Cabinet secretary for approval.
14. Some State Corporations were managed by their sister State Corporations rather than them exercising autonomy derived from their establishing Acts of parliament. This was observed between the Communication Authority of Kenya and the Universal Service Advisory Council; the Media Council of Kenya and the Media Complaints Commission.
15. Majority of the State Corporations are managed by staff seconded from the parent ministries or state departments denying them Semi-Autonomous status. The parent ministries or state departments are hesitant to grant the Semi-Autonomous status as envisaged in the establishing Acts.
16. Deliberate micro-management of the State Corporations by their respective parent ministries or state departments thus depriving them adequate funding to offer intended services to the Kenyan Public.

**Lack of Accountability of public funds and failure to prepare and submit financial statements to the Auditor General for audit**

17. The Committee requested the accounting officers of all the State Corporations and their

respective Principal Secretaries/Cabinet Secretaries appearing before it to provide the budgetary allocations, the appropriations and the actual expenditure for the period they have been in existence.

18. For various financial years, a total Budget of **Kshs.3,917,052,096** for the few State Corporations that complied with the Committee's request for evidence, had not been appropriately accounted for due to their failure to prepare and submit financial statements for audit. The details of budgetary allocations, appropriations, the actual expenditure and the un-absorbed amounts is listed below and the appendix attached to this report;

	<b>State Corporations</b>	<b>Allocated Amount(Kshs)</b>	<b>Actual Expenditure</b>	<b>Un-Absorbed Amount</b>
1	Agricultural Information Resource Centre (AIRC)	114,832,693	Not submitted	-
2	Clinical Officers Council	514,208,000	439,847,000	74,361,000
3	Estates Agents Registration Board	30,368,394	26,424,056	3,944,338
4	Kenya Consumer Advisory Committee	209,209,137	189,952,308	19,256,829
5	Kenya Fish Marketing Authority	63,690,000	60,946,540	2,743,460
6	Kenya Fishing Industries Corporation	10,000,000	9,997,600	2,400
7	Mathari National Teaching and Research Hospital	1,639,882,712	Not submitted	-
8	Media Complaints Commission	69,775,000	Not submitted	
9	National Heroes Council	140,086,011	127,901,979	12,184,032
10	Physiotherapists Council of Kenya	59,537,151	Not submitted	
11	Public Health Officers and	115,650,683	103,874,095	11,776,588

	Technicians Council			
12	Refugee Appeals Board	88,692,538	84,833,487	3,859,051
13	Kenya Health Human Resource Advisory Council	276,759,873	Not submitted	-
14	Kenya Health Professions Oversight Authority	192,269,210	153,160,464	39,108,746
15	Tobacco Control Board	315,618,626	115,574,102	200,044,524
16	Valuers Registration Board	16,934,917	Not submitted	
	<b>Total</b>	<b>3,917,052,096</b>	<b>1,312,511,631</b>	<b>2,604,540,465</b>

19. The Committee noted with concern that, all the corporations listed below have failed to prepare and submit financial statements to the Office Auditor General for audit—

1. Agricultural Information Resource Centre (AIRC)
2. Animal Technician's Council
3. Mathari National Teaching and Referral Hospital,
4. Clinical Officers Council;
5. Counselors and Psychologists Board;
6. Physiotherapists Council of Kenya
7. Public Health Officers and Technicians Council;
8. Kenya Health Professions Oversight Authority;
9. Tobacco Control Board;
10. Kenya Nutritionists and Dieticians Institute;
11. Kenya Health Human Resource Advisory Council;
12. Health Records and Information Managers Board;
13. Kenya Fish Marketing Authority;
14. Kenya Fishing Industries Corporation;
15. Kenya Consumers Protection Advisory Committee;
16. National Heroes Council;
17. Kenya National Commission on Culture and Social Services
18. Estates Agents Registration Board;

19. Valuers Registration Board;
20. Refugees Appeals Board;
21. Media Complaints Commission;
22. Universal Service Fund Advisory Council;
23. Kenya Sports Authority

20. Further, the Committee was informed that the Kenya Sports Authority does not exist as a state corporation.

21. Besides, the Committee noted that the listed State Corporations have their financial books of accounts incorporated into their respective parent Ministries or departments despite being established as State Corporations. This contravenes the provisions of Articles 226 and 229 of the Constitution, Section 68 (2) (k) of the Public Finance Management Act, 2012, section 7 of the Public Audit Act, 2015 and section 14(3) of the State Corporations Act, 1986 which require the books of accounts to be independently prepared and submitted to the Office of the Auditor-General for audit.

22. Further, the Committee noted that the regulatory State Corporations receive money from the public through member registration and subscription fees. However, the State Corporations failed to prepare financial statements and accounts of the monies received from the public and thereafter submit them to the Auditor-General for audit as required by law. The Committee noted that this money is 'public money' and 'public funds' as defined under section 2 of the Public Finance Management Act, 2012 and the Public Audit Act, 2015 respectively and as such, should be audited in accordance with the Public Finance Management Act, 2012 and Public Audit Act, 2015.

**Failure to prepare and submit statements for unspent money repaid into the National Exchequer Account**

23. Section 45 (1) and (2) of the Public Finance Management Act, 2012 provides that when a Ministry or State Department has an appropriation that has not been spent at the end of the financial year for which it was appropriated, it shall lapse immediately at the end of that Financial Year. The unspent money shall be repaid into the National Exchequer Account

and a statement prepared and submitted to the Controller of Budget.

24. The Committee observed that the state departments in which some non-operationalized State Corporations operate did not prepare and submit statements for unspent money repaid into the National Exchequer Account contrary to Section 45 of the Public Finance Management Act, 2012.
25. For various financial years, a total of **Kshs.2,604,540,465** allocated to the State Corporations as listed in paragraph 17 in this report was un-absorbed as at the end of the respective years for which the State Corporations were in existence. There was no documentary evidence that was availed to prove that the unspent money was repaid into the National Exchequer Account.

#### **Failure by the Parent Ministries to operationalize the State Corporations**

26. The Committee noted that various Cabinet Secretaries failed to operationalize the State Corporations that fall within their respective ministries as follows:
  - i. The Cabinet Secretary **Ministry of Health** has failed to operationalize the Clinical Officers Council, the Counselors and Psychologist Board, the Physiotherapists Council of Kenya, the Public Health Officers and Technicians Council, The Kenya Health Human Resource Advisory Council, the Kenya Health Professions Oversight Authority, the Tobacco Control Board, the Kenya Nutritionists and Dieticians Institute, the Health Records and Information Managers Board and Mathari National Teaching and Referral Hospital.
  - ii. The Cabinet Secretary **Ministry of Mining, Blue Economy and Maritime Affairs** failed to operationalize the Kenya Fish Marketing Authority and the Kenya Fishing Industries Corporation. However, the Fisheries Management and Development Act, 2016 that established the Kenya Fish Marketing Authority was declared invalid for want of public participation by the Court in a Judgment delivered on 15<sup>th</sup> November 2022. Despite the claims of a stay order, the Authority did not avail before the Committee, any Court evidence or Ruling of stay of the said Judgment.

- iii. The Cabinet Secretary **Ministry of Agriculture and Livestock Development** failed to operationalize the Animal Technicians Council and the Agricultural Information Resource Centre.
- iv. The Cabinet Secretary **Ministry of Lands, Public Works, Housing and Urban Development** failed to operationalize the Estates Agents Registration Board and the Valuers' Registration Board.
- v. The Cabinet Secretary **Ministry of Tourism, Wildlife and Heritage** failed to operation the National Heroes Council and the Kenya National Commission for Culture and Social Services.
- vi. The Cabinet Secretary **Ministry of Information, Communication and the Digital Economy** failed to operationalize the Media Complaints Commission and the Universal Service Advisory Council.
- vii. The Cabinet Secretary **Ministry of Investments, Trade and Industry** failed to operationalize the Kenya Consumers Protection Advisory Committee.
- viii. The **Ministry of Interior and National Administration** failed to operationalize the Refugees Appeals Board.

#### **State Corporations established through Executive Orders but lack clear mandate**

27. The Committee noted that the Executive Orders establishing some public entities or State Corporations as a Semi-Autonomous Government Agencies did not state the mandates of those entities and their operational autonomy.
28. The affected State Corporations include the Agricultural Information Resource Centre, the Kenya National Commission for Culture and Social Services and Kenya Sports Authority which does not exist.

#### **State Corporations that lack substantive accounting officers**

29. Section 67 (3) of the Public Finance Management Act, 2012 provides that the Cabinet Secretary shall ensure that at any time there is an accounting officer in each National Government Entity.

30. The Committee noted that some public entities lacked designated accounting officers while others had accounting officers who have been in acting capacity for an inordinately long period.

31. In relation to the aforementioned provisions, the Committee observed that;

i. The Kenya Information and Communication Act, 1998 establishes the Communication Authority of Kenya and the Universal Service Advisory Council. However, the Universal Service Advisory Council does not have a designated accounting officer and its source of funding is not clearly stipulated in the Act.

ii. The Media Council Act - Act No. 46 of 2013 establishes the Media Council and the Media Complaints Commission. However, the establishing Act and the Cabinet Secretary had not designated an accounting officer for the Media Complaints Commission and its source of funding is not clearly stipulated in the Act or who is responsible for collection of fines or penalties that may be imposed from time to time.

32. Section 6 of the Public Finance Management Act, 2012 states that in the case of any inconsistency between this Act and any other legislation, on the matters to do with:

- a) preparation and submission of budget estimates, including the time for doing so;
  - b) preparation and submission of accounts for audit, including the time for doing so;
- the Public Finance Management Act shall prevail.

**Failure by the State Corporations to keep financial and accounting records that comply with the Public Finance Management Act, 2012**

33. Section 68 (2) (b) and (c) of the Public Finance Management Act, 2012 states that in the performance of a function under subsection (1), an accounting officer shall:-

- (b) ensure that the entity keeps financial and accounting records that comply with this Act;

(c) ensure that all financial and accounting records the entity keeps in any form, including in electronic form are adequately protected and backed up;

34. Further, Regulation 104 (1) of the Public Finance Management – (National Government) Regulations 2015 provides that all receipts and payments vouchers of public moneys shall be properly supported by pre-numbered receipt and payment vouchers and shall be supported by the appropriate authority and documentation.

35. In relation to the above provisions, the State Corporations, were not operating a separate financial reporting system distinct from their parent ministries. The Corporations were therefore in breach of Section 68 (2) (b) and (c) of the Public Finance Management Act, 2012 and the attendant Regulations as well as their respective establishing Acts which requires them to keep financial records.

36. Some entities did not have a separate bank account and the payment vouchers were prepared by/under the parent ministries' finance department and thus no clear demarcation of which payments or receipts relates to the parent ministry and which relates to the Semi-Autonomous Government Agencies.

37. It was also not clear how any donations, gifts, grants and Appropriations in Aid (or receipts by the State Corporations were accounted for considering that some collected revenues, received donations, gifts or grants yet they were not given the Semi-Autonomous status.

#### **Weak Governance**

38. The Committee observed that some State Corporations were operating without substantive Board of Directors and accounting officers (Chief Executive Officer/Director-General/Registrar). It was also observed that, in majority of the state corporations, the Chief Executive Officers/Managing Directors/Registrars were in acting capacity or staff/officers seconded from the parent ministries or state departments. The operations of

the State Corporations were merely an extension of the parent ministries or state departments. This hampers the independence and governance of the State Corporations to make strategic and binding decisions. The State Corporations lacks approved Human Resource Instruments due to the said impediments.

#### **Declaration of entities as National Government Entities**

39. The Committee observed that the Cabinet Secretary National Treasury has failed to declare various state corporations, authorities or other bodies whose functions fall under the national government to be a national government entity. This is despite the approval by the Cabinet and Parliament through various Acts of Parliament establishing the entities. The Cabinet Secretary has therefore continued to breach Section 4 of the Public Financial Management Act, 2012 and Regulation 211 of the Public Financial Management National Government Regulations, 2015.

#### **Recommendations**

##### **40. The Committee recommends that;**

- i. Within three months after tabling and adoption of this report, the Cabinet Secretary and the accounting officer of the line ministries for the State Corporations established by an Act of Parliament or Legal Notice which continue to operate as directorates within the said parent ministries or State Departments should take the necessary steps to accord them the semi-autonomy depicted in the establishing statutes.
- ii. Within three months after tabling and adoption of this report, the Attorney-General and the Cabinet Secretary of the line ministries for the State Corporations established by Executive Order which continue to operate as directorates within the said parent ministries or State Departments should initiate the necessary legal steps of developing a legal framework to accord them the semi-autonomy depicted in the Executive Order.
- iii. The State Corporations that rely on National Exchequer for financial support should be funded through grants rather than as budgetary line items. Further, upon

tabling and adoption of this report, the State Corporations that are not operationalized, should be operationalized and granted their autonomy status. In addition, the Cabinet Secretary in charge and in consultation with the Attorney-General, should initiate the process of repealing the respective Acts of Parliament or relevant statutes establishing them where it is felt that the statutes have been overtaken by events and are no longer applicable like in the case of Animal Technicians Council.

- iv. Upon tabling and adoption of this report, State Corporations that are managed by their sister corporations be granted their semi-autonomous status.
- v. Within three months upon tabling and adoption of this report, the Cabinet Secretary in charge, in consultation with the Attorney General should initiate the amendment process for the State Corporations established to offer services that conflict or are similar to those of sister corporation established by the same Act to be merged.
- vi. Within three months upon tabling and adoption of this report, the Attorney General should give guidance on the Executive Orders establishing the State Corporations but do not clearly define and prescribe the functions of each entity.
- vii. Within three months from the date of tabling and adoption of this report or by the deadline of the legally stipulated period of three months after the end of the financial year whichever comes earlier, the accounting officers of the State Corporations should prepare financial statements for the period they have been in existence.
- viii. Within three months after tabling and adoption of this report, the accounting officers of the affected State Corporations and the line ministries should provide evidence to National Assembly of the repayment of the unspent funds to the National Exchequer Account and a statement prepared and submitted to the

Controller of Budget in compliance with Section 45 of the Public Finance Management Act, 2012.

- ix. The State Corporations Advisory Committee and the Inspectorate of State Corporations should review and advise on the governance and non-compliance of the State Corporations within a period of three months after tabling and adoption of this Report. A status report on the review should be provided to Parliament within this stipulated time.

**2.0 EXAMINATION OF THE REPORTS OF THE AUDITOR GENERAL ON THE  
AUDITED ACCOUNTS OF THE LISTED 23 STATE CORPORATIONS**

41. The Committee invited the Chief Executive Officers, Directors-General and Registrars of the twenty three State Corporations discussed in the body of this report.
42. The Committee also invited the Cabinet Secretaries and Principal Secretaries for the respective ministries to adduce more evidence on the existence status, accountability and operationalization of State Corporations in question.
43. The management of the Corporations was to provide the Committee with information relating to Auditor-General reports, financial statements, approved budgets, appropriated amounts and unspent appropriations for the years they have been in existence as per their respective establishing Statutes.

**2.1 EXAMINATION OF THE REPORTS OF THE AUDITOR GENERAL ON THE  
AUDITED ACCOUNTS OF AGRICULTURAL INFORMATION RESOURCE  
CENTRE (AIRC)**

44. Agricultural Information Resource Centre (AIRC) is a Semi-Autonomous Governmental Agency (SAGA) in the State Department for Crop Development. The Centre started in 1966 to disseminate agricultural information to farmers, extension workers and other stakeholders.
45. Mr. Richard Githaiga, the Ag. Director Agriculture Information Resource Centre appeared before the Committee to adduce evidence on the Audited accounts of Agriculture Information Resource Centre

**46. The Ag. Director informed the Committee that;**

- i. The organizational structure of the State Department for Crop Development as approved by the Public Service Commission places the institution (AIRC) as a Division under Directorate of Research and Innovation. The Director AIRC reports to the Research and Innovation Secretary who in turn reports to the Principal Secretary.
- ii. AIRC is listed as an institution in the State Department for Crop Development under Executive Order no 1 of 2023. However, the Semi-Autonomous status of the institution has not been established in the following areas:
  - (a) Financial management – The institution does not receive transfers or grants from the State Department of Crop development. It is funded from the accounts of the State Department through a vote head like all Divisions in the state department.
  - (b) The center does not maintain its own accounts and therefore cannot produce financial statements as its accounts are covered by the State Department for Crop Development with the Principal Secretary as the Accounting Officer.
  - (c) The Center does not have capacity to recruit and maintain a staff complement. All officers working at the institution are deployed from the State department for Crop Development.

**Submissions by the Cabinet Secretary Ministry of Agriculture and Livestock Development**

**47. The Cabinet Secretary informed the Committee that;**

- i. The Agricultural Information Resource Centre (AIRC) is a Division in the State Department of Crop Development within the Ministry of Agriculture and Livestock Development.

- ii. The Center was started in 1966 and has over the years produced agricultural information materials for extension workers and farmers.
- iii. The Centre has also been involved in training on among other related courses: communication skills, supervisory and management skills, extension service delivery for extension and other developmentworkers.
- iv. The services were initially offered free of charge but this became unsustainable from late 1980s due to budgetary constraints.
- v. To address the sustainability challenge, the Government created a revolving fund. The fund is established under Exchequer and Audit (Agricultural Information Centers Revolving Fund) Regulations, [LN. 163/1993, LN-21/2000, Corr. No. 13/2000.
- vi. The arrangement allowed the Centre retain revenues earned from the commercial activities, to enhance the quality of services and thereby be more effective, efficient, responsive to the information needs of the Kenyan farmers, training needs of extension workers and the agriculture sector in general.
- vii. AIRC collects, processes and shares Agricultural Information to farmers, CBOs, NGOs and Private sector. AIRC in partnership with various stakeholders in the Sector. The Center produces agricultural mass media information, education and communication (IEC) materials that are disseminated to clients through integrated media
- viii. The approved organization structure by the Public Service Commission places the institution as a Division under Directorate of Research and Innovation in the State Department for Crop Development, Ministry of

Agriculture and Livestock Development. The officers working at the institution are deployed from the State department for Crop Development.

- ix. The Centre is funded from the accounts of the State Department for Crop Development through a vote head, like all other Divisions in the state department. The Centre spent Kshs.40,041,417 in the financial year 2022/2023, and Ksh.33,307,579 in the Financial Year 2021/2022 through funds from the State Department.
- x. The State Department for Crop Development supervises the Centre for all technical, administrative and financial activities. All financial allocation received from the State Department are accounted for through the established procedures in the State Department. Auditing is done along with the other Divisions and Statement prepared.

#### **Committee Observations**

48. The Committee observed that;

- i. AIRC did not provide a copy of the establishing instrument to the Committee. However, Executive Order No. 1 of 2023 recognizes the Agricultural Information Resource Centre (AIRC) as a Semi- Autonomous Government Agency.
- ii. The Executive Order does not state the mandate or functions of the Centre. However, it operates as a Directorate in the Ministry of Agriculture and Livestock Development without clear legal framework.
- iii. The Attorney General has abdicated his constitutional role under Article 156 of the Constitution as the chief legal advisor to the Government in failing to advise the Government to provide for clear legal framework and mandate of the entities established through Executive Orders.

- iv. The Institution does not prepare and submit separate financial statements for audit to the Auditor-General in breach of Section 68 (2) (k) of the Public Finance Management Act, 2012 despite being established as a Semi- Autonomous Government Agency under Executive Order No. 1 of 2023.
- v. The State Department for Crop Development did not provide the budget, the appropriated amount or submit statements for unspent money repaid into the National Exchequer Account contrary to Section 45 of the Public Finance Management Act, 2012.

#### **Committee Recommendations**

- i. Within three months upon tabling and adoption of this report, the Cabinet Secretary, Ministry of Agriculture and Livestock Development in conjunction with the Attorney General should develop a legal framework that outlines the functions, structure, autonomy in operations and budgeting and accountability of public resources and report to Parliament.
- ii. Parliament reprimands the Cabinet Secretary, Ministry of Agriculture and Livestock Development for failure to operationalize the AIRC and grant autonomy in its operations and financial independence.
- iii. Parliament reprimands the Cabinet Secretary National Treasury for failure to appoint an accounting officer for AIRC in line with Article 226(1)(b) of the Constitution and Section 67(3) of the Public Finance Management Act, 2012.
- iv. Within three months upon tabling and adoption of this report, the Cabinet Secretary Ministry of Agriculture and Livestock to operationalize the AIRC as per the Executive Order No. 1 of 2023 which establishes AIRC as a Semi-Autonomous Government Agency.

- v. Within three months upon tabling and adoption of this report, the accounting officer shall prepare outstanding financial statements of the Centre since establishment as a Semi-Autonomous Government Agency and submit to the Auditor-General for audit. The Auditor-General shall audit and report to Parliament in accordance with Article 229 of the Constitution and the Public Audit Act, 2015. Subsequently, the Accounting Officer of AIRC must at all times comply with the legal provisions relating to accounts and audit in accordance with Section 68 of the Public Finance Management Act, 2012.
- vi. The Attorney-General should develop legal instruments that clearly specifies, defines and prescribes the functions, funding, accountability and management of entities created through Executive Orders.
- vii. Within three months upon tabling and adoption of this report, and after the financial statements are submitted for audit, the Auditor-General should audit and report to Parliament on the Appropriations in Aid and any other monies received or collected by the entity in form of grants, donations or loans in the course of its operation. Also, the Auditor-General should audit and report to this Parliament the expenditure/use of public funds by the entity to ascertain whether the resources of the entity were used in a way that is lawful, authorised, effective, efficient, economical and transparent.

## **2.2 EXAMINATION OF THE REPORTS OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF ANIMAL TECHNICIANS COUNCIL**

49. The Animal Technicians Council is established under section 4 of the Animal Technicians Act No. 11 of 2010. The Act provides for regulation of and training, registration and licensing of animal technicians.

50. Hon. Mithika Linturi the Cabinet Secretary, Ministry of Agriculture and Livestock

Development appeared before the Committee to adduce evidence on the Audited accounts of Animal Technicians Council.

### **Submissions by the Cabinet Secretary Ministry of Agriculture and Livestock Development**

#### **51. The Cabinet Secretary informed the Committee that;**

- i. The Animal Technicians Council is established under the Animal Technicians Act No. 11 passed in 2010 and it provides for the training, registration, and licensing of animal technicians to provide for the regulation of the standards and practice of the profession of animal technicians excluding matters concerning animal health and food safety.
- ii. The proponents of the of the Act then a Bill which was through a private member lost interest in the implementation of the Act when H.E. the then President through a memorandum to Parliament excluded matters animal health and food safety to abide by international standards as set out by the World Organization for Animal Health (WOAH) enforced through the World Trade Organization's Sanitary and Phytosanitary (SPS) Protocol. To support international trade in livestock and livestock products, WOAH standards discourage countries from having more than one veterinary statutory body regulating professionals guaranteeing safety of food of animal origin if they want to trade.
- iii. Thereafter, in 2011 Veterinary Surgeons and Veterinary Paraprofessionals (VSVP) Act no. 29 of 2011 was passed which followed international standards that adequately catered for the functions then envisaged under the Animal Technicians Act on the practice by technologists and technicians in the veterinary practice.

- iv. The VSVP Act is an act of Parliament to make provision for the training, registration and licensing of veterinary surgeons and veterinary paraprofessionals; to provide for matters relating to animal health services and welfare, and for connected purposes. The enforcing agency in the VSVP Act is the Kenya Veterinary Board that regulates both the veterinary surgeons and the veterinary paraprofessionals (technologists and technicians).
- v. Cognizant that the Animal Technicians Council was based on the importance of regulating practice by veterinary technologists and technicians involved in service delivery in disease control especially treating animals and inspection of food of animal origin which mandate was removed from the Animal Technicians Act as stated in the long title. The veterinary technicians and technologists are now fully regulated in the VSVP Act in compliance with international standards. During preparation of Executive Orders, legislations are a primary reference point explaining the basis of repeated gazettelement of the Animal Technicians Council despite the potential operational nightmare. For this reason, the Animal Technicians Council has never been operationalized.
- vi. Due to lack of an operational Animal Technicians Council from the Executive Order, inadvertent allocation of budgets to the Council have remained unspent by the Agency unless are reallocated and therefore there are no audited accounts since the Animal Technicians Council has never been functional. In the Health Sector multiple regulatory agencies, exist for nurses, doctors, and other cadres a situation that would attract sanctions internationally. The options available include retaining the status quo or repeal the Animal Technicians Act to avoid any further confusion to stakeholders.
- vii. The Cabinet Secretary suggested the need to repeal the Animal Technicians Act till such time technicians in the Livestock Sector who are not catered for in the VSVP Act are in sufficient need for self-regulation

### **Committee Observations**

52. The Committee observed that;

- i. The Animal Technicians Council has not been operationalized and therefore does not exist despite being established by the Animal Technicians Act, 2010 as a Semi-Autonomous Government Agency
- ii. The Cabinet Secretary did not provide the budgetary information and the appropriated amount and therefore the Committee was unable to establish whether there has been any funding and related expenditure on account of Animal Technicians Council in the State Department.
- iii. The functions of the Animal Technicians Council have been duplicated by the Kenya Veterinary Board as established under the Veterinary Surgeons and Veterinary and Para-professionals Act, 2011. The Ministry proposes to repeal the Animal Technicians Act.

### **Committee Recommendations**

53. The Committee recommends that within three months upon tabling and adoption of this report the Ministry of Agriculture and Livestock Development in consultation with the Attorney General to initiate the legal process to repeal the Animal Technicians Council, 2010 to address the duplication of functions of the Animal Technicians Council and the Kenya Veterinary Board.

## **2.3 EXAMINATION OF THE REPORTS OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF THE MATHARI NATIONAL TEACHING AND REFERRAL HOSPITAL**

54. Mathari National Teaching and Referral Hospital is established under the State Corporations Act, Cap. 446, Legal Notice No. 165 of 2020. As per Executive Order No. 1 of 2023, the Hospital is under the State Department for Medical Services.

#### **Submissions by the Chief Executive Officer**

55. Dr. Julius Ogato Chief Executive Officer (CEO) was accompanied by Mr. Francis Karanja Head of Finance, Mr. Daud Ibrahim Internal Audit and Alice Wangui Head of Administration appeared before the Committee to adduce evidence on the accounts of Mathari National Teaching and Referral Hospital.

56. The Chief Executive Officer informed the Committee that;

- i. The Mathari National Teaching and Referral Hospital was established as a Semi-Autonomous Government Agency (SAGA) through Legal Notice No. 165 of 21<sup>st</sup> August, 2020. The CEO was employed to head the institution in October 2022.
- ii. The Hospital does not receive funds as grants but all its accounts are run from the State Department for Medical Services, Ministry of Health. The Hospital collects revenue as Appropriation in Aid (AIA) to run its operations.
- iii. The Mathari National Teaching and Referral Hospital Board was constituted in 2020.

#### **Submissions by the Principal Secretary State Department for Medical Services**

57. Mr. Harry Kimutai Principal Secretary Medical Services, was accompanied by Dr. Peter Chemwile Senior Finance Officer, Mr. Moses Gitari, Mr. Joseph Koech, Vivian Mboga Administration, Dr. Purity Kiunga appeared before the Committee to adduce evidence on the accounts of the Mathari National Teaching and Referral Hospital.

58. The Principal Secretary informed the Committee that;
- i. The Hospital was established as a Semi-Autonomous Government Agency (SAGA) through Legal Notice No. 165 of 2020 under the State Corporations Act as a level Six Tertiary Hospital offering specialized Neuropsychiatric Services as well as Research and Training in Mental Health.
  - ii. The Hospital is governed by a board of directors which consists of:
    - a. A non-executive chairperson appointed by the President
    - b. The Principal Secretary in the ministry for the for the time being responsible for finance, or his or her representative, appointed in writing
    - c. The Principal Secretary in the Ministry for the time being responsible for health, or his or her representative appointed in writing
    - d. The Principal Secretary in the Ministry for the time being responsible for correctional services or his or her representative appointed in writing
    - e. The Attorney-General or his representative, appointed in writing
    - f. The Chief Executive Officer who shall be ex-officio member of the Board; and
    - g. Three other members, not being public officers, appointed by the Cabinet Secretary by virtue of gender, disability, regional balance and their knowledge and experience in matters in matter related to fiancé, management, economics, law or any other relevant field.
  - iii. The Hospital collects Appropriation in Aid (AIA) as Facility Improvement Fund (FIF), which is administered by the CEO with the oversight of the Board of Directors.

## **Committee Observations**

59. The Committee observed that;

- i. Despite being established as a body corporate with an envisaged financial and administrative autonomy by the Legal Notice No. 165 of 2020 and State Corporations Act, the Hospital still operates as a Department in the Ministry of Health.
- ii. The Chief Executive Officer of the Mathari National Teaching and Referral Hospital was in breach of Section 16 (1) and (2) of the Legal Notice No.165 of 2020 which requires that the Board to keep proper audit books and records of accounts of the income, expenditure, assets and liabilities which shall be audited and reported upon in accordance with Section 68 (2) (k) of the Public Finance Management Act,2012 and the Public Audit Act, 2015.
- iii. There is micro-management of the Hospital by the parent ministry which impedes the oversight role of the Board.
- iv. The CEO does not account for the Appropriation in-Aid in contravention of section 68 of the Public Finance Management Act, 2012 and section 16 of Legal Notice 165 of 2020.
- v. The government owes the Hospital Ksh. 800 million through the State Department for Correctional Services for psychiatric assessment of suspects.
- vi. The Principal Secretary confirmed to the Committee on ceding the hospital to operate as a SAGA and confirmed allocating grants to the hospital in the current financial year.

- vii. There are proposals to relocate the Hospital to Ngong which might expose the current land to the risk of being grabbed or sale to interested parties. The Hospital is in a protracted struggle to secure a title deed and there had been an increased encroachment of the facility's land and this sabotages its future expansion plans.

### **Committee Recommendations**

60. The Committee Recommends that;

- i. Parliament reprimands the Cabinet Secretary, Ministry of Health for failure to grant autonomy in the Hospital's operations and financial independence.
- ii. Parliament reprimands the Cabinet Secretary National Treasury for failure to appoint an accounting officer for the Hospital in line with Article 226(1)(b) of the Constitution and Section 67(3) of the Public Finance Management Act, 2012.
- iii. Within three months upon tabling and adoption of this report, the Cabinet Secretary Ministry of Health to expedite the process of granting autonomy to the Hospital to facilitate its attainment of the status of a Semi-Autonomous Government Agency (SAGA) and report to Parliament.
- iv. Within three months upon tabling and adoption of this report the accounting officer shall prepare outstanding financial statements of the Hospital since inception and submit to the Auditor-General for audit.
- v. The Auditor-General shall audit and report to Parliament in accordance with Article 229 of the Constitution and the Public Audit Act, 2015.
- vi. The Accounting Officer of the Hospital must at all times comply with the legal provisions relating to accounts and audit in accordance with Section 68 of the Public Finance Management Act, 2012, section 16 of Legal notice 165 of 2020

and section 14(3) of the State Corporations Act, 1986.

- vii. That even if the Hospital is relocated to Ngong with a larger piece of land, the current location be retained for posterity.
- viii. Within three months upon tabling and adoption of this report the Directorate of Criminal Investigations and within three months upon tabling and adoption of this report, the Ethics and Anti-corruption Commission to initiate investigations into the alleged grabbing of part of the Hospital land. The Office of the Director of Public Prosecutions to initiate legal proceedings against any culpable party.
- ix. Within three months upon tabling and adoption of this report, and after the financial statements are submitted for audit, the Auditor-General should audit and report to Parliament on the Appropriations in Aid and any other monies received or collected by the entity in form of grants, donations or loans in the course of its operation. Also, the Auditor-General should audit and report to Parliament the expenditure/use of public funds by the entity to ascertain whether the resources of the entity were used in a way that is lawful, authorised, effective, efficient, economical and transparent.

#### **2.4 EXAMINATION OF THE REPORTS OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF THE CLINICAL OFFICERS COUNCIL**

- 61. The Clinical Officers Council is established under section 3 of the Clinical Officers (Training Registration & Licensing) Act No 20 of 2017 to coordinate and regulate the training, registration and licensing of all Clinical Officers in Kenya. The Act commenced on 7<sup>th</sup> July 2017.
- 62. As per the Executive Order No. 1 of 2023, the Clinical Officers Council is under the State Department for Public Health and Professional Standards.

#### **Submissions by the Registrar of the Clinical Officers Council**

63. Mr. Ibrahim Wako, the Registrar of the Clinical Officers Council appeared before the Committee to adduce evidence on the Audited accounts of the Clinical Officers Council.
64. **The Registrar informed the Committee that;**
- i. The Clinical Officers Council Financial Statements for the Financial Year 2020/2021 were audited by Warren and Associates –a private auditor.
  - ii. The Council receives internally generated funds from members through registration of clinical officers, examination fees for accreditation and practicing licences.
  - iii. The Council has submitted the Financial Statements for the Financial Years 2020/2021 and 2021/2022 to the Office of the Auditor General as required by section 68 (2) (k) of the Public Finance Management Act, 2012.

#### **Submissions by the Principal Secretary State Department for Health and Professional Standards**

65. The Clinical Officers Council is established under Act of Parliament no. 20 of 2017. The Council has no Exchequer Funding and solely relies on internally generated funds.
66. The Council is categorized as a regulatory body by SCAC and approval of HR instrument is on-going. The Council has a fully constituted and Gazetted Board and has eleven 11 staff, five seconded from the Ministry of Health.
67. Budget approvals are done by the Board with the Chief Executive Officer being the Accounting Officer. The Council Financial Statements are Audited by private auditors. The council has written to the OAG and the audit process has begun and is ongoing.

### **Committee Observations**

68. The Committee observed that;
- i. The Clinical Officers Council is established as a body corporate by the Clinical Officers (Training Registration & Licensing) Act, 2017 with an envisaged financial and administrative autonomy.
  - ii. The Council received money from the public through member registration fees, examination fees and practice licence fees. Money received from the members of the professional body is 'public money' and 'public funds' as defined under section 2 of the Public Finance Management Act, 2012 and the Public Audit Act, 2015 respectively and as such, should be audited in accordance with the Public Finance Management Act, 2012 and Public Audit Act, 2015.
  - iii. The accounting officer of the Council failed to prepare financial statements and accounts of the monies received from the public and thereafter submit to the Auditor-General for audit since 2017, in contravention of section 68 (2) (k) of the Public Finance Management Act, 2012.
  - iv. Further, the Registrar was in breach of Section 29 (1) and 29 (3) of the Clinical Officers (Training, Registration and Licensing) Act, 2017 which requires that the Registrar under the direction of the Council to keep proper books and records of accounts of the income, expenditure and assets of the Council and to submit its accounts to the Auditor General for audit within four months after the end of the financial year.
  - v. The Council directly outsourced private auditors to audit their annual financial statements in contravention of Section 23 of the Public Audit Act, 2015.

## Committee Recommendations

69. The Committee recommends that;

- i. Parliament reprimands the Cabinet Secretary Ministry of Health for failure to monitor the financial performance of the Clinical Officers Council in line with section 88 of the Public Finance Management Act, 2012.
- ii. The accounting officer shall prepare outstanding financial statements of the Council since inception and submit to the Auditor-General for audit. The Auditor-General shall audit and report to Parliament in accordance with Article 229 of the Constitution and the Public Audit Act, 2015.
- iii. The Registrar Clinical Officers Council must at all times comply with the legal provisions relating to accounts and audit in accordance with Section 68 of the Public Finance Management Act, 2012 and Section 29 of the Clinical Officers (Training, Registration and Licensing) Act, 2017.
- iv. Within three months upon tabling and adoption of this report, the Ethics and Anti-Corruption Commission should investigate the matter of the Clinical Officers Council outsourcing private auditors contrary to section 23 of the Public Audit Act, 2015 with a view to ascertain any loss of public funds, including audit fees paid to the private auditors, and the Office of Director of Public Prosecution (ODPP) to subsequently prefer appropriate charges.
- v. Within three months upon tabling and adoption of this report, and after the financial statements are submitted for audit, the Auditor-General should audit and report to Parliament on the Appropriations in Aid and any other monies received or collected by the entity in form of grants, donations or loans in the course of its operation. Also, the Auditor-General should audit and report to Parliament the expenditure/use of public funds by the entity to ascertain whether the resources of

the entity were used in a way that is lawful, authorised, effective, efficient, economical and transparent.

## **2.5 EXAMINATION OF THE REPORTS OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF THE COUNSELORS AND PSYCHOLOGISTS BOARD**

70. The Counselors and Psychologists Board is established under section 3 of the Counselors and Psychologists Act No. 14 of 2014. The date of commencement of the Act was 18<sup>th</sup> August 2014. The Act provides for training, registration, licensing, practice and standards of counselors and psychologists.
71. As per the Executive Order No. 1 of 2023, the Counselors and Psychologists Board is under the State Department for Public Health and Professional Standards.
- Submissions by the Registrar**
72. Dr. Matilda Mghoi, The Registrar/Chief Executive Officer of the Counselors and Psychologists Board appeared before the Committee to adduce evidence on the Audited accounts of the Counselors and Psychologists Board.
73. The Registrar/Chief Executive Officer informed the Committee that;
- i. The Counselors and Psychologists Board was established on 5<sup>th</sup> August, 2022 under Section 3 of the Counselors and Psychologists Act No: 14 of 2014.
  - ii. The Core function of the board is to regulate the Curriculum of Counselors & Psychologist, registration, licensing the practice and standards of counselors and psychologist.
  - iii. The primary sources of revenue for the Organization include registration and licensing of Counselors and Psychologists. The Board has diligently planned to

diversify the revenue streams and explore opportunities for sustainable funding to achieve its goals.

- iv. The Organization's financial position remains constant. The Board has not yet received any monies since its inception.
- v. The Board of Directors was constituted in August, 2022.

**Submissions by the Principal Secretary State Department for Health and Professional Standards**

- 74. The Board is established under the Counselors & Psychologists Act No 14 of 2014 in the Gazette Notice No. 9322 of 5th August 2022.
- 75. The Board has no exchequer funding and has neither collected nor received any funds from registration of the psychologists. Consequently, the Board books of accounts have not been audited.
- 76. The Induction of the Board Members was done by the State Corporations Advisory Committee (SCAC) on 12<sup>th</sup> and 13<sup>th</sup> July 2023. The Board has written a letter to the Ministry requesting authority to open Bank account.

**Committee Observations**

- 77. The Committee observed that;
  - i. The Counselors and Psychologists Board is established as a body corporate by the Counselors & Psychologist Act, 2014 with an envisaged financial and administrative autonomy. The Counselors and Psychologists Board was appointed on 5<sup>th</sup> August 2022 despite the Counselors & Psychologist Act, 2014 coming into force on 18<sup>th</sup> August 2014.
  - ii. The Counselors and Psychologists Board was in breach of Section 43 of the Counselors

and Psychologists Act, 2014 which requires the Board to keep proper books and records of accounts of the income, expenditure and assets of the Board and submit its accounts to the Auditor General for audit.

#### **Committee Recommendations**

78. The Committee recommends that;
  - i. Parliament reprimands the Cabinet Secretary responsible for Health for failing to promptly appoint the members of the Counselors and Psychologists Board in 2014 when the Act came into force on 18<sup>th</sup> August 2014.
  - ii. The Registrar Counselors and Psychologists Board must at all times comply with the legal provisions relating to accounts and audit in accordance with Section 68 of the Public Finance Management Act, 2012, Section 43 of the Counselors and Psychologists Act, 2014 and section 14(3) of the State Corporations Act, 1986.
  - iii. Within three months upon tabling and adoption of this report, and after the financial statements are submitted for audit, the Auditor-General should audit and report to Parliament on the Appropriations in Aid and any other monies received or collected by the entity in form of grants, donations or loans in the course of its operation. Also, the Auditor-General should audit and report to Parliament the expenditure/use of public funds by the entity to ascertain whether the resources of the entity were used in a way that is lawful, authorised, effective, efficient, economical and transparent.

#### **2.6 EXAMINATION OF THE REPORTS OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF THE PHYSIOTHERAPY COUNCIL OF KENYA**

79. The Physiotherapists Council of Kenya is a regulatory body established under the Physiotherapists Act, No. 20 of 2014.
80. The Physiotherapists Council of Kenya is under the State Department for Public Health and Professional Standards as per the Executive Order No. 1 of 2023.

### **Submissions by the Acting Chief Executive Officer**

81. Mr. Douglas Kotut, the Ag. Chief Executive Officer of the Physiotherapists Council of Kenya accompanied by Mr. Henry Opondo the Chairperson, appeared before the Committee to adduce evidence on the accounts of Physiotherapists Council of Kenya.
82. The Ag. Chief Executive Officer informed the Committee that;
- i. The Physiotherapists Council of Kenya is established as a body corporate under section 3 of the Physiotherapists Act, No. 20 of 2014.
  - ii. The Council was established in 2014 with the main mandate of training and licensing of physiotherapists in Kenya.
  - iii. The Council has three (3) members of staff including the Acting CEO who are all seconded from the Ministry of Health.
  - iv. The Council does not receive any monies from the National Treasury. However, the accounts of the entity are administered from the Ministry of Health.
  - v. The Council earnings is through collections from members' fees (license and registration fees) at a rate of Kshs.5,000 for each registration and licence amounting to an average collection of Kshs.5 million per year.

### **Submissions by the Principal Secretary State Department for Health And Professional Standards**

83. The Principal Secretary informed the Committee that;
- i. Physiotherapists Council of Kenya (PCK) is a regulatory body established under an Act of Parliament (Physiotherapists Act No. 20 of 2014)

- ii. The Council does not receive any funding from the exchequer but collects revenues through subscription from members which have been used for operations, maintenance and salaries.
- iii. PCK has a Gazetted Board, an Acting CEO Deployed by the Ministry and two other staff. The Council has requested for more staff deployed to the Council to strengthen services.
- iv. The Board has written to SCAC requesting for categorization and is in the process of developing HR instruments to be submitted to the Public Service Commission for approval upon finalization.
- v. A Letter has been written directing the Council to engage the Office of the Auditor General to have their books audited.

#### **Committee Observations**

84. The Committee observed that;

- i. The Physiotherapists Council of Kenya (PCK) is established as a body corporate by the Physiotherapists Act No. 20 of 2014 with an envisaged financial and administrative autonomy.
- ii. The Council has an Acting CEO who is deployed by the Ministry.
- iii. The Council received money from the public through member registration fees and practicing licence fees. Money received from the members of the professional body is 'public money' and 'public funds' as defined under section 2 of the Public Finance Management Act, 2012 and the Public Audit Act, 2015 respectively and as such, should be audited in accordance with the Public Finance Management Act, 2012 and

Public Audit Act, 2015.

- iv. The accounting officer of the Council failed to prepare financial statements and accounts of these monies received from the public and thereafter submit to the Auditor-General for audit since 2017, in contravention of section 68 (2) (k) of the Public Finance Management Act, 2012.
- v. Further, the CEO was in breach of Section 16 (2) and (3) of the Physiotherapists Act, No. 20 of 2014 which requires that the CEO under the direction of the Council to keep proper books and records of accounts of the income, expenditure and assets of the Council and to submit its accounts to the Auditor General for audit within four months after the end of the financial year.
- vi. The Council was also in breach of Section 14(3) (3) of the State Corporations Act which requires the accounts of every state corporation shall be audited and reported on annually in accordance with the Public Audit Act.
- vii. Despite the Council having reported that it only relies on internally generated revenue that averages Kshs.5 million annually, its approved budgets have since 2017/2018 remained on average Kshs.10 Million resulting into a huge budget deficit.

#### **Committee Recommendations**

85. The Committee Recommends that;

- i. Parliament reprimands the Cabinet Secretary Ministry of Health for failure to monitor the financial performance of the Physiotherapists Council of Kenya in line with section 88 of the Public Finance Management Act, 2012.
- ii. The accounting officer shall prepare outstanding financial statements of the Council since inception and submit to the Auditor-General for audit.

- iii. The Auditor-General shall audit and report to Parliament in accordance with Article 229 of the Constitution and the Public Audit Act, 2015.
- iv. The CEO of the Physiotherapists Council of Kenya must at all times comply with the legal provisions relating to accounts and audit in accordance with Section 68 of the Public Finance Management Act, 2012, Section 16 of the Physiotherapists Act, 2014 and section 14(3) of the State Corporations Act, 1986.
- v. Within three months upon tabling and adoption of this report, and after the financial statements are submitted for audit, the Auditor-General should audit and report to Parliament on the Appropriations in Aid and any other monies received or collected by the entity in form of grants, donations or loans in the course of its operation. Also, the Auditor-General should audit and report to Parliament the expenditure/use of public funds by the entity to ascertain whether the resources of the entity were used in a way that is lawful, authorised, effective, efficient, economical and transparent.

## **2.7 EXAMINATION OF THE REPORTS OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF THE PUBLIC HEALTH OFFICERS AND TECHNICIANS COUNCIL**

- 86. The Public Health Officers and Technicians Council (PHOTC) is established by Public Health Officers (Training, Registration and Licensing) Act, No. 12 of 2013 to regulate the training, practice and employment of public health officers and technicians in Kenya.
- 87. As per the Executive Order No. 1 of 2023, the Public Health Officers and Technicians Council is under the State Department for Public Health and Professional Standards.
- 88. Mr. Aggrey Oriema the Ag. Chief Executive Officer of the Public Health Officers and Technicians Council accompanied by Ms. Rachel Kiiru, Administration and Planning and Mr. Nahashon Echoro appeared before the Committee to adduce evidence on the accounts of Public Health Officers and Technicians Council.

### **Submissions by the Acting Chief Executive Officer**

86. The Ag. Chief Executive Officer informed the Committee that;
- i. The Public Health Officers and Technicians Council (PHOTC) is established as a body corporate under section 3 of the Public Health Officers (Training, Registration and Licensing) Act, No. 12 of 2013 to regulate the training, practice and employment of public health officers and technicians in Kenya.
  - ii. The Council has never received any funds from the Exchequer.
  - iii. There have been delays in appointing a substantive board for the Council.
  - iv. Since its operationalization, the Council has never submitted its books of accounts and financial statements to the Office of the Auditor General.

### **Submissions by the Principal Secretary State Department for Health and Professional Standards**

87. The Public Health Officers and Technicians Council was established under the Public Health Officers Act No 12 Of 2013. (Act of Parliament)
88. The Council has previously been audited by a private auditor for the Financial Years 2016/2017 to 2021/2022.
89. The State Corporations Advisory Committee (SCAC) categorizes the Council as a regulatory body. The board members of the Council were constituted vide a gazette notice 9331, of August 5, 2022.
90. The Council has two (2) staff who are seconded from the Ministry of Health and eight (8)

officers who were recruited through the Public Service Commission (PSC). The Council has submitted it's a request for approval of Human Resource Instruments to the PSC.

91. The Council has never submitted its Financial Statements to the Auditor-General for audit. However, the Council has written a letter to the Office of the Auditor General; reference PHOTC/GC/2023/07/15 to audit its financial statements.
92. The Council receives Appropriation in Aid (AIA)

#### **Committee Observations**

93. The Committee observed that;
  - i. The Public Health Officers and Technicians Council is established as a body corporate by the Public Health Officers (Training, Registration and Licensing) Act, 2013 with an envisaged financial and administrative autonomy.
  - ii. The Ministry failed to promptly appoint a substantive Board of the Public Health Officers and Technicians Council when the Act came into force on 18<sup>th</sup> September 2013.
  - iii. The accounting officer of the Council failed to prepare financial statements and accounts of monies received as Appropriation-in-Aid and thereafter submit to the Auditor-General for audit since 2017, in contravention of section 68 (2) (k) of the Public Finance Management Act, 2012.
  - iv. Further, the CEO was in breach of Section 19 of the Public Health Officers (Training, Registration and Licensing) Act, 2013 which requires the CEO to keep proper books and records of accounts of the income, expenditure and assets of the Council and to submit its accounts to the Auditor General for audit within three months after the end of the financial year.

- v. The Council was also in breach of Section 14(3) (3) of the State Corporations Act which requires the accounts of every state corporation shall be audited and reported on annually in accordance with the Public Audit Act.
- vi. The Council directly outsourced private auditors to audit their annual financial statements in contravention of Section 23 of the Public Audit Act, 2015.

**94. The Committee Recommends that;**

- i. Parliament reprimands the Cabinet Secretary responsible for Health for failing to promptly operationalize and appoint the members of the Public Health Officers and Technicians Council in 2013 when the Act came into force on 18<sup>th</sup> September 2013.
- ii. Parliament reprimands the Cabinet Secretary Ministry of Health for failure to monitor the financial performance of the Public Health Officers and Technicians Council in line with section 88 of the Public Finance Management Act, 2012.
- iii. The accounting officer shall prepare outstanding financial statements of the Council since inception and submit to the Auditor-General for audit.
- iv. The Auditor-General shall audit and report to Parliament in accordance with Article 229 of the Constitution and the Public Audit Act, 2015.
- v. The CEO Public Health Officers and Technicians Council must at all times comply with the legal provisions relating to accounts and audit in accordance with Section 68 of the Public Finance Management Act, 2012, Section 19 of the Public Health Officers (Training, Registration and Licensing) Act, 2013 and section 14(3) of the State Corporations Act, 1986.

- vi. Within three months upon tabling and adoption of this report, the Ethics and Anti-Corruption Commission should investigate the matter of the Public Health Officers and Technicians Council outsourcing private auditors contrary to section 23 of the Public Audit Act, 2015 with a view to ascertain any loss of public funds, including audit fees paid to the private auditors, and the Office of Director of Public Prosecution (ODPP) to subsequently prefer appropriate charges.
- vii. Within three months upon tabling and adoption of this report, and after the financial statements are submitted for audit, the Auditor-General should audit and report to Parliament on the Appropriations in Aid and any other monies received or collected by the entity in form of grants, donations or loans in the course of its operation. Also, the Auditor-General should audit and report to Parliament the expenditure/use of public funds by the entity to ascertain whether the resources of the entity were used in a way that is lawful, authorised, effective, efficient, economical and transparent.

## **2.8 EXAMINATION OF THE REPORTS OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF THE KENYA HEALTH PROFESSIONAL OVERSIGHT AUTHORITY (KHPOA)**

95. The Kenya Health Professions Oversight Authority is established under section 45 of the Health Act 2017. As per the Executive Order No. 1 of 2023, the Kenya Health Professions Oversight Authority is under the State Department for Public Health and Professional Standards.

### **Submissions by the Chief Executive Officer**

96. Dr. Jackson Kioko the Chief Executive Officer of the Kenya Health Professional Oversight Authority (KHPOA) accompanied by Mr. Nixon Oborah Chief Finance Officer and Ms. Sophie Ngugi the Head of Quality and Assurance appeared before the Committee to adduce evidence on the status and accounts of the Kenya Health Professionals Oversight Authority (KHPOA).

97. The Chief Executive Officer informed the Committee that;

- i. The Kenya Health Professions Oversight Authority is established as a body corporate under section 45 of the Health Act 2017.
- ii. The Authority Board of Directors is composed of nine (9) Members appointed in April 2022 and inaugurated by the Cabinet Secretary for Health in July 2022. The Authority has a total of 13 members of staff seconded from the Ministry of Health.
- iii. The Authority has not been fully operationalized and its finances are budgeted and appropriated under the State Department for Public Health and Professional Standards, Ministry of Health.
- iv. The Council had a budgetary allocation of Kshs.55,628,562 in the 2020/2021 Financial Year and Kshs.12,172,050 for the 2021/2022 Financial Year.
- v. The Council has a budget of Kshs.65,562,468 for the Financial Year 2023/2024 out of which Kshs.15,000,000 is AIA and Kshs.50, 000,000 is from the Exchequer.

**Submissions by the Principal Secretary State Department for Public Health and Professional Standards**

98. Ms. Mary Muthoni the Principal Secretary, State Department for Public Health and Professional Standards submitted that the Authority was established under Health Act, 2017. It is a State Agency under the State Department for Public Health and Professional Standards as per Executive Order No.1 of 2023.
99. The Authority receives its exchequer funding as itemised budget under the State Department for Public Health and Professional Standards, Ministry of Health. The

ministry receives and acts upon funding requisitions to support activities of the Authority in the approved Annual Work Plans of the Authority. The Accounting of funds appropriated and expensed is done under the Ministry of Health.

100. The Authority's Board of directors was constituted with 9 members appointed in April 2022 when it became operational. The Authority has Staff establishment of 84 awaiting approval of HR with 13 In-post staff.

#### **Committee Observations**

101. The Committee observed that;
- i. Despite the Kenya Health Professions Oversight Authority being established as a body corporate by the Health Act, 2017 with an envisaged financial and administrative autonomy, the Authority lacks autonomy and financial independence. Further, the Authority's finances are budgeted and appropriated under the State Department for Public Health and Professional Standards, Ministry of Health.
  - ii. The accounting officer of the Authority failed to prepare financial statements and accounts of monies received as Appropriation-in-Aid and thereafter submit to the Auditor-General for audit since 2017, in contravention of section 68 (2) (k) of the Public Finance Management Act, 2012.
  - iii. Further, the CEO was in breach of Section 59 of the Health Act, 2017 which requires that the Board of the Authority to keep proper books and records of accounts of the income, expenditure and assets of the Authority and to submit its accounts to the Auditor General for audit within three months after the end of the financial year.
  - iv. The Council was also in breach of Section 14(3) (3) of the State Corporations Act which requires the accounts of every state corporation shall be audited and reported on annually in accordance with the Public Audit Act.

### **Committee Recommendations**

102. The Committee recommends that;

- i. Parliament reprimands the Cabinet Secretary, Ministry of Health for failure to monitor its financial performance in line with section 88 of the Public Finance Management Act, 2012 and for failure to grant the Kenya Health Professions Oversight Authority (KHPOA) autonomy in its operations and financial independence.
- ii. Parliament reprimands the Cabinet Secretary National Treasury for failure to appoint an accounting officer for KHPOA in line with Article 226(1)(b) of the Constitution and Section 67(3) of the Public Finance Management Act, 2012.
- iii. Within three months upon tabling and adoption of this report, the Cabinet Secretary Ministry of Health to grant the KHPOA autonomy in its operations and finances as per the Health Act, 2017 which establishes KHPOA as a body corporate.
- iv. Within three months of tabling and adoption of this report, the accounting officer shall prepare outstanding financial statements of the Kenya Health Professions Oversight Authority since inception and submit to the Auditor-General for audit.
- v. The Auditor-General shall audit and report to Parliament in accordance with Article 229 of the Constitution and the Public Audit Act, 2015.
- vi. The CEO KHPOA must at all times comply with the legal provisions relating to accounts and audit in accordance with Section 68 of the Public Finance Management Act, 2012 and Section 59 of the Health Act, 2017.
- vii. Within three months upon tabling and adoption of this report, and after the

financial statements are submitted for audit, the Auditor-General should audit and report to Parliament on the Appropriations in Aid and any other monies received or collected by the entity in form of grants, donations or loans in the course of its operation. Also, the Auditor-General should audit and report to Parliament the expenditure/use of public funds by the entity to ascertain whether the resources of the entity were used in a way that is lawful, authorised, effective, efficient, economical and transparent.

## **2.9 EXAMINATION OF THE REPORTS OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF TOBACCO CONTROL BOARD**

103. The Tobacco Control Board is established under section 5 of the Tobacco Control Act No. 4 of 2007, and is mandated to advise the Cabinet Secretary for Health on policies and regulations for tobacco control. The Act commenced on 8<sup>th</sup> October 2007.

### **Submissions by the Secretary**

104. Mr. Anthony Wainaina the Secretary of the Tobacco Control Board (TCB) accompanied by Mr. Ejiha Ogoti Chief Finance Officer, Mr. Gamaliel Omondi and Ms. Caren Sang Administration Officer appeared before the Committee to adduce evidence on the status and accounts of the Tobacco Control Board (TCB).
105. The Secretary informed the Committee that;
- i. The Tobacco Control Board is an advisory board established under section 5 of the Tobacco Control Act No. 4 of 2007. The Board is mandated to advise the Cabinet Secretary for Health on policies and regulations for tobacco control.
  - ii. The Board does not have financial autonomy and has never been independently audited by the Office of the Auditor General (OAG); instead, its funds and accounts are administered from the Ministry of Health.

- iii. Due to the multi-sectoral nature of tobacco control, the Board consists of sixteen (16) board members from various Government Ministries, Departments, Agencies as well as representatives from relevant non- state institutions. The first Board was inaugurated in 2009 and second, third and fourth appointments were made in 2012, 2015 and 2019 respectively. The current Board members were gazetted vide gazette notice No. 8262 dated 13<sup>th</sup> July, 2022.
- iv. The funds for the Board include the Exchequer and collaborative partners grants. The Board does not have Appropriations In Aid (AIA) collected by the entity.
- v. The Tobacco Control Board is not a body Corporate
- vi. The Board also manages the Tobacco Control Fund which has an account at Central Bank of Kenya (CBK) with a deposit of Kshs.480,000,000 collected in the Financial Year 2020/2021 and 2021/2022 the funds are however inaccessible due to lack of a regulatory framework. The Tobacco Control Fund has not yet been operationalized. The funds are collected from stakeholders who are interested in the tobacco industry and all matters that arise from the sale and consumption of tobacco and tobacco products in Kenya.
- vii. The funds allocation to the Board have been as follows:

<b>FINANCIAL YEAR</b>	<b>AMOUNT (kshs)</b>
2014/2015	54,450,000.00
2015/2016	34,047,240.00
2016/2017	22,684,748.00
2017/2018	26,950,000.00

2020/2021	62,500,000.00
2021/2022	55,354,263.00
2022/2023	41,000,000.00

**Submissions by the Principal Secretary State Department for Health and Professional Standards**

106. The Board was established under Section 5 of the Tobacco Control Act 2007 with its first Board inaugurated in May 2009.
107. The Board's activities are implemented through a work plan that is recommended by the Board and approved by the accounting officer at the Ministry of Health, i.e. the Principal Secretary for the State Department for Public Health and Professional Standards. The Board has been operational since May 2009.
108. The first funding to the Board was in 2014/2015 through a vote itemised in the Ministerial budget. The Principal Secretary proposes legislative review to align the Board's operations to the Constitution. The financial operations and records of the Board are prepared and audited under the Ministry of Health rather than as a separate entity. The Board commits to prepare and submit financial statements to Auditor-General starting with FY 2023/2024 in compliance with Section 68 (2) (K).

**Committee Observations**

109. The Committee observed that;
  - i. The Tobacco Control Board is established by the Tobacco Control Act, 2007.

- ii. The board was inaugurated in May 2009 when the first Board members were appointed and the first funding from the exchequer disbursed in the financial year 2015/2016.
- iii. The Tobacco Control Act, 2007 does not give Tobacco Control Board the status of a body corporate and as such, the Board is not a Semi-Autonomous Government Agency.
- iv. Due to this gap in the establishing statute, the Board lacks autonomy and financial independence and the Board's funds and accounts are administered from the Ministry of Health and the audit by the Auditor-General is done through the Ministry.
- v. The Board receives funds from the exchequer and also collects monies designated in the Tobacco Control Act, 2007 as collectible by the Tobacco Control Fund. The Fund has not yet been operationalized due to the fact that Regulations for administration of the Fund have not been developed.
- vi. The Board operates Tobacco Control Fund account held at Central Bank of Kenya (CBK) with a deposit of Kshs.480,000,000 collected in the Financial Year 2020/2021 and 2021/2022. However, the funds are inaccessible due to lack of Regulations. The TCB also operates an account at the NCBA Bank which is accessible.
- vii. The Board advises the Cabinet Secretary on matters relating to administration of the Fund. The Fund is administered by the accounting officer of the Ministry of Health.
- viii. There is need to amend the Tobacco Control Act, 2007 to create a governing Board that can administer the Fund independently from the Ministry of Health.

### **Committee Recommendations**

110. The Committee Recommends that;

- i. Parliament reprimands the Cabinet Secretary, Ministry of Health for failure to identify gaps in the law and failing to take corrective action to amend the Tobacco Control Act, 2007 to create the Tobacco Control Board as a Semi-Autonomous Government Agency with independence in its operations and financial reporting and report to Parliament.
- ii. Within three months upon tabling and adoption of this report the Cabinet Secretary Ministry of Health, in conjunction with the Attorney General, to initiate the legal process to amend the Tobacco Control Act, 2007 to grant the Tobacco Control Board autonomy and independence with an aim to strengthen the Board.
- iii. The Cabinet Secretary Ministry of Health, in conjunction with the Attorney General, to fast-track the development of the Regulations for the administration of the Tobacco Control Fund in order to enable it achieve its mandate under the establishing statute.
- iv. Within three months upon tabling and adoption of this report, and after the financial statements are submitted for audit, the Auditor-General should audit and report to Parliament on the Appropriations in Aid and any other monies received or collected by the entity in form of grants, donations or loans in the course of its operation. Also, the Auditor-General should audit and report to Parliament the expenditure/use of public funds by the entity to ascertain whether the resources of the entity were used in a way that is lawful, authorised, effective, efficient, economical and transparent.

## **2.10 EXAMINATION OF THE REPORTS OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF KENYA NUTRITIONISTS AND DIETICIANS INSTITUTE**

111. The Kenya The Chief Executive Officer Dr. David Okeyo did not appear before the Committee but made a written submission which was accepted by the Committee as follows;

- i. The Kenya Nutritionists and Dieticians Institute is a professional member agency. It is owned by members and governed by a council elected by members and appointed by the Cabinet Secretary ministry of Health.
- ii. The institute has been established as a non-exchequer agency and it is fully funded by members subscriptions, fees, grants and other charged professional services. The institute does not receive any funds through the National Exchequer or government grants. The institute is audited by Muiru Karanja and Associates-certified public Accountants.

### **Submissions by the Chief Executive Officer/Ex-Official member of The Council**

112. The Chief Executive Officer Dr. David Okeyo made a written submission as follows;

- i. The Kenya Nutritionists and Dieticians Institute is a professional member agency. It is owned by members and governed by a council elected by members and appointed by the Cabinet Secretary Ministry of Health.
- ii. The institute has been established as a non-exchequer agency and it is fully funded by members subscriptions, fees, grants and other charged professional services. The institute does not receive any funds through the National Exchequer or government grants. The institute is audited by Muiru Karanja and Associates-certified public Accountants.

### **Committee Observations**

113. The Committee observed that;
- i. The Kenya Nutritionists and Dieticians Institute is established as a body corporate by the Nutritionists and Dieticians Act, 2007 with an envisaged financial and administrative autonomy.
  - ii. The Institute received money from the public through member registration fees and practicing licence fees. Money received from the members of the professional body is 'public money' and 'public funds' as defined under section 2 of the Public Finance Management Act, 2012 and the Public Audit Act, 2015 respectively and as such, should be audited in accordance with the Public Finance Management Act, 2012 and Public Audit Act, 2015.
  - iii. The accounting officer of the Institute failed to prepare financial statements and accounts of these monies received from the public and thereafter submit to the Auditor-General for audit since 2017, in contravention of section 68 (2) (k) of the Public Finance Management Act, 2012.
  - iv. Further, the CEO was in breach of section 14(3) (3) of the State Corporations Act, 1986 which requires the accounts of every state corporation shall be audited and reported on annually in accordance with the Public Audit Act.
  - v. The Council directly outsourced private auditors to audit their annual financial statements in contravention of Section 23 of the Public Audit Act, 2015.

### **Committee Recommendations**

114. The Committee recommends that;

- i. Parliament reprimands the Cabinet Secretary Ministry of Health for failure to monitor the financial performance of the Kenya Nutritionists and Dieticians Institute in line with section 88 of the Public Finance Management Act, 2012.
- ii. The accounting officer shall prepare outstanding financial statements of the Institute since inception and submit to the Auditor-General for audit.
- iii. The Auditor-General shall audit and report to Parliament in accordance with Article 229 of the Constitution and the Public Audit Act, 2015.
- iv. The CEO KNDI must at all times comply with the legal provisions relating to accounts and audit in accordance with Section 68 of the Public Finance Management Act, 2012 and Section 14(3) of the State Corporations Act.
- v. Within three months upon tabling and adoption of this report, the Ethics and Anti-Corruption Commission should investigate the matter of the KNDI outsourcing private auditors contrary to section 23 of the Public Audit Act, 2015 with a view to ascertain any loss of public funds, including audit fees paid to the private auditors, and the Office of Director of Public Prosecution (ODPP) to subsequently prefer appropriate charges.
- vi. Within three months upon tabling and adoption of this report, and after the financial statements are submitted for audit, the Auditor-General should audit and report to Parliament on the Appropriations in Aid and any other monies received or collected by the entity in form of grants, donations or loans in the course of its operation. Also, the Auditor-General should audit and report to Parliament the expenditure/use of public funds by the entity to ascertain whether the resources of

the entity were used in a way that is lawful, authorised, effective, efficient, economical and transparent.

## **2.11 EXAMINATION OF AUDITOR GENERAL REPORTS ON THE AUDITED ACCOUNTS OF THE KENYA HEALTH HUMAN RESOURCE ADVISORY COUNCIL**

115. The Kenya Health Human Resource Council is established as a body corporate under Sections 30 of the Health Act, 2017. It is also a Semi-Autonomous Government Agency under the State Department for Public Health & Professional Standards as per Executive Order No.1 of 2023.

### **Submission by the Registrar**

116. Dr. John Kihama the Ag. Chief Executive Officer of the Kenya Health Human Resource Advisory Council (KHHRAC) accompanied by Mr. Nixon Oborah Chief Finance Officer appeared before the Committee to adduce evidence on the status and accounts of the Kenya Health Human Resource Advisory Council.
117. The Ag. Chief Executive Officer informed the Committee that;
- i. The Council was set up as an intergovernmental and multi-agency body with a mandate that encompasses key stakeholders in co-coordinating training and employment of healthcare workers.
  - ii. The roles of the KHHRAC include:
    - a) Posting of medical interns to County and National Government health facilities.
    - b) Transfer of healthcare professionals from County to another or to National Government facilities.
    - c) Welfare and scheme for healthcare professionals.
    - d) Maintenance of a master register for all healthcare workers in Kenya.

- iii. In 2019, an interim secretariat was deployed from the Ministry of Health and in June 2023 the Board was inaugurated.
- iv. The Council has never been audited by the Office of the Auditor General (OAG) and its accounts and budget are domiciled and administered from the Ministry of Health.
- v. The Council's budget is itemized under the Ministry of Health and has received allocations for the Financial Years 2020/2021, 2021/2022 and 2022/2023.
- vi. The Council has been allocated a budget of Kshs.68,638,589 for the Financial Year 2023/2024 and is domiciled at the State Department for Public Health and Professional Standards.

**Submissions by the Principal Secretary - State Department for Public Health and Professional Standards**

- 118. Ms. Mary Muthoni Muriuki, HSC the Principal Secretary appeared before the Committee to adduce evidence on the status of the examination of the council's books of accounts by the Auditor General.
- 119. The Principal Secretary informed the Committee that the Exchequer funding to the Council is through itemized budget under State Department for Public Health and Professional Standards. Consequently, Accounting and Auditing of allocated itemized budget of the Council is done under the State Department for Public Health and Professional Standards. Efforts are underway to have the Financial Year 2024/2025 budget issued as a grant to the Council.
- 120. The approval of Annual Work Plans, procurement plans and requisition for the Council is done at the State Department for Public Health and Professional Standards.

121. The Board is currently constituted with 12 Board members appointed in May 2023 and inaugurated in June 2023 awaiting induction by SCAC.
122. The Board is yet to forward the Human Resource Instruments for approval by Public Service Commission. It has a proposed staff establishment of 87 with 5 In-post staff.
123. The Request for categorization by SCAC had been done in 2021 and is planned to be renewed by the board.

#### **Committee's Observations**

124. The Committee observed that;
  - i. Whereas the Kenya Health Human Resource Advisory Council (KHHRAC) is established as a body corporate under the Health Act, 2017, the finances and expenditure statements and records are still being reported and audited as part of the Ministerial books of Accounts in contravention of Section 68 (2) of the PFM Act 2012 and section 43 of the Health Act, 2017.
  - ii. The Ministry has failed to grant the Council its operational and financial autonomy and reliance on the approvals and authorization of expenditure from the State Department impedes the independence needed for efficient and effective execution of the Council's mandate.
  - iii. There have been incidences in the past when expenditure requests by the Council for some reasons were not authorized by Principal Secretary for the State department and this adversely affected budget absorption and realization of budget outcomes and impacts.

#### **Committees Recommendations**

125. The Committee recommends that;

- i. Parliament reprimands the Cabinet Secretary, Ministry of Health for failure monitor the performance of the Kenya Health Human Resource Advisory Council in line with section 88 of the Public Finance Management Act, 2012.
- ii. Further, Parliament reprimands the Cabinet Secretary, Ministry of Health for failure to promptly operationalize the Kenya Health Human Resource Advisory Council (KHHRAC) and to appoint members of the Council and grant autonomy in its operations and financial independence.
- iii. Parliament reprimands the Cabinet Secretary National Treasury for failure to appoint an accounting officer for Kenya Health Human Resource Advisory Council in line with Article 226(1)(b) of the Constitution and Section 67(3) of the Public Finance Management Act, 2012.
- iv. Within three months upon tabling and adoption of this report, the Cabinet Secretary Ministry of Health to operationalize the Council as per the establishing statute, Health Act, 2017.
- v. Within three months of tabling and adoption of this report, the accounting officer shall prepare outstanding financial statements of the Council since inception and submit to the Auditor-General for audit.
- vi. The Auditor-General shall audit and report to Parliament in accordance with Article 229 of the Constitution and the Public Audit Act, 2015.
- viii. The CEO Kenya Health Human Resource Advisory Council must at all times comply with the legal provisions relating to accounts and audit in accordance with Section 68 of the Public Finance Management Act, 2012, Section 43 of the Health Act, 2017 and section 14(3) of the State Corporations Act, 1986.

- ix. Within three months upon tabling and adoption of this report, and after the financial statements are submitted for audit, the Auditor-General should audit and report to Parliament on the Appropriations in Aid and any other monies received or collected by the entity in form of grants, donations or loans in the course of its operation. Also, the Auditor-General should audit and report to Parliament the expenditure/use of public funds by the entity to ascertain whether the resources of the entity were used in a way that is lawful, authorised, effective, efficient, economical and transparent.

**2.12 EXAMINATION OF AUDITOR GENERAL REPORTS ON THE AUDITED ACCOUNTS OF THE HEALTH RECORDS AND INFORMATION MANAGERS BOARD**

126. The Health Records and Information Managers Board is established by the Health Records and Information Managers Act No. 15 of 2016. The Act provides for the training, registration and licensing of the health records and information managers.
127. As per the Executive Order No. 1 of 2023, the Health Records and Information Managers Board is under the State Department for Public Health and Professional Standards.

**Submission by the Principal Secretary-State Department for Public Health And Professional Standards**

128. Ms. Mary Muthoni Muriuki, HSC the Principal Secretary appeared before the Committee to adduce evidence on the status of the audit of the Health Records and Information Managers Board.
129. The Principal Secretary informed the Committee that the Health Records and Information Management Board was established through an Act of Parliament- HRIM Act No. 15 of 2016 and Board members appointed by the Cabinet Secretary Ministry of Health vide a gazette notice 9331 of August 5, 2022. Thus, it is fully constituted.
130. The Board is a State Agency under the State Department for Public Health and

Professional Standards as per the Executive Order No. 1 of 2023.

131. The Board has not received or collected any monies but will do so if authorized. The collected or received funds will be accounted for through the Ministry and OAG.
132. The Board has written to SCAC requesting categorization and is awaiting staff deployment from the Ministry of Health and already requested the Principal Secretary, State Department for Public Health and Professional Standards to act.
133. Despite the Board having been operational for less than one year since its constitution on August 5, 2022, they commit to complying with audit requirements for Audit by the OAG in the next reporting cycle.

#### **Committee Observations**

**134. The Committee observed that;**

- i. The Health Records and Information Managers Board is established as a body corporate by the Health Records and Information Managers Act, 2016 with an envisaged financial and administrative autonomy.
- ii. The Cabinet Secretary responsible for Health failed to promptly operationalize and appoint the members of the Board since the Health Records and Information Managers Act came into force on 9<sup>th</sup> June 2016. The Board members were appointed by the Cabinet Secretary Ministry of Health vide a gazette notice 9331 of August 5, 2022.
- iii. The Board is authorized under Section 36 of the Health Records and Information Managers Act to collect such monies as may accrue or vest in the Board in the course of the exercise of its powers or the performance of its functions under the Act and therefore does not require any other authorization to collect monies as indicated in the submission.

### **Committee Recommendations**

135. The Committee recommends that;

- i. Parliament reprimands the Cabinet Secretary, Ministry of Health for failure to operationalize the Health Records and Information Managers Board and grant autonomy in its operations and financial independence.
- ii. Within three months upon tabling and adoption of this report, the Cabinet Secretary Ministry of Health to operationalize the Health Records and Information Managers Board as per the establishing statute, Health Records and Information Managers Act, 2016.
- iii. The Registrar Health Records and Information Managers Board must at all times comply with the legal provisions relating to accounts and audit in accordance with Section 68 of the Public Finance Management Act, 2012 and section 14(3) of the State Corporations Act, 1986.
- iv. Within three months upon tabling and adoption of this report, and after the financial statements are submitted for audit, the Auditor-General should audit and report to Parliament on the Appropriations in Aid and any other monies received or collected by the entity in form of grants, donations or loans in the course of its operation. Also, the Auditor-General should audit and report to Parliament the expenditure/use of public funds by the entity to ascertain whether the resources of the entity were used in a way that is lawful, authorised, effective, efficient, economical and transparent.

### **2.13 EXAMINATION OF THE AUDITOR GENERAL'S REPORT OF AUDITED ACCOUNTS OF THE KENYA FISH MARKETING AUTHORITY (KFMA)**

136. The Kenya Fish Marketing Authority (KFMA) is established under Section 198 of the

Fisheries Management and Development Act, 2016 to market fish and fisheries products in Kenya. As per Executive Order No. 1 of 2023, the Authority is under the State Department for Blue Economy and Fisheries.

**Submission by the Acting Director General for Kenya Fish Marketing Authority**

137. Mr. Samuel Onyango Ag. Director General for Kenya Fish Marketing Authority (KFMA) appeared before the Committee to adduce evidence on the status of the audited accounts of Kenya Fish Marketing Authority.
138. The Ag. Director General informed the Committee that;
- i. The Kenya Fish Marketing Authority (KFMA) is a body corporate established by section 198 of the Fisheries Management and Development Act, No. 35 of 2016 to market fish and fisheries products from Kenya.
  - ii. The Authority has 12 Board Members with five being Independent Directors, one of whom is the Chairperson appointed by the President. The first Board of KFMA was appointed on 18<sup>th</sup> September 2018. The Chairperson of the Board was appointed on 16<sup>th</sup> October 2019 and his term came to an end on 15<sup>th</sup> October 2022.
  - iii. The Authority has not been audited independently however it will be audited for the first time in the year 2022/2023. The Authority has plans to recruit its own staff to execute its mandate.

**Submission by the Principal Secretary for State Department for Blue Economy and Fisheries**

139. Ms. Betsy Njagi, the Principal Secretary, State Department for the Blue Economy and Fisheries submitted that the Kenya Fish Marketing Authority (KFMA) is a body corporate established by section 198 of the Fisheries Management and Development Act, No. 35 of 2016 to market fish and fisheries products from Kenya.

140. The Authority has 12 Board Members with five being Independent Directors one of whom is the Chairperson appointed by the President. The first Board of KFMA was appointed on 18th September 2018. The Chairperson of the Board was appointed on 16th October 2019 and his term came to an end on 15<sup>th</sup> October 2022. The current Board Chairperson, Hon. Martin Ogindo was appointed on 29<sup>th</sup> April, 2023 by His Excellency the President of the Republic of Kenya.
141. The Organization has been undergoing operationalization including the development of the Human Resources Instruments to enable staff acquisition for delivery of their mandate. In March 2022, The State Corporations Advisory Committee (SCAC) categorized KFMA as a Parastatal category 3C and approved the Organizational Structure, Grading and Staff Establishment, Human Resource Policy and Procedures Manual and a Career Guidelines. The Authority has been supported by staff from the State Department including Finance and Accounting, Procurement, HR and ICT. The Authority has plans to recruit its own staff to execute the mandate.
142. The Authority has not been audited independently however it will be audited for the first time in the year 2022/2023.

#### **Committee Observations**

143. The Committee observed that;
- i. Whereas the Kenya Fish Marketing Authority (KFMA) is established as a body corporate by section 198 of the Fisheries Management and Development Act, 2016, the finances and expenditure statements and records are still being reported and audited as part of the Ministerial books of Accounts in contravention of Section 68 (2) of the PFM Act 2012 and section 14(3) of the State Corporations Act, 1986.

- ii. The Ministry has failed to grant the Authority its operational and financial autonomy and reliance on the approvals and authorization of expenditure from the State Department impedes the independence needed for efficient and effective execution of the Council's mandate.
- iii. The period 2018/2019 to 2021/2022 the approved budgetary allocation amounts to Kshs.63.69 million whereas the actual expenditure amounts to Kshs.60.5 million resulting in to unspent amount of Kshs. 2.74 million. No documentary evidence was submitted to Committee to confirm the whether the unspent amount was remitted to the National Exchequer account as required by section 45 (2)of the Public Finance management Act, 2012.
- iv. The Fisheries Management and Development Act, 2016 was declared unconstitutional in a judgment delivered on 15<sup>th</sup> November, 2022 in Malindi Constitution petition number 13B of 2021 Mahmoud Shalima Mohammed Versus Ministry of Agriculture, Livestock and Fisheries and Others. Although the Principal Secretary indicated that a stay order was granted in the matter on 18<sup>th</sup> July, 2023 stating that the Act continues to be operation save for section 42 (1) (a) to (k) and section 42 (2) which shall remain suspended pending the hearing of the appeal, the Ministry did not provide a copy of the court order to the Committee.

#### **Committee Recommendations**

144. The Committee recommends that;

- i. Parliament reprimands the Cabinet Secretary, Ministry of Mining, Blue Economy and Maritime Affairs for failure to monitor the performance of the Kenya Fish Marketing Authority in line with section 88 of the Public Finance Management Act, 2012 and for failure to grant the Authority autonomy in its operations and financial independence.

- ii. Parliament reprimands the Cabinet Secretary National Treasury for failure to appoint an accounting officer for Kenya Fish Marketing Authority in line with Article 226(1)(b) of the Constitution and Section 67(3) of the Public Finance Management Act, 2012.
- iii. Within three months upon tabling and adoption of this report, the Cabinet Secretary Ministry of Mining, Blue Economy and Maritime Affairs to grant autonomy to the Kenya Fish Marketing Authority as per the establishing statute, Fisheries Management and Development Act, 2016.
- iv. Within three months of tabling and adoption of this report, the accounting officer shall prepare outstanding financial statements of the Authority since inception and submit to the Auditor-General for audit.
- v. The Auditor-General shall audit and report to Parliament in accordance with Article 229 of the Constitution and the Public Audit Act, 2015.
- vi. The CEO Kenya Fish Marketing Authority must at all times comply with the legal provisions relating to accounts and audit in accordance with Section 68 of the Public Finance Management Act, 2012 and section 14(3) of the State Corporations Act, 1986.
- vii. The Ministry of Mining, Blue Economy and Maritime affairs in conjunction with the Attorney General to fast-track the pending court case touching on the validity of the Fisheries Management and Development Act, 2016 and report to Parliament.
- viii. Within three months upon tabling and adoption of this report the Accounting officer of the Authority to provide the National Assembly with evidence of remittance of the unspent amount to the National Treasury.

- ix. Within three months upon tabling and adoption of this report, and after the financial statements are submitted for audit, the Auditor-General should audit and report to Parliament on the Appropriations in Aid and any other monies received or collected by the entity in form of grants, donations or loans in the course of its operation. Also, the Auditor-General should audit and report to Parliament the expenditure/use of public funds by the entity to ascertain whether the resources of the entity were used in a way that is lawful, authorised, effective, efficient, economical and transparent.

#### **2.14 EXAMINATION OF THE AUDITORS GENERAL REPORT OF THE AUDITED ACCOUNTS OF THE KENYA FISHING INDUSTRIES CORPORATION (KFIC)**

145. The Kenya Fishing Industries Corporation (KFIC) is a state corporation established vide Section 3 (1) of the State Corporations Act, Legal Notice No. 214 of 23 November 2018 and Legal Notice No. 110 of 22 May 2020. As per Executive Order No. 1 of 2023, the Corporation is under the State Department for the Blue Economy and Fisheries.

#### **Submission by the Acting Chief Executive Officer for Kenya Fish Marketing Authority**

146. Dr. Mikah Nyaberi the Ag. Chief Executive Officer of the Kenya Fishing Industries Corporation appeared before the Committee to adduce evidence on the status of the audited accounts for Kenya Fishing Industries Corporation.
147. The Ag. Chief Executive Officer informed the Committee that;
  - i) The Kenya Fishing Industries Corporation (KFIC) was established under the Ministry of Agriculture, Livestock and Fisheries through the State Corporations Act, (Legal Notice No. 214 of 2018) and (Legal notice 110 of 2020) to provide strategic leadership and direction in the exploitation of fish and fish products; marine resources and products including aquatic plants in the Country. This effort

is intended to revamp the fisheries industry and revolutionize Kenya deep sea fisheries under the blue economy initiative.

- ii) The State Corporation became fully operational through the appointment of a Board of Directors in November, 2021.
- iii) The State Corporation Advisory Council (SCAC) classified KFIC as a Commercial/ Manufacturing Corporation-Category PC7 C.
- iv) The State Department deployed an acting CEO and other support services staff to assist in running the SAGA. SCAC approved HR instruments in June, 2022 approving 71 members of staff.
- v) The Ministry has since through the board of directors initiated the process of recruiting a substantive CEO, whose recruitment process is underway.
- vi) Previously, KFIC didn't have a board to approve its own budget. However, since the Board is now in place, the entity is envisaged to utilize its own budget independently starting 2022/2023 financial year.

**Submission by the Principal Secretary for State Department for Blue Economy and Fisheries**

148. Ms. Betsy Njagi, The Principal Secretary for the State Department of Blue Economy submitted that the Kenya Fishing Industries Corporation (KFIC) was established under the Ministry of Agriculture, Livestock and Fisheries through the State Corporations Act, (Legal Notice No. 214 of 2018) and (Legal Notice 110 of 2020) to provide strategic leadership and direction in the exploitation of fish and fish products; marine resources and products including aquatic plants in the Country. This effort is intended to revamp the fisheries industry and revolutionize Kenya deep sea fisheries under the blue economy initiative.

149. The State Corporation became fully operational through the appointment of a Board of Directors in November 2021. It was later classified as a Commercial/ Manufacturing Corporation-Category PC7 C by SCAC. The Principal Secretary, State Department for Blue Economy and Fisheries deployed an acting CEO and other support services staff to assist in running the SAGA. SCAC approved HR instruments in June, 2022 approving 71 members of staff.

150. The Ministry has since through the Board of Directors initiated the process of recruiting a substantive CEO, whose recruitment process is underway. KFIC did not have a Board to approve its own budget. However, since the Board is now in place, the entity is envisaged to utilize its own budget independently starting 2022/2023 financial year.

151. The Kenya Fish Marketing Authority was budgeted to receive grants as follows:

<b>Financial Year</b>	<b>Budget (Ksh)</b>	<b>Expenditure (Ksh)</b>
2018/19	10,290,000	9,549,353
2019/20	11,500,000	9,497,206
2020/21	15,900,000	15,899,981
2021/22	26,000,000	26,000,000

152. Kenya Fish Marketing Authority was authorized to open a bank account on 7<sup>th</sup> may, 2021 at Cooperative Bank of Kenya, Upper Hill Branch, Nairobi and the same opened on 2<sup>nd</sup> July, 2021.

153. The utilization of the authorities' Budget was at the State Department prior to opening their own bank account.

154. In the financial year 2018/19 to 2020/21 most of the payments were for travel allowances, task force allowances and Board sitting allowances.

155. In 2021/2022 financial year, grants were released to the authority to enable it operate

independently.

156. Kenya Fishing Industries Corporation was budgeted to receive grants as follows:

Financial Year	Budget (Ksh)	Expenditure (Ksh)
2021/2022	10,000,000	9,977,600

157. Kenya Fishing Industries Corporation was given authority to open a bank account on 9<sup>th</sup> December, 2021 at National Bank of Kenya, Bondeni Branch, Mombasa. This was done on 7<sup>th</sup> January, 2022.

158. The utilization of the budget in financial year 2021/2022 in the first half of the financial year, was for payment of allowances and reimbursement of standing imprest for the Corporation. The second half of the financial year was by release of grants to their bank account for spending.

159. Kenya Fishing Industries Corporation received Development AIEs to facilitate construction projects under the Liwatoni Budget in the financial year 2021/22.

160. The payments made in respect to KFMA and KFIC under the State Department were audited as a one-line-item grants to government agencies and certified in financial years 2019/2020, 2020/2021 and 2021/2022.

161. The SAGAs have not been audited independently but through the Ministry however the SAGAs are expected to prepare their own financial statements for financial year 2022/2023.

#### **Committee Observations**

162. The Committee observed that;

- i. Whereas the Kenya Fishing Industries Corporation is established as a body corporate by section 3 of Legal Notice No. 214 of 2018, the finances and expenditure statements and records are still being reported and audited as part of the Ministerial books of Accounts in contravention of Section 68 (2) of the PFM Act 2012, section 14(3) of the State Corporations Act, 1986 and section 18 of Legal Notice No. 214 of 2018.
- ii. The Ministry has failed to grant the Authority its operational and financial autonomy and reliance on the approvals and authorization of expenditure from the State Department impedes the independence needed for efficient and effective execution of the Council's mandate.
- iii. Despite the Legal Notice No. 214 of 2018 coming into force on 23<sup>rd</sup> November 2018, the Cabinet Secretary Ministry of Mining, Blue Economy and Maritime Affairs failed to promptly operationalize and appoint members of the Board of the Kenya Fishing Industries Corporation.

#### **Committee Recommendations**

- i. Parliament reprimands the Cabinet Secretary, Ministry of Mining, Blue Economy and Maritime Affairs for failure to monitor the performance of the Kenya Fishing Industries Corporation in line with section 88 of the Public Finance Management Act, 2012 and for failure to grant the Authority autonomy in its operations and financial independence.
- ii. Parliament reprimands the Cabinet Secretary National Treasury for failure to appoint an accounting officer for Kenya Fishing Industries Corporation in line with Article 226(1)(b) of the Constitution and Section 67(3) of the Public Finance Management Act, 2012.
- iii. Parliament reprimands the Cabinet Secretary National Treasury for failing in his oversight role of the Ministry and failing to promptly appoint members of the

Board of Kenya Fishing Industries Corporation despite the Legal Notice coming into force on 23<sup>rd</sup> November 2018.

- iv. Within three months upon tabling and adoption of this report, the Cabinet Secretary Ministry of Mining, Blue Economy and Maritime Affairs to operationalize and grant operational and financial autonomy to the Kenya Fishing Industries Corporation as envisaged in the establishing instrument, Legal Notice No. 214 of 2018.
- v. Within three months of tabling and adoption of this report, the accounting officer shall prepare outstanding financial statements of the Authority since inception and submit to the Auditor-General for audit.
- vi. The Auditor-General shall audit and report to Parliament in accordance with Article 229 of the Constitution and the Public Audit Act, 2015.
- vii. The CEO Kenya Fishing Industries Corporation must at all times comply with the legal provisions relating to accounts and audit in accordance with Section 68 of the Public Finance Management Act, 2012 and section 14(3) of the State Corporations Act, 1986.
- viii. Within three months upon tabling and adoption of this report, and after the financial statements are submitted for audit, the Auditor-General should audit and report to Parliament on the Appropriations in Aid and any other monies received or collected by the entity in form of grants, donations or loans in the course of its operation. Also, the Auditor-General should audit and report to Parliament the expenditure/use of public funds by the entity to ascertain whether the resources of the entity were used in a way that is lawful, authorised, effective, efficient, economical and transparent.

## **2.15 EXAMINATION OF THE AUDITOR GENERAL REPORT OF KENYA CONSUMER PROTECTION ADVISORY COMMITTEE**

163. The Consumer Protection Advisory Committee is established under Section 89 of the Consumer Protection Act. The Act commenced on 14<sup>th</sup> March 2013.

### **Submission by the Acting CEO, Kenya Consumer Protection Advisory Committee**

164. Mrs. Redempta Oyeyo the Ag. Chief Executive Officer of the Kenya Consumers Protection Advisory Committee (KECOPAC) appeared before the Committee to adduce evidence on the status of the audited accounts for Kenya Consumers Protection Advisory Committee

165. The Ag. Chief Executive Officer informed the Committee that;

- i. The Kenya Consumers Protection Advisory Committee was created through an Act of Parliament, Consumer Protection Act No. 46 of 2012 and has been existence since November 2013.
- ii. The Committee is mandated to advise the Cabinet Secretary on all aspects relating to consumer protection.
- iii. The Committee does not exist independently and that the State Department for Trade provides the Secretariat to support the operations of the Committee.
- iv. The salary for the staff serving in the Secretariat are paid by the State Department for Trade.
- v. The Kenya Consumers Protection Advisory Committee's budget comes as a line budget under the State Department for Trade and therefore it does not prepare any financial statements.

**Submissions from the Principal Secretary State Department For Investments, Trade And Industry.**

166. Mr. Alfred Ombudo the Principal Secretary for State Department of Trade submitted on the status of the audited accounts for Kenya Consumers Protection Advisory Committee.
167. The Principal Secretary submitted that the Kenya Consumers Protection Advisory Committee (KECOPAC) is established by an Act of Parliament, the Consumer Protection Act of 2012 which is mandated by the Constitution under Article 46.
168. KECOPAC has never been included in the Executive Orders in the organization of the Government of Kenya. In 2010, the Principal Secretary wrote to the office of the Presidency highlighting the anomaly but there was no response. The current Committee was appointed on the expiry of the last Committee term and subsequently, a board meeting was held where the Chairperson and Vice- Chairperson were elected. The State Department for Trade has deployed adequate and competent officers with a clear job description, delegated roles and a specific time frame to offer secretariat services to support KECOPAC operations.
169. KECOPAC currently does not have an independent bank account and therefore its operations are funded through the Parent Ministry. KECOPAC has planned to hold a meeting on 27<sup>th</sup> July, 2023 to pass resolutions amongst others, opening of KECOPAC's bank account. Once the request is received, the State Department will fast-track the account opening with the National Treasury.
170. The Authorized Officer in conjunction with the Committee will ensure proper accountability of the KECOPAC's operations. The State Department will fast-track full operationalization of KECOPAC to ensure the achievement of its mandate.
171. The Consumer Protection Act No.46 of 2012 is deficient and has gaps. The Act never

provided for a structure for the stand-alone operationalization of the Advisory Committee and therefore the Institutions mandate cannot be effectively executed by the Committee.

172. To address the identified deficiencies and gaps in the Act, the State Department has proposed Amendments to the Act and forwarded the same to the Prime Cabinet Secretary's Office for further necessary legislative amendments. The proposed amendment to the Act is to convert KECOPAC to a Board or an Authority.
173. During the inauguration of the Committee by the Principal Secretary, it was agreed that the Committee will seek Private Public Partnerships to enhance their roles in consumer protection e.g. partnership with Trademark East Africa (TMEA) and ICT Authority, among others. This will enable the Advisory Committee to supplement its funding from the exchequer.
174. KECOPAC does not have a bank account for the remittance of its funds and therefore the Agency has not been preparing independent financial statements consequently its financial records have been audited through the State Department for Trade. The Agency's budget and expenditures are currently funded through the Parent Ministry.

#### **Committee Observations**

175. The Committee observed that;
  - i. The Kenya Consumers Protection Advisory Committee is established by the Consumer Protection Act, 2012 and has been in existence since 2013.
  - ii. The Consumer Protection Act, 2012 does not give Kenya Consumers Protection Advisory Committee the status of a body corporate and as such, the Committee is not a Semi-Autonomous Government Agency. The operations of the Committee are still under the Ministry of Trade, Investments and Industry and the Cabinet Secretary overlooks external interests of the Committee.

- iii. Due to this gap in the establishing statute, the Committee lacks operational capacity, autonomy and financial independence and the Committee's funds and accounts are administered from the Ministry of Trade, Investments and Industry and the audit by the Auditor-General is done through the Ministry.
- iv. There is need to amend the Consumer Protection Act, 2007 to establish the Committee as a Semi-Autonomous Government Agency and grant it autonomy and independence in its operations and financial reporting with an aim to strengthen the Committee and enable it achieve its mandate

#### **Committee Recommendation**

176. The Committee recommended that;
  - i. Parliament reprimands the Cabinet Secretary, Ministry of Trade, Investments and Industry for failure to promptly identify gaps in the law since the Act was passed in 2012, and failing to take corrective action to amend the Consumer Protection Act, 2012 to create the Kenya Consumer Protection Advisory Committee as a Semi-Autonomous Government Agency with independence in its operations and financial reporting and report to Parliament.
  - ii. Within three months upon tabling and adoption of this report the Cabinet Secretary Ministry of Trade, Investments and Industry, in conjunction with the Attorney General, to initiate the legal process to amend the Consumer Protection Act, 2012 to grant the Kenya Consumer Protection Advisory Committee autonomy and independence with an aim to strengthen the Committee and enable it achieve its mandate under the establishing statute.
  - iii. Within three months upon tabling and adoption of this report, and after the financial statements are submitted for audit, the Auditor-General should audit and report to Parliament on the Appropriations in Aid and any other monies received

or collected by the entity in form of grants, donations or loans in the course of its operation. Also, the Auditor-General should audit and report to Parliament the expenditure/use of public funds by the entity to ascertain whether the resources of the entity were used in a way that is lawful, authorised, effective, efficient, economical and transparent.

## **2.16 EXAMINATION OF THE REPORTS OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF NATIONAL HEROES COUNCIL**

177. The National Heroes Council is a State Corporation established by the Kenya Heroes Act No 5 of 2014. The Act commenced on 1<sup>st</sup> September 2020. As per the Executive Order No. 1 of 2023, National Heroes Council is under the State Department for Culture and Heritage.

### **Submissions by the Principal Secretary State Department for Culture and Heritage**

178. Ms. Umami Bashir, the Principal Secretary State Department for Culture and Heritage submitted that the National Heroes Council was established pursuant to the Kenya Heroes Act No.5 of 2014.

179. The council was however operationalized in 4<sup>th</sup> September, 2020 when the chair was appointed through Gazette Notice No 173 thereafter followed by the appointment of the council's Board in September 16<sup>th</sup> 2020.

180. That the council through the assistance of the National Treasury, the State Corporation Advisory Committee (SCAC) and Public Service Commission caused to have the necessary instruments in place that has guided in the determination of staff establishment, career guidelines and recruitment of staff.

181. The Principal Secretary stated that the council is facing the following challenges:

- i. **Exchequer Financing**-the council is seeking an increment from Kshs.72 M TO 135 M in the current FY 2023/2024.

- ii. **Establishment of Heroes Fund**-This has not been initiated due to limited financial resources.
- iii. **Public sensitization**-since inception the council has not managed to sensitize the public on its existence nor educated the public on its key mandate.

#### **Committee Observations**

182. The Committee observed that;

- i. The National Heroes Council is established as a body corporate under the Kenya Heroes Act, 2014. The Act commenced on 1<sup>st</sup> September 2020. However, the Ministry of Tourism, Wildlife and Heritage has failed to grant autonomy and financial independence to the Council as envisaged in the establishing statute.
- ii. The Principal Secretary State Department for Culture and Heritage did not prepare and submit statements for unspent money repaid into the National Exchequer Account from financial year 2019/2020 when the council was operationalized and funded with Kshs. 25,500,000 with Kshs. 7,826,182 being unspent. The PS was therefore in breach of section 45 of the Public Finance Management Act, 2012.

#### **Committee Recommendations**

183. The Committee recommends that;

- i. Parliament reprimands the Cabinet Secretary, Ministry of Tourism, Wildlife and Heritage for failure to monitor the financial performance of the National Heroes Council in line with section 88 of the Public Finance Management Act, 2012 and for failure to grant the Council autonomy in its operations and financial independence.
- ii. Parliament reprimands the Cabinet Secretary National Treasury for failure to appoint an accounting officer for the National Heroes Council in line with Article

226(1)(b) of the Constitution and Section 67(3) of the Public Finance Management Act, 2012.

- iii. Parliament reprimands the Cabinet Secretary Ministry of Tourism, Wildlife and Heritage for failure to monitor the financial performance of the National Heroes Council in line with section 88 of the Public Finance Management Act, 2012.
- iv. Within three months upon tabling and adoption of this report, the Cabinet Secretary Ministry of Tourism, Wildlife and Heritage to operationalize and grant autonomy to the National Heroes Council as per the establishing statute, Kenya Heroes Act, 2014.
- v. Within three months of tabling and adoption of this report, the accounting officer shall prepare outstanding financial statements of the Council since inception and submit to the Auditor-General for audit.
- vi. The Auditor-General shall audit and report to Parliament in accordance with Article 229 of the Constitution and the Public Audit Act, 2015.
- vii. The Director National Heroes Council must at all times comply with the legal provisions relating to accounts and audit in accordance with Section 68 of the Public Finance Management Act, 2012, Section 43 of the Kenya Heroes Council, 2014 and section 14(3) of the State Corporations Act, 1986.
- viii. Within three months upon tabling and adoption of this report, and after the financial statements are submitted for audit, the Auditor-General should audit and report Parliament on the Appropriations in Aid and any other monies received or collected by the entity in form of grants, donations or loans in the course of its operation. Also, the Auditor-General should audit and report to Parliament the expenditure/use of public funds by the entity to ascertain

whether the resources of the entity were used in a way that is lawful, authorised, effective, efficient, economical and transparent.

## **2.17 EXAMINATION OF THE REPORTS OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF KENYA NATIONAL COMMISSION FOR CULTURE AND SOCIAL SERVICES**

184. The Kenya National Commission for Culture and Social Sciences is a state corporation established under the Executive Order. The Executive Order No. 1 of 2023, places the Kenya National Commission for Culture and Social Sciences is under the State Department for Culture and Heritage.

### **Submissions by the Principal Secretary State Department for Culture and Heritage**

185. Ms. Umami Bashir the Principal Secretary, State Department for Culture and Heritage submitted that Kenya National Commission for Culture and Social Services is yet to be established as an independent Semi-Autonomous Government Agency. The Executive Order No.1 of 2023 places the commission under the State Department for culture and Heritage.
186. During the public participation exercise of the Culture Bill within which the KNCCSS is anchored, the Council of Governors (CoG) opposed the establishment of the Commission on grounds that its roles were duplicating the county government devolved function of culture. The PSs forum (the National Development Technical Implementation Committee) also supported the CoG on the matter.
187. The State Department has formed a Committee to relook the functions of the Commission with the view to eliminating those specific provisions of the Bill that are contentious. The State Department has further written to the Attorney General seeking guidance/ advice on modalities of operationalizing the Commission.

### **Committee Observations**

188. The Committee observed that;

- i. Kenya National Commission for Culture and Social Services is established through Executive Order No. 1 of 2023. The Commission was also established through previous Executive Orders since 2018. However, to date, the Cabinet Secretary responsible for Tourism, Wildlife and Heritage has failed to operationalize the Kenya National Commission for Culture and Social Services.
- ii. Further, the Executive Order establishing the Commission as a State Corporation did not state the mandate of the Commission. Consequently, the operational autonomy including financial independence to achieve its intended functions are not clearly spelt out.
- iii. The Attorney General has abdicated his constitutional role under Article 156 of the Constitution as the chief legal advisor to the Government in failing to advise the Government to provide for clear legal framework and mandate of the Commission and other entities established through Executive Orders.
- iv. The Commission's mandate cuts across two state departments that is Culture & Heritage and Social Protection under the ministry of Labour and Social Protection and as such the Principal Secretary had sought legal advice and guidance from the solicitor General in July 2023 after being prompted by Parliament.

### **Committee Recommendations**

189. The Committee recommends that;

- i. Parliament reprimands the Cabinet Secretary, Tourism, Wildlife and Heritage for failure to promptly operationalize the Kenya National Commission for Culture and Social Services.
- ii. Within three months upon tabling and adoption of this report, the Cabinet Secretary Tourism, Wildlife and Heritage to operationalize the Kenya National

Commission for Culture and Social Services as per the Executive Order No. 1 of 2023 which establishes the Commission as a Semi-Autonomous Government Agency.

- iii. Within three months upon tabling and adoption of this report, the Attorney-General should develop legal instruments that clearly specifies, defines and prescribes the functions, autonomy, funding, accountability and management of the Kenya National Commission for Culture and Social Services established through the Executive Order.
- iv. Within three months upon tabling and adoption of this report, and after the financial statements are submitted for audit, the Auditor-General should audit and report to Parliament on the Appropriations in Aid and any other monies received or collected by the entity in form of grants, donations or loans in the course of its operation. Also, the Auditor-General should audit and report to Parliament the expenditure/use of public funds by the entity to ascertain whether the resources of the entity were used in a way that is lawful, authorised, effective, efficient, economical and transparent.

## **2.18 EXAMINATION OF THE REPORTS OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF ESTATES AGENTS REGISTRATION BOARD**

190. The Estate Agents Registration Board (EARB) is established under section 3 of the Estate Agents Act, 1984 Cap 533 and it derives its mandate from the Act which was operationalized in 1987. The Act regulates and provides for the registration of persons who negotiate for or are involved in selling, purchasing or letting of land and buildings. As per the Executive Order No. 1 of 2023, the Estate Agents Registration Board is under the State Department for Housing and Urban Development.

### **Submissions by the Registrar**

191. Ms. Rose Nabiswa, the Registrar, Estates Agents Registration Board appeared before the Committee to adduce evidence on the Audited accounts of the Estates Agents

Registration Board.

192. The Registrar informed the Committee that;

- i. The Estate Agents Registration Board (EARB) is established as a body corporate under section 3 of the Estate Agents Act, 1984 Cap 533 and it derives its mandate from the Act which was operationalized in 1987.
- ii. The Act regulates and provides for the registration of persons who negotiate for or are involved in selling, purchasing or letting of land and buildings.
- iii. The Board has never received any money from the exchequer since it was established
- iv. Their source of funds are mainly members' annual subscription fees, registration fees and any other fees from members.
- v. The Estate Agents Registration Board (EARB) has never been audited since its inception.

#### **Submissions by the Principal Secretary State Department for Housing and Urban Development**

193. Mr. Charles Hinga, Principal Secretary, State Department for Housing and Urban Development accompanied by Ms. Rose Nabiswa, the Registrar Estate Agents Registration Board, Mr. John Muya, Director Administration appeared before the Committee to adduce evidence on the status of the Estate Agents Registration Board.

194. Mr. Charles Hinga submitted that the Board collects public funds and performs statutory roles, but they have not prepared and submitted financial reports as required by the law (PFM Act). The board is therefore in breach of the law. The Board is considered a

professional sector regulator that collects funds independently through members' subscriptions and other board activities and has never received any funds from the Exchequer since inception. The Board submits its books of accounts to a private auditor.

195. The Board raises its own funds through member subscriptions and has not received any grants from the Ministry.

#### **Committee Observations**

196. The Committee observed that;

- i. The Estate Agents Registration Board (EARB) is established as a body corporate under the Estate Agents Act, 1984. The Act commenced on 9<sup>th</sup> April 1985.
- ii. The Board has been operating for 38 years; including making monetary transactions and collecting fees as member subscriptions without submitting its accounts to the Office of the Auditor General. The Principal Secretary confirmed in writing that failure of the Board to submit financial statements to the Auditor-General for audit was in breach of the law.
- iii. Further, the Estate Agents Registration Board received money from the public through member registration and subscription fees. Money received from the members of the professional body is 'public money' and 'public funds' as defined under section 2 of the Public Finance Management Act, 2012 and the Public Audit Act, 2015 respectively and as such, should be audited in accordance with the Public Finance Management Act, 2012 and Public Audit Act, 2015.
- iv. The accounting officer of the Board failed to prepare financial statements and accounts of these monies received from the public and thereafter submit to the Auditor-General for audit since 2017, in contravention of section 68 (2) (k) of the Public Finance Management Act, 2012.

- v. The Board was also in breach of Section 14(3) of the State Corporations Act which requires the accounts of every state corporation shall be audited and reported on annually in accordance with the Public Audit Act.
- vi. The Board directly outsourced private auditors to audit their annual financial statements in contravention of Section 23 of the Public Audit Act, 2015.

### **Committee Recommendations**

197. The Committee recommends that;

- i. Parliament reprimands the Cabinet Secretary Ministry of Lands, Public Works, Housing and Urban Development for failure to monitor the financial performance of the Estate Agents Registration Board in line with section 88 of the Public Finance Management Act, 2012.
- i. The accounting officer shall prepare outstanding financial statements of the Board since inception and submit to the Auditor-General for audit.
- ii. The Auditor-General shall audit and report to Parliament in accordance with Article 229 of the Constitution and the Public Audit Act, 2015.
- iii. The Registrar Estate Agents Registration Board must at all times comply with the legal provisions relating to accounts and audit in accordance with Section 68 of the Public Finance Management Act, 2012 and section 14(3) of the State Corporations Act, 1986.
- iv. Within three months upon tabling and adoption of this report, the Ethics and Anti-Corruption Commission should investigate the matter of the Estate Agents Registration Board (EARB) outsourcing private auditors contrary to section 23 of

the Public Audit Act, 2015 with a view to ascertain any loss of public funds, including audit fees paid to the private auditors, and the Office of Director of Public Prosecution (ODPP) to subsequently prefer appropriate charges.

- v. Within three months upon tabling and adoption of this report, and after the financial statements are submitted for audit, the Auditor-General should audit and report to Parliament on the Appropriations in Aid and any other monies received or collected by the entity in form of grants, donations or loans in the course of its operation. Also, the Auditor-General should audit and report to Parliament the expenditure/use of public funds by the entity to ascertain whether the resources of the entity were used in a way that is lawful, authorised, effective, efficient, economical and transparent.

## **2.19 EXAMINATION OF THE REPORTS OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF VALUERS REGISTRATION BOARD**

198. The Valuers Registration Board is established under section 3 of the Valuers Act Cap 532. The Act provides for the registration of valuers and the Board exists to regulate the activities and conduct of registered valuers in accordance with the provisions of the Act. The Act commenced on 9<sup>th</sup> April 1985.

### **Submissions by the Registrar**

199. Mr. Gregory Masika the Registrar accompanied by Ms. Jecinta Mutua, Chairperson Valuers Registration Board appeared before the Committee to adduce evidence on the status and accounts of the Valuers Regulatory Board (VRB).
200. The Registrar informed the Committee that;
  - i. The Valuers Registration Board is established under section 3 of the Valuers Act Cap 532. The Act provides for the registration of valuers and to regulate the activities and conduct of registered valuers in accordance with the provisions of

the law. The Board is a body Corporate with a perpetual succession and common seal.

- ii. The Board source of funds are mainly members' annual subscription fees. The Board has never been audited by the Office of the Auditor General as required by Article 229 of the Constitution. However the Board contracted a private Auditor to audit its books of accounts.

### **Submissions by the Cabinet Secretary Ministry of Ministry of Lands, Public Works, Housing and Urban Development**

201. Mr. Zachariah Njeru, the Cabinet Secretary Ministry of Lands, Public Works , Housing and urban Development and Hon. Generali Nixon Korir PS- State Department for Lands and Physical Planning, Ministry of Lands, Public Works, Housing and Urban Development appeared before the Committee to adduce evidence on the existence, accountability and operationalization of the Valuers Registration Board.
202. The Cabinet Secretary submitted that the Valuers Registration Board is established by an Act of Parliament Cap 532 of 1985.
203. The Board membership is as per schedule 1 of the Valuers Act which provides that the Board shall consist of nine members appointed by Cabinet Secretary. The Board receives its financing from Annual subscription from members, Interview fees, Certificate fees, Application for registration fees, Gazettment fee for non-practicing members, Fines and penalties and Reinstatement fees. In day-to-day activities the board incurs expenses on Annual Gazettment of Valuers, Board member's allowances, Staff salaries, Normal office operations, Conference fees.
204. Further, section 26 of the Valuers Act states that the Minister may with the consent of the National Treasury, out of the moneys provided by parliament;
  - i. Make to the board such grants as may be necessary to enable it to discharge its functions

- ii. Pay remuneration and travelling and other allowances to the members of the Board other than members who are public officers in receipt of a salary
  - iii. Make such other payments as may be necessary.
207. The Board has never been funded by the ministry since its inception and therefore its books of account have never been audited.
208. However during 2021/2022 financial year an audit query was raised about the Board's Books of accounts, consequently the Board sought services of a private auditor to prepare its books of accounts.

#### **Committee Observations**

209. The Committee observed that;
- i. The Valuers Registration Board is established as a body corporate by the Valuers Act, 1984 with an envisaged financial and administrative autonomy.
  - ii. The Board received money from the public through member annual subscription fees. Money received from the members of the professional body is 'public money' and 'public funds' as defined under section 2 of the Public Finance Management Act, 2012 and the Public Audit Act, 2015 respectively and as such, should be audited in accordance with the Public Finance Management Act, 2012 and Public Audit Act, 2015.
  - iii. The accounting officer of the Board failed to prepare financial statements and accounts of these monies received from the public and thereafter submit to the Auditor-General for audit since 2017, in contravention of section 68 (2) (k) of the Public Finance Management Act, 2012.

- iv. The Council was also in breach of Section 14(3) of the State Corporations Act which requires the accounts of every state corporation shall be audited and reported on annually in accordance with the Public Audit Act.
- v. The Council directly outsourced private auditors to audit their annual financial statements in contravention of Section 23 of the Public Audit Act, 2015.

### **Committee Recommendations**

210. The Committee recommends that;

- i. Parliament reprimands the Cabinet Secretary Ministry of Lands, Public Works, Housing and Urban Development for failure to monitor the financial performance of the Valuers Registration Board in line with section 88 of the Public Finance Management Act, 2012.
- ii. The accounting officer shall prepare outstanding financial statements of the Valuers Registration Board since inception and submit to the Auditor-General for audit.
- iii. The Auditor-General shall audit and report to Parliament in accordance with Article 229 of the Constitution and the Public Audit Act, 2015.
- iv. The Registrar Valuers Registration Board must at all times comply with the legal provisions relating to accounts and audit in accordance with Section 68 of the Public Finance Management Act, 2012 and Section 14(3) of the State Corporations Act, 1986.
- v. Within three months upon tabling and adoption of this report, the Ethics and Anti-Corruption Commission should investigate the matter of the Valuers Registration Board outsourcing private auditors contrary to section 23 of the Public Audit Act,

2015 with a view to ascertain any loss of public funds, including audit fees paid to the private auditors, and the Office of Director of Public Prosecution (ODPP) to subsequently prefer appropriate charges.

- vi. Within three months upon tabling and adoption of this report, and after the financial statements are submitted for audit, the Auditor-General should audit and report to Parliament on the Appropriations in Aid and any other monies received or collected by the entity in form of grants, donations or loans in the course of its operation. Also, the Auditor-General should audit and report to Parliament the expenditure/use of public funds by the entity to ascertain whether the resources of the entity were used in a way that is lawful, authorised, effective, efficient, economical and transparent.

## **2.20 EXAMINATION OF THE REPORTS OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF REFUGEE STATUS APPEALS COMMITTEE (FORMERLY REFUGEE APPEALS BOARD)**

211. The Refugee Appeals Board was previously established by the Refugee Act No. 13 of 2006. However, the Act was repealed by the Refugees Act No. 10 of 2021 and it is now referred to as Refugee Status Appeals Committee established under section 11 of the Act. The Act commenced on 21<sup>st</sup> February 2022.

### **Submissions from the Principal Secretary State Department For Immigration And Citizen Services, Ministry Of Interior And National Administration On The Existence Of The Refugee Status Appeals Committee (Formerly RAb)**

212. Ambassador Julius Bitok (Principal Secretary – State Department for Immigration and Citizen Services) was accompanied by Ms. Evelyn Cheluget (DG – Immigration), Mr. John Burugu (Commissioner for Refugees- State Dept. Immigration), Mr. Jack Okula (Legal Advisor –State Dept. Immigration) and Mr. Nixon Nganga (Director-Communication).

213. The Principal Secretary submitted that;

- i. The Refugee Appeal Board (the Board) is a quasi-judicial institution established under Section 9 of the Refugees Act 2006 which has since been repealed and the core function of the Board is to hear and determine appeals arising from the decisions of the Commissioner for Refugee Affairs (CRA). The Board is mandated to carry out its functions under section 10 of the Refugees Act 2006.
- ii. The Board operates under the State Department for Immigration and Citizen Services, within the Ministry of Interior and National Administration as per Executive Order No. 1 of 2023.
- iii. Before Executive Order No. 1 of 2023, the Board operated under the Directorate of Immigration within the State Department for Interior and Citizen Services, Ministry of Interior and Coordination of National Government.
- iv. The Refugees Act 2006 commenced on 15<sup>th</sup> May, 2007, the Pioneer Refugee Appeal Board was formally established on 1<sup>st</sup> April, 2015 following the appointment and gazettelement of a chairperson and five (5) members by the Cabinet Secretary responsible for refugee matters. The tenure of the first Board ran from April 2015 to April 2018 (Three years). Currently, Kenya hosts 726,000 refugees out of which 623,000 are registered and 102,000 remain undocumented.
- v. The Board does not have its own individual budget separate from that of the State Department for Immigration and Citizen Services and does not have its own bank account.
- vi. The Board's first budget was provided during the Financial Year 2016/2017 whose A.I.E. holder was the Director General, Directorate of Immigration Services and the Accounting Officer was the Principal Secretary, State Department for Interior and Citizen Services.

- vii. The Principal Secretary is the Board's current Accounting Officer after establishment of the State Department for Immigration and Citizen Services.
- viii. The Board currently provides its input on its needs in the budget, which is then shared with the State Department for Immigration and Citizen Services for consideration and inclusion in the Department's final budgetary allocations for each Financial Year.
- ix. Funding for refugee affairs comes from multiple sources including USAID, United Nations High Commission for Refugees (UNHCR), and the International Organization for Migration (IOM). There are currently pledges for funding from donors for the Shirika Plan for Ksh.30 billion.

#### **Committee Observations**

214. The Committee observed that;

- i. The Refugee Status Appeals Committee is established by the Refugees Act, 2021 which commenced on 21<sup>st</sup> February 2022.
- ii. The Refugees Act, 2021 does not give the Refugee Status Appeals Committee the status of a body corporate and as such, the Committee is not a Semi-Autonomous Government Agency. The operations, financial control and accountability of the Committee are still under the State Department for Immigration and Citizen Services.
- iii. Due to this gap in the establishing statute, the Committee lacks autonomy and financial independence and the Committee's funds and accounts are administered from the Ministry of Interior and National Government and the audit by the Auditor-General is done through the Ministry.
- iv. There is need to amend the Refugees Act, 2021 to establish the Committee as a Semi-Autonomous Government Agency and grant it autonomy and independence

in its operations and financial reporting with an aim to strengthen the Committee and enable it achieve its mandate.

### **Committee Recommendations**

215. The Committee recommended that;

- i. Parliament reprimands the Cabinet Secretary, Ministry of Interior and National Administration for failure to promptly identify gaps in the law since the Refugees Act, 2021 was commenced on 21<sup>st</sup> February 2022, and failing to take corrective action to amend the Refugees Act, 2021 to create the Refugee Status Appeals Committee as a Semi-Autonomous Government Agency with independence in its operations and financial reporting and report to Parliament.
- ii. Within three months upon tabling and adoption of this report the Cabinet Secretary Ministry of Interior and National Administration, in conjunction with the Attorney General, to initiate the legal process to amend the Refugees Act, 2021 to grant the Refugee Status Appeals Committee autonomy and independence with an aim to strengthen the Committee and enable it achieve its mandate under the establishing statute.
- iii. Within three months upon tabling and adoption of this report, and after the financial statements are submitted for audit, the Auditor-General should audit and report to Parliament on the Appropriations in Aid and any other monies received or collected by the entity in form of grants, donations or loans in the course of its operation. Also, the Auditor-General should audit and report to Parliament the expenditure/use of public funds by the entity to ascertain whether the resources of the entity were used in a way that is lawful, authorised, effective, efficient, economical and transparent.

**2.21 EXAMINATION OF THE REPORTS OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF THE MEDIA COMPLAINTS COMMISSION**

216. The Media Complaints Commission is established under section 27 of the Media Council Act (No. 46 of 2013). The Act commenced on 10<sup>th</sup> January 2014.

**Submissions by the Deputy Chief Executive Officer of the Media Council of Kenya**

217. Mr. Victor Bwire the Deputy Chief Executive Officer of the Media Council of Kenya (MCK) was accompanied by Ms. Jamila Yeshe (Acting Registrar-Complaints Commission), Ms. Anne Jalang'o (Internal Audit), Mr. John Munyiri (Govt. Relations), Mr. Baven Terence Minishi (Manager-RAD) appeared before the Committee to adduce evidence on the Audited accounts the Media Complaints Commission.

218. The Deputy Chief Executive Officer informed the Committee that the Media Complaints Commission was established under the Media Council Act of 2013. The Registrar for the Media Complaints Commission is appointed by the Chief Executive Officer of the Media Council of Kenya. The Staff for the Media Complaints Commission, including its Registrar, are seconded from the Media Council of Kenya. The Media Complaints Commission does not run its own accounts but is allocated funds through the Media Council of Kenya whose CEO is also the accounting officer.

**Submission by the Cabinet Secretary Ministry of Information, Communication and the Digital Economy**

219. Mr. Eliud Owalo, the Cabinet Secretary, Prof. Edward Kisiang'ani Principal Secretary— State Department for Broadcasting and Telecommunications, Ministry of ICT and Digital Economy, Mr. David Omwoyo, the Chief Executive Officer of the Media Council of Kenya appeared before the Committee to adduce evidence on the existence, accountability and operationalization of the Media Complaints Commission. The Cabinet Secretary informed the Committee that Article 34(5) of the Constitution provides that Parliament shall enact legislation that provides for the establishment of a body, which shall: -

- (a) Be independent of control by government, political interests or commercial interests;
  - (b) Reflect the interests of all sections of the society; and
  - (c) Set media standards and regulate compliance with those standards.
220. Further, in the Supreme Court case of Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others [2014] eKLR. The court stated in part: “The body contemplated by Article 34(5) of the Constitution is the Media Council of Kenya”. The Media Council Act No. 46 of 2013 (the Act) was enacted to give effect to Article 34(5) of the Constitution. The Act establishes two institutions: -
- (a) Media Council of Kenya (MCK);
  - (b) The Complaints Commission (CC).
221. The Complaints Commission is an independent body established under **Section 27** of the Act. Pursuant to section 30 of the Act, the operations of the CC are guided by the provisions of **Article 159** of the Constitution.
222. The functions of the Complaints Commission are to: -
- (a) Mediate or adjudicate in disputes between the government and the media and between the public and the media and intra media on ethical issues;
  - (b) Ensure the adherence to high standards of journalism as provided for in the code of conduct for the practice of journalism in Kenya; and
  - (c) Achieve impartial, speedy and cost-effective settlement of complaints against journalists and media enterprises, without fear or favour in relation to the Act.
223. In accordance with **section 32** of the Act, the Commission is empowered to: -
- a) Establish and maintain an internal mechanism for the resolution of disputes;
  - b) Prescribe procedures for determination of disputes relating to the media;
  - c) Receive, investigate, and deal with complaints made against journalists and media enterprises.
  - d) Summon and receive information of evidence relating to any matter.

224. The Commission is not bound by the rules of evidence as set out in the Evidence Act (Cap. 80); it regulates its own procedure.
225. **Section 42** of the Act provides that a person aggrieved by the decision of the Complaints Commission may appeal to the High Court.
226. The Commission is comprised of a Chairperson and six (6) other Commissioners pursuant to section 28 of the Act.
227. The appointment of the Commissioners is done through a competitive process by a selection panel appointed by the Cabinet Secretary.
228. The membership of the selection panel is as prescribed in Section 7(2) of the Act and comprises of members nominated by the following organizations: Kenya Union of Journalists, Media Owners Association, Kenya Editor's Guild, Law Society of Kenya, Kenya Correspondents Association, Public Relations Society of Kenya, National Gender and Equality Commission, Association of Professional Societies in East Africa, Consumers Federation of Kenya, The Ministry responsible for matters relating to media, Kenya News Agency; and two persons nominated by schools of journalism of recognized universities, one representing public universities and the other representing private universities.
229. Upon completion of the recruitment process, the selection panel shall select one person qualified to be appointed as Chairperson and six persons qualified to be appointed as members of the Commission and forward the names to the Cabinet Secretary for appointment and gazettelement.
230. The chairperson and members of the Complaints Commission are remunerated as per the determination of the Salaries and Remuneration Commission.
231. The operations of the Complaints Commission are funded from allocations of the

National Assembly through Media Council of Kenya, pursuant to section 23 (a) of the Media Council Act, 2013.

232. Allocations made to the Complaints Commission over the years as detailed within the printed estimates are as follows: -

FINANCIAL PERIOD	ALLOCATION (KSH)
FY 2013/2014	-
FY 2014/2015	-
FY 2015/2016	-
FY 2016/2017	-
FY 2017/2018	10,000,000
FY 2018/2019	10,000,000
FY 2019/2020	10,000,000
FY 2020/2021	10,000,000
FY 2021/2022	10,000,000
FY 2022/2023	9,775,000
FY 2023/2024	10,000,000

These funds are channeled towards meeting the costs of mediation and adjudication. Media Council of Kenya meets all expenditure associated with outreach programs and sensitization forums. The Council also funds other administration related activities undertaken by the Commissioners.

233. All Exchequer disbursements so received are duly reported within the Financial Statements of the Council, which are availed to the National Treasury and presented to the Office of the Auditor General for external auditing purposes.
234. The Complaints Commission has a secretariat composition of three (3) personnel, deployed by the Council. This secretariat is headed by the Registrar, whose main role is to co-ordinate all the functions and activities of the Commission, a Legal Researcher, who conducts legal research and undertakes legal drafting and an officer (Corporate

Communications & Public Affairs - Complaints Commission) who is the liaison person for all communication related support for the Commission.

235. All personnel and administrative costs incurred by these officers are met by Media Council of Kenya.
236. The Complaints Commissioners participate in media development and self-regulation through outreach activities aimed at creating awareness on and promoting adherence to the Media Act 2013. The Commissioners have an active participation in signature events organized by the Council.
237. The Strategic Plan (2019/2023) Key Result Area (4) on Dispute Resolution is a pillar that fully supports the Complaints Commission. All the costs associated with administrative support for activities undertaken by the Complaints Commission are met by Media Council of Kenya.
238. During the financial period under review (FY 2021/2022), the Complaints Commission has mediated over and successfully adjudicated several media related complaints as detailed below:
1. Resolved by mediation - six (6);
  2. Withdrawn - five (5);
  3. Dismissed for want of prosecution - two (2);
  4. Resolved by adjudication - ten (10);
  5. Consent settlement - three (3);
  6. On-going adjudication - five (5); and
  7. Pending mediation - two (2).
239. The Commissioners have also increased their visibility within the public by creating awareness through sensitizations and stakeholder engagements forums. The Commission has also adapted to technological advancements to make it more efficient in conducting hearings and case management.

240. The following gaps have been noted within the Media Council Act, 2013 in relation to the operations of the Complaints Commission: -

- (a) There is no express provision that deals with funding of the Commission.
- (b) The act does not create the office of the Registrar.
- (c) Section 27(2) of the act that refers to the appointment of the selection panel in section 7 is currently subject to two Constitutional petitions on conflict of interest.
- (d) There is no provision on the administrative powers of Media Council of Kenya as a regulator that sets media standards as per Article 34(5) of the Constitution.

241. The Ministry of Information, Communication and the Digital Economy (MICDE) wishes to present the following proposals to the Committee for consideration: -

- (a) A review of the Media Regulatory framework (Media Council Act 2013) and subsidiary legislation.
- (b) A review of KICA (currently an on-going exercise) and Media Council act to: -
  - Align the functions of the Media Council of Kenya and the Communications Authority to avoid duplicity.
  - Align the functions of the Complaints Commission and Communications and Multimedia Appeals Tribunal to avoid duplicity (there is a Supreme Court ruling on the distinction of functions).

#### **Committee Observations**

242. The Committee observed that;

- i. State Corporations that lacks independence, clear mandate and a designated accounting officers.
- ii. The Institution does not prepare and submit separate financial statements for audit to the Auditor -General in breach Section 68 (2) (K) of the Public Finance Management Act, 2012.

- iii. The Media Council Act, 2013 has no express provision on funding of the Commission and creation of the office of the Registrar.
- iv. One of the sources of funds in the establishing Act includes fines and penalties charged by the Commission. However, these have never been collected on account of Commissions limited enforcement capacity.

### **Committee Recommendations**

243. The Committee recommends that;

- i. Parliament reprimands the Cabinet Secretary, Ministry of ICT and Digital Economy for failure to identify gaps in the law and failing to take corrective action to amend the Media Council Act, 2013 to create the Media Complaints Commission as a Semi-Autonomous Government Agency with independence in its operations and financial reporting and report to Parliament.
- ii. Within three months upon tabling and adoption of this report the Cabinet Secretary Ministry of ICT and Digital Economy, in conjunction with the Attorney General, to initiate the legal process to amend the Media Council Act, 2013 to grant the Media Complaints Commission autonomy and independence with an aim to strengthen the Commission.
- iii. Within three months upon tabling and adoption of this report, and after the financial statements are submitted for audit, the Auditor-General should audit and report to Parliament on the Appropriations in Aid and any other monies received or collected by the entity in form of grants, donations or loans in the course of its operation. Also, the Auditor-General should audit and report to Parliament the expenditure/use of public funds by the entity to ascertain whether the resources of

the entity were used in a way that is lawful, authorised, effective, efficient, economical and transparent.

## **2.22 EXAMINATION OF THE REPORTS OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF THE UNIVERSAL SERVICE ADVISORY COUNCIL**

244. The Universal Service Advisory Council is established under section 102K of the Kenya Information and Communications Act No. 2 of 1998. The Council is mandated to advise the Communications Authority and provide strategic policy guidance for the administration and implementation of the Universal Service Fund.

### **Submission by the Cabinet Secretary Ministry of Information, Communication and the Digital Economy**

245. Mr. Eliud Owalo, the Cabinet Secretary and Prof. Edward Kisiang'ani Principal Secretary– State Department for Broadcasting and Telecommunications, Ministry of ICT and Digital Economy, Mr. Ezra Chiloba, the Director General, Communications Authority of Kenya appeared before the Committee to adduce evidence on the existence, accountability and operationalization of the Universal Service Advisory Council.

246. The Cabinet Secretary informed the Committee that **The Universal Service Advisory Council (USAC)** is established under Section 102K (1) of the Kenya Information and Communications Act, 1998 to manage the Universal Service Fund. The specific functions of the Universal Service Advisory Council are provided for under Section 102K (5) of the Kenya Information and Communications Act, 1998 which states that the Universal Service Advisory Council shall:

- “(a) advise the Authority and provide strategic policy guidance for the administration and implementation of the Universal Service Fund; and*
- (b) Perform any other functions as the Board, may from time to time assign.”*

247. Paragraph 11 of the Fourth Schedule to the Kenya Information and Communications Act

provides that: *“The secretary and any other staff of the Council shall be members of the staff of the Authority appointed for the purpose by the Board.”*

248. Based on the provisions above, the Universal Service Advisory Council:

*USAC is part and parcel of the Communications Authority of Kenya’s decision-making organs on the matters of Universal Service Fund;*

*USAC is an advisory organ to the Authority’s Board on the administration and implementation of the Universal Service Fund; and*

*(a) Therefore, USAC is subordinate to the Authority’s Board and not an independent State Corporation.*

248. Section 1 of the *Fourth Schedule* of the KICA provides that the Chairperson and Members of the Council shall hold office for a period not exceeding three years on such terms and conditions as may be specified in their instruments of appointment but are eligible for reappointment for one more term of three years.

249. Under Section 2 of the *Fourth Schedule* on the appointment of members, *“The Members of the Council shall be appointed at such times that their respective terms of office shall expire at different times”*

250. The term of the five (5) USAC Members and that of the Chairperson came to an end on 8<sup>th</sup> May 2020, while that of the remaining three (3) ended on 9<sup>th</sup> August 2020. According to the legal framework the Public Service Commission is assigned the responsibility of recruiting Council Members and forward the candidates for appointment. The recruitment done in 2021 was not successful.

251. Under Section 84J (1) the *Universal Service Fund is “managed and administered by the Authority.”* *The Kenya Information and Communications (Universal Access and Service) Regulations, 2010*, at paragraph 10 and 11 provide for the Fund Accounts and Annual Reports.

252. Accordingly, the Authority manages the Fund, keeps accounts, prepares the Quarterly and Annual Financial Statements, and submits the same to the Ministry and The National Treasury on a regular basis. The Fund is audited annually by the Auditor General separate from the Authority.

#### **Committees Observations**

252. The Committee observed that;

- i. The Universal Service Advisory Council (USAC) is established under the Kenya Information and Communications Act, 1998.
- ii. The function of USAC is advise the Communications Authority on the administration and implementation of the Universal Service Fund and perform any other functions as the Board of the Communications Authority, may from time to time assign.
- iii. The Universal Service Advisory Council is not a body corporate and it lacks independence. USAC does not have a designated accounting officer and its finances and expenditure statements and records are still being reported and audited as part of the Authority.
- iv. Therefore, there exists duplicity in the functions and roles of the Universal Service Advisory Council and the Board of the Communication Authority as the Board oversights both the USAC and Universal Service Fund. This duplicity of functions not only results to unnecessarily high operational costs but also causes operational tensions from the unclear reporting lines among the various staff members.

### **Committee Recommendations**

253. The Committee recommends that;

- i. Parliament reprimands the Cabinet Secretary, Ministry of ICT and Digital Economy for failure to promptly identify gaps in the law since the Act was passed in 1998, and failing to take corrective action to amend the Kenya Information and Communications Act, 1998 to address the duplicity of functions and roles of USAC and Board of Communications Authority and report to Parliament.
- ii. Within three months upon tabling and adoption of this report the Cabinet Secretary Ministry of ICT and Digital Economy, in conjunction with the Attorney General, to initiate the legal process to amend the Kenya Information and Communications Act, 1998 to abolish USAC or merge the functions of USAC and the Board of the Authority or establish the independence of the USAC and Universal Service Fund from Communications Authority.
- iii. Within three months upon tabling and adoption of this report, and after the financial statements are submitted for audit, the Auditor-General should audit and report to Parliament on the Appropriations in Aid and any other monies received or collected by the entity in form of grants, donations or loans in the course of its operation. Also, the Auditor-General should audit and report to Parliament the expenditure/use of public funds by the entity to ascertain whether the resources of the entity were used in a way that is lawful, authorised, effective, efficient, economical and transparent.

### **EXAMINATION OF THE REPORTS OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF THE KENYA SPORTS AUTHORITY**

254. Kenya Sports Authority was created under the Executive Order No. 1 of 2018. The Executive Order indicates that the Authority is established through Kenya Sports Authority Act, 2012.

255. However, after the Committee invited the Director- General of Sports Kenya, he indicated that such an authority does not exist.

### **Committee Observations**

256. The Committee observed that;

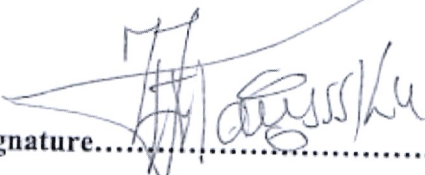
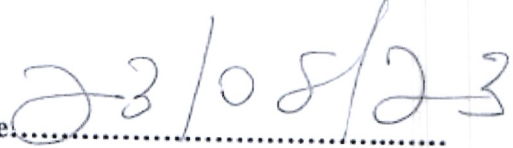
- i. Kenya Sports Authority is established through Executive Order No. 1 of 2018. However, to date, the Cabinet Secretary responsible for Youth Affairs, Sports and the Arts has failed to operationalize the Kenya Sports Authority.
- ii. Further, the Executive Order establishing the Authority as a State Corporation did not state the mandate of the Authority. Consequently, the operational autonomy including financial independence to achieve its intended functions are not clearly spelt out.
- iii. The Attorney General has abdicated his constitutional role under Article 156 of the Constitution as the chief legal advisor to the Government in failing to advise the Government to provide for clear legal framework and mandate of the Authority and other entities established through Executive Orders.

### **Committee Recommendations**

257. The Committee recommends that;

- i. Within three months upon tabling and adoption of this report, the Cabinet Secretary responsible for Youth Affairs, Sports and the Arts to operationalize the Kenya Sports Authority as per the Executive Order No. 1 of 2018 which establishes the Authority as a Semi-Autonomous Government Agency.
- ii. Within three months upon tabling and adoption of this report, the Attorney-General should develop legal instruments that clearly specifies, defines and prescribes the functions, autonomy, funding, accountability and management of

the Kenya Sports Authority established through the Executive Order No. 1 of 2018.

Signature..........Date..........

**HON. EMMANUEL WANGWE CBS, MP**  
**CHAIRPERSON – PUBLIC INVESTMENTS COMMITTEE ON SOCIAL SERVICE,**  
**ADMINISTRATION AND AGRICULTURE**

APPENDIX

**Estimates of Public Funds not subjected to appropriate Public Audit in various Financial Years (Amounts in KSh)**

Financial Years	Allocated Amount	Actual Expenditure	Non-absorbed allocations
<b>1. Tobacco Control Board</b>			
2014/15	54,450,000	41,816,285	12,633,715
2015/16	34,047,240	33,817,445	229,795
2016/17	22,684,748	0	22,684,748
2017/18	26,950,000	10,287,699	16,662,301
2018/19	9,977,500	9,472,557	504,943
2019/20	8,654,875	8,279,384	375,491
2020/21	62,500,000	1,306,360	61,193,640
2021/22	55,354,263	10,594,372	44,759,891
2022/23	41,000,000	0	41,000,000
<b>Total</b>	<b>315,618,626</b>	<b>115,574,102</b>	<b>200,044,524</b>
<b>2. Kenya Fish Marketing Authority</b>			
2018/19	10,290,000	9,549,353	740,647
2019/20	11,500,000	9,497,206	2,002,794
2020/21	15,900,000	15,899,981	19
2021/22	26,000,000	26,000,000	0
<b>Total</b>	<b>63,690,000</b>	<b>60,946,540</b>	<b>2,743,460</b>
<b>3. Kenya Health Professionals Oversight Authority</b>			
2020/21	66,609,075	52,127,276	14,481,799
2021/22	62,907,337	58,732,828	4,174,509
2022/23	62,752,798	42,300,360	20,452,438
<b>Total</b>	<b>192,269,210</b>	<b>153,160,464</b>	<b>39,108,746</b>
<b>4. The National Heroes Council of Kenya</b>			
2022/23	72,081,220	72,081,220	-
2021/22	24,627,265	23,655,871	971,394
2020/21	17,877,526	14,491,070	3,386,456
2019/20	25,500,000	17,673,818	7,826,182
<b>Total</b>	<b>140,086,011</b>	<b>127,901,979</b>	<b>12,184,032</b>
<b>5. The Refugee Appeals Board</b>			
2022/23	56,837,973	55,316,875	1,521,098
2021/22	20,296,079	18,779,150	1,516,929

Financial Years	Allocated Amount	Actual Expenditure	Non-absorbed allocations
2020/21	11,558,486	10,737,462	821,024
<b>Total</b>	<b>88,692,538</b>	<b>84,833,487</b>	<b>3,859,051</b>
<b>6.The Physiotherapy Council of Kenya</b>			
2022/23	12,136,977	Not submitted	
2021/22	9,064,610		
2020/21	8,855,178		
2019/20	9,671,205		
2018/19	10,753,559		
2017/18	9,055,622		
<b>Total</b>	<b>59,537,151</b>		
<b>7.Agricultural Information Resource Centre(AIRC)</b>			
2021/23	40,041,417	Not submitted	
2021/23*	41,483,697		
2021/22	33,307,579		
<b>Total</b>	<b>114,832,693</b>		
<b>8.Kenya Fishing Industries Corporation</b>			
2021/22	10,000,000	9,997,600	2,400
<b>Total</b>	<b>10,000,000</b>	<b>9,997,600</b>	<b>2,400</b>
<b>9.Media Complaints Commission</b>			
2023/24	10,000,000	Not submitted	
2022/23	9,775,000		
2021/22	10,000,000		
2020/21	10,000,000		
2019/20	10,000,000		
2018/19	10,000,000		
2017/18	10,000,000		
<b>Total</b>	<b>69,775,000</b>		
<b>10.Mathari Teaching &amp; Referral Hospital</b>			
2023/24*	1,319,882,712	Not submitted	
2022/23	160,000,000		
2021/22	160,000,000		
<b>Total</b>	<b>1,639,882,712</b>		
<b>11.Kenya Health Resource Advisory Council</b>			
2020/21	67,343,979	Not submitted	
2021/22	73,433,326		

Financial Years	Allocated Amount	Actual Expenditure	Non-absorbed allocations
2022/23	67,343,979		
2023/24	68,638,589		
<b>Total</b>	<b>276,759,873</b>		
<b>12. Kenya Consumer Protection Advisory Committee</b>			
2022/23	36,200,000	32,037,704	4,162,296
2021/22	56,200,000	54,667,073	1,532,927
2020/21	36,200,000	33,199,310	3,000,690
2019/20	40,309,000	40,299,999	9,001
2018/19	40,300,137	29,748,222	10,551,915
<b>Total</b>	<b>209,209,137</b>	<b>189,952,308</b>	<b>19,256,829</b>
<b>13. Estate Agents Registration Board</b>			
2021/22	11,311,060	9,906,753	1,404,307
2020/21	9,987,334	8,282,444	1,704,890
2019/20	4,947,000	3,502,850	1,444,150
2018/19	4,123,000	4,732,009	(609,009)
<b>Total</b>	<b>30,368,394</b>	<b>26,424,056</b>	<b>3,944,338</b>
<b>14. Valuers Registration Board</b>			
2021/22	3,582,000	Not submitted	
2020/21	2,337,000		
2019/20	3,425,166		
2018/19	2,889,100		
2017/18	2,262,951		
2016/17	2,438,700		
<b>Total</b>	<b>16,934,917</b>		
<b>15. Clinical Officers Council</b>			
2021/22	80,180,000	91,264,000	(11,084,000)
2020/21	100,885,000	92,492,000	8,393,000
2019/20	98,474,000	60,282,000	38,192,000

Financial Years	Allocated Amount	Actual Expenditure	Non-absorbed allocations
2018/19	73,081,000	64,732,000	8,349,000
2017/18	76,257,000	67,784,000	8,473,000
2016/17	85,331,000	63,293,000	22,038,000
<b>Total</b>	<b>514,208,000</b>	<b>439,847,000</b>	<b>74,361,000</b>
<b>16.Public Health Officers and Technicians Councils</b>			
2021/22	31,802,834	29,672,623	2,130,211
2020/21	20,849,526	17,349,252	3,500,274
2019/20	36,831,346	30,300,854	6,530,492
2018/19	26,166,977	26,551,366	(384,389)
<b>Total</b>	<b>115,650,683</b>	<b>103,874,095</b>	<b>11,776,588</b>
<b>TOTAL BUDGET ALLOCATION</b>	<b>3,917,052,096</b>	<b>1,312,511,631</b>	<b>2,604,540,465</b>

Source: Submissions from State Corporations and budget books (various Issues)



REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT – (SECOND SESSION 2023)

THE NATIONAL ASSEMBLY

PUBLIC INVESTMENTS COMMITTEE ON SOCIAL ADMINISTRATION &

AGRICULTURE

DIRECTORATE OF AUDIT, APPROPRIATIONS AND OTHER SELECT COMMITTEES

COMMITTEE MEMBERS REPORT WRITING ADOPTION LIST

19/8/2023

No.	NAME	DATE	SIGN
1.	Hon. Emmanuel Wangwe, MP, CBS – Chairperson		
2.	Hon. Caleb AmisiLuyai, MP – Vice Chairperson		
3.	Hon. Ferdinand Kevin Wanyonyi, MP		
4.	Hon. Martin Peters Owino, MP		
5.	Hon. Mary WamauNjoroge, MP		
6.	Hon. Nicholas NgikorNgikolong, MP		
7.	Hon. (Dr.) Peter Francis Masara, MP		
8.	Hon. AbdiJehowFatuma, MP		
9.	Hon. Bernard KiborKitur, MP		
10.	Hon. CPA Geoffrey Wandeto MP		
11.	Hon. (Dr.) Jackson KipkemoiKosgei, MP		
12.	Hon. Joshua KivindaKimilu, MP		
13.	Hon. Michael WambuguWainaina, MP		
14.	Hon. Elijah NjoreKururia, MP		
15.	Hon. Paul NabuinEkwom, MP		