

REPORT OF THE AUDITOR-GENERAL ON TANA AND ATHI RIVERS DEVELOPMENT AUTHORITY FOR THE YEAR ENDED 30 JUNE 2018

REPORT ON THE FINANCIAL STATEMENTS

Qualified Opinion

I have audited the accompanying financial statements of Tana and Athi Rivers Development Authority set out on pages 30 to 55, which comprise the statement of financial position as at 30 June 2018, and the statement of financial performance, statement of changes in equity, statement of cash flows and statement of comparison of budget and actual amounts for the year then ended, and a summary of significant accounting policies and other explanatory information in accordance with the provisions of Article 229 of the Constitution of Kenya and Section 35 of the Public Audit Act, 2015. I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit.

In my opinion, except for the effect of the matters described in the Basis for Qualified Opinion section of my report, the financial statements present fairly, in all material respects, the financial position of Tana and Athi Rivers Development Authority as at 30 June, 2018, and (of) its financial performance and its cash flows for the year then ended, in accordance with International Public Sector Accounting Standards (Accrual Basis) and comply with the enabling Act, Cap. 443 of 1974.

Basis for Qualified Opinion

1. Going Concern

A review of the statement of financial performance for the year ended 30 June 2018 showed that the Authority recorded a net deficit of Kshs.595,600,710 which when added to the deficit of previous financial years results to a cumulative deficit of Kshs.13,981,252,947. Further, the total revenue realized in the year under review was Kshs.447,213,121 which was a decline from the Kshs.761,857,897 realized in 2016/2017 representing a Kshs.314,644,776 or about 42% decrease.

The management has attributed this negative trend to lost revenue arising from transfer of power generating and transmission assets to KPLC and KENGEN in 1987/1988 without commensurate compensation to the Authority. Before the transfer of the assets, the Authority had signed a commercial lease agreement with KPLC whereby Kshs.258,000,000 was to be paid annually for bulk power sales. Based on the commercial agreement, a total of Kshs.3,996,000,000 should have been paid to the Authority between 1987/88 and 1998/1999 before KENGEN took over power generation role from KPLC. However, total payments received from KPLC for the same period amounted to Kshs.238,333,000 leaving an outstanding balance of Kshs.3,757,667,000 as shown in Appendix I.

Price Water House Coopers (PWHC) Report -1999

PWHC was in June 1999 contracted by the Ministry of Energy (MoE) to value the power assets owned by TARDA and KVDA and provide advice on compensation for the loss of their generating and transmission assets. The total investments in Masinga and Kiambere projects by TARDA reportedly stood at Kshs.31.140 billion in 1999/2000. In their report, PWHC recommended compensation to TARDA of USD 6.54 million (Kshs.533 million) per annum.

Inter-Governmental Sector Group (ISG) Recommendations

In August 1999, the Ministry of Energy appointed an Inter-Governmental Sector Group (ISG) to review the recommendations of PWHC and came up with USD 5.46 million (Kshs.420 million) per annum as fair compensation for the transferred assets. From the year 1999/2000 when KENGEN took over power generation from KPLC to the year under audit (2017/2018) an amount of Kshs.8,080,000,000 was supposed to have been paid to the Authority based on the ISG recommendations. However, total payments for this period amounted to Kshs.1,095,900,000 leaving unpaid balance of Kshs.6,984,100,000 as shown in Appendix II.

Public Investments Committee (PIC) Recommendations

In their 19th and 21st reports, the Public Investments Committee (PIC) recommended that the Ministry of Energy and Petroleum, KENGEN and KPLC should honour the sales and lease agreements and pay debts owed to TARDA in accordance with the Head of Public Service letter dated 1 August 1988. It was however noted that in spite of the repeated PIC recommendations, the two had neither settled nor acknowledged these debts. This was even after the Government had allowed KPLC to increase tariffs to enable compliance with the lease agreement.

In view of the foregoing, to enable the Authority to sustain its operations in the foreseeable future, KENGEN and KPLC should honour the sales and lease agreements with TARDA and address with finality the long outstanding debts which had accumulated to Kshs.10,741,767,000 as at 30 June 2018.

2. Trade and Other Payables

As previously reported, the statement of financial position for the year ended 30 June 2018 reflects a balance of Kshs.342,384,404 (Kshs. 238,092,491 in 2017) comprising of; Kshs.140,235,546.67 for sundry creditors, Kshs.76,143,705.70 for unremitted statutory deductions, Kshs.84,156,974.35 for unpaid pensions and Kshs.41,848,175 for other unpaid payroll deductions. A review of the schedules and other documents made available in support of the sundry creditors balance of Kshs.140,235,546.67 showed some amounts have remained unpaid for a long time with some dating back to 1999. Similarly, some payroll deductions have remained unremitted for long dating back to 2014 while some VAT deductions have been outstanding since 2004.

The management has attributed the failure to settle the creditors dues to inadequate funding and has stated that a request has been made to the National Treasury to provide the required funds. However, the unremitted statutory and other deductions

are likely to attract interest and penalties and the Authority also risks legal action from the other creditors.

In consequence, it has not been possible to confirm the accuracy of the trade and other payables balance of Kshs.342,384,404.00 as at 30 June 2018

3. Revaluation of Assets

As previously reported, the statement of financial position as at 30 June 2018 reflects a balance of Kshs.19,697,833,221 in respect of revaluation reserve which could not be verified as no documentary evidence was presented to show when and how it arose. Further, the balance has remained unchanged over the years meaning that the element of asset depreciation relating to the revalued amounts has not been charged to the revaluation reserves as required by International Public Sector Accounting Standard (IPSAS) No.17. In addition, the last revaluation of the Authority's assets was done in 2006 which is 12 years ago contrary to the provisions of IPSAS 17 which requires revaluations to be made with sufficient regularity to ensure that the carrying amount of the assets does not differ materially from that which would be determined using fair value at the reporting date.

In the circumstances, it has not been possible to confirm whether the revaluation reserve balance of Kshs.19,697,833,221 as at 30 June 2018 is fairly stated.

4. Land without Ownership Documents

The statement of financial position as at 30 June 2018 reflects a balance of Kshs.9,941,903,951 (2017: Kshs10,379,031,923) in respect of property, plant and equipment which includes Kshs.1,264,135,430 for land. As previously reported, included in the land balance is Kshs.90,903,600 representing the value of three parcels of land located at Kibwezi, Kitui and Emali measuring 17,745.73 hectares whose title documents have not been produced for audit verification. The management has however explained that the Emali land lease had expired and the County Government of Kajiado has expressed unwillingness to renew the same.

Under the circumstances, it has not been possible to confirm TARDA's ownership of these land parcels as well as the accuracy of Kshs.1,264,135,430 for land included in the Property, Plant and Equipment balance of Kshs.9,941,903,951 as at 30 June 2018.

5. Fully Depreciated Assets

Similarly, as reported in the previous year, included in the property, plant and equipment balance of Kshs.9,941,903,951 as at 30 June 2018 (Kshs.10,379,031,923 in 2017) are fully depreciated assets with original costs totalling Kshs.1,942,275,373. However, these assets have not been adjusted for; in determining the depreciable amounts leading to overstatement of depreciation charges by an unknown amount over the years. Further, the management has not put in place any policy on revaluation of fully depreciated assets and is not adhering to IPSAS's requirements.

In the circumstances, the accuracy and completeness of the depreciation charge for the year amounting to Kshs.438,651,616 and also the accuracy of the property, plant and equipment balance of Kshs.9,941,903,951 could not be confirmed.

6. Understatement of Building's Value

Included in the property, plant and equipment balance as at 30 June 2018 of Kshs.9,941,903,951 is Kshs.503,030,491 relating to net book value for the Authority's buildings. However, a review of the assets register showed a negative entry of Kshs.752,944,634 posted as the opening balance for buildings. Management has explained that the details of these adjustments could not be obtained as the original assets register was destroyed in the 1998 bomb blast. However, this entry has in-effect understated the value of buildings reflected in the property, plant and equipment schedule by a similar amount.

As a result, it was not possible to confirm the accuracy and completeness of Kshs.9,941,903,951 in respect of the property, plant and equipment balance as at 30 June 2018.

7. Biological Assets

The statement of financial position as 30 June 2018 reflects a biological assets balance of Kshs.15,352,050 (2017: Kshs.14,360,177). As mentioned previously, the biological assets balance excluded unvalued fruit bearing trees in the Authority's farm at Kibwezi.

8. Work in Progress

As previously reported, the statement of financial position reflects works in progress balance of Kshs.257,273,943 (Kshs. 252,001,275 in 2017) comprising of Kshs.234,152,289 and Kshs.23,121,654 for Tana Delta Irrigation Project and Masinga Dam Resort respectively. The works in progress in Tana Delta Irrigation Project were in respect of construction of staff houses, a school, a dispensary and a supermarket in Garsen which commenced in 1990 but later stalled. The facilities are in dilapidated state and their current value is far below the disclosed amounts. In addition, relevant supporting documents for procurement and construction of the said facilities were not made available for audit verification.

Consequently, the accuracy and propriety of the work in progress of Kshs.257,273,943 could not be ascertained.

9. Trade and Other Receivables

The statement of financial position as at 30 June 2018 reflects a balance of Kshs.130,882,120 (Kshs.140,401,502 in 2017) for trade and other receivables. As previously reported, this amount is net of provision for bad debts amounting to Kshs.1,261,117,834 out of which Kshs.1,179,215,376 is in respect of bulk power sales

to KPLC for the period prior to 1988 which is under dispute. The balance of the provisions totalling Kshs.81,902,458 has not been explained or analyzed. Further, the trade and other receivables balance of Kshs.130,882,120 includes amount totalling Kshs.9,996,292 owed by former staff and other long outstanding debtors dating back to 1997 whose recoverability is in doubt.

In the circumstances, it has not been possible to confirm the accuracy and recoverability of the trade and other receivables balance of Kshs.130,882,120.00 as at 30 June 2018.

10. Investments

As previously reported, the statement of financial position as at 30 June 2018 reflects investments-portfolio balance of Kshs.24,500,000 representing historical cost of shares purchased from the Consolidated Bank over twenty years ago. Although the Share Certificates have been seen, there was no evidence of benefits accruing from this investment.

Under the circumstance, it has not been possible to confirm the value and benefits earned from the investment over the years upto 30 June 2018.

The audit was conducted in accordance with International Standards of Supreme Audit Institutions (ISSAIs). I am independent of Tana and Athi Rivers Development Authority in accordance with ISSAI 30 on Code of Ethics. I have fulfilled other ethical responsibilities in accordance with the ISSAI and in accordance with other ethical requirements applicable to performing audits of financial statements in Kenya. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my qualified opinion.

Key Audit Matters

Key audit matters are those matters that, in my professional judgment, are of most significance in the audit of the financial statements. Except for the matter(s) described in the Basis for Qualified Opinion section, I have determined that there are no other key audit matters to communicate in my report.

Other Matter

1.0 Budget and Budgetary Performance

1.1 Revenue

The Authority had budgeted for revenue totalling Kshs.866,231,458 but actual amount realized was Kshs.535,472,572 resulting to a shortfall of Kshs.330,758,886 or 38% as follows.

Revenue Head	Budget Kshs.	Actual Kshs.	Excess/(Shortfall) Kshs.	Variance %
Recurrent				
GoK (Normal)	345,000,000	316,991,041	(28,008,959)	8
KenGen	65,972,000	65,544,632	(427,368)	1
AIA (Upper Hill Parking)	12,000,000	10,080,000	(1,920,000)	16
AIA-Projects	0	47,326,809	47,326,809	100
Miscellaneous Income	0	7,270,632	7,270,632	100
Development				
GoK (Normal)	355,000,000	0	(355,000,000)	100
B/F	88,259,458	88,259,458	0	
Total	866,231,458	535,472,572	(330,758,886)	38

1.2 Expenditure

The Authority had an expenditure budget of Kshs.866,231,458 against actual expenditure for the year totalling Kshs.555,974,904 resulting to under expenditure of Kshs.310,256,554 or 36% as follows:

Expenditure	Budget Kshs.	Actual Kshs.	Over/(Under) Kshs.	Variance %
Salaries/Wages	345,432,000	345,122,946	(309,054)	0
Operations & Maintenance	84,705,400	77,791,606	(6,913,794)	8
Performance Contract Activities				
<i>Redemption of debts</i>	7,204,450	4,040,804	(3,163,646)	44
Non-financing Activities	4,055,000	3,197,582	(857,418)	21
Strategic Objectives	18,000,000	11,467,139	(6,532,861)	36
Dynamic Activities	150,000	0	(150,000)	100
Corruption Eradication & Governance	40,000,000	0	(40,000,000)	100
Sub-Total	29,449,450	18,705,525	(10,743,925)	36
Non-Performance Contract Activities				
Masinga Dam Resort-Renovation	25,500,000	3,371,675	(22,128,325)	87
Kieni Integrated Project	192,950,000	2,788,598	(190,161,402)	99
Murang'a Feasibility Studies	57,800,000	0	(57,800,000)	100
Tana Delta Irrigation Project	25,500,000	7,430,120	(18,069,880)	71
GOK Special Project	104,894,608	100,764,434	(4,130,174)	4
Sub-Total	406,644,608	114,354,827	(292,289,781)	71
Grand Total	866,231,458	555,974,904	(310,256,554)	36

The under expenditure implies that the Authority's planned activities as well as Agenda 4 on food security for the year were not achieved.

Unresolved Prior Year Audit Matter

1. European Union Fund Grant

As similarly reported the Authority received Kshs.30,714,048 in respect of a grant from the European Union (EU) for implementation of Community Based Mini-hydropower Electric Power Development-Project in Upper Tana Basin for poverty alleviation. However, these funds remained unutilized for a period of over four years and the donor recalled the funds in the financial year 2013/2014 and advised the Authority to prepare a new proposal for another grant. However, no evidence has been provided to show whether the management subsequently prepared another proposal.

2. Lease Income

As previously reported, the statement of financial performance for the year ended 30 June 2017 reflected other income of Kshs.168,049,484 (2016: Kshs.247,572,911) which included an amount of Kshs.30,000,000 for lease income from Braken Agricultural Limited for the lease of 10,000 hectares of land for the production of rice.

A review of the matter in the year under audit showed that the Authority through a letter Ref.No.TARDA/TDIP/48/1 dated 31 October 2017 and addressed to the lessee advocates, Albert Kamunde Advocates, terminated the lease agreement for failure to commence farming activities on the leased land since 10 September, 2015 when the contract was signed. By the time of the lease termination, Braken Agricultural Limited had paid a total of Kshs.30,000,000 leaving an outstanding balance of Kshs.60,000,000.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

As required by Article 229(6) of the Constitution, based on the audit procedures performed, I confirm that, nothing else has come to my attention to cause me to believe that public resources have not been applied lawfully and in an effective way.

Basis for Conclusion

The audit was conducted in accordance with ISSAI 4000. The standard requires that I comply with ethical requirements and plan and perform the audit to obtain assurance about whether the activities, financial transactions and information reflected in the financial statements are in compliance, in all material respects, with the authorities that govern them. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my conclusion.

REPORT ON INTERNAL CONTROLS EFFECTIVENESS, GOVERNANCE AND RISK MANAGEMENT SYSTEMS

Conclusion

As required by Section 7 (1) (a) of the Public Audit Act, 2015, based on the audit procedures performed, except for the matter(s) described in the Basis for Conclusion on Effectiveness of Internal Controls, Risk Management and Governance section of my report, I confirm that, nothing has come to my attention to cause me to believe that internal controls, risk management and overall governance were not effective.

Basis for Conclusion

Manual Accounting Records

A review of the accounting system in place revealed that the Authority's financial records are mainly in manual form with ledgers maintained in excel work sheets in spite of the expansive operations of the Authority both in Tana and Athi Rivers Basins. Maintenance of manual records means it is not possible to monitor the operations on real-time basis and transactions are also prone to errors and manipulation or even use of non-official records especially for receipt records. In addition, project field receipts and cashbooks do not show any evidence of independent checks to guarantee their accuracy in recording and summations. Further, excel ledgers availed for audit mainly had monthly totals but lacked individual transactions details required to validate the amounts. Excel worksheets are also subject to manipulation without any audit trail.

In the circumstances, lack of automation of the Authority's operation is an indicator of weaknesses in the internal controls system which may be exploited leading to loss of public resources entrusted to the Authority.

The audit was conducted in accordance with ISSAI 1315 and ISSAI 1330. The standards require that I plan and perform the audit to obtain assurance about whether effective processes and systems of internal control, risk management and governance were operating effectively, in all material respects. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my conclusion.

Responsibilities of Management and Those Charged with Governance

Management is responsible for the preparation and fair presentation of these financial statements in accordance with International Public Sector Accounting Standards (Accrual Basis) and for maintaining effective internal control as management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error and for its assessment of the effectiveness of internal control, risk management and governance.

In preparing the financial statements, management is responsible for assessing the Authority's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the applicable basis of accounting unless the National Government either intends to liquidate the Authority or to cease its operations, or has no realistic alternative but to do so. Management is also responsible for the submission of the financial statements to the Auditor-General in accordance with the provisions of Section 47 of the Public Audit Act, 2015.

In addition to the responsibility for the preparation and presentation of the financial statements described above, management is also responsible for ensuring that the activities, financial transactions and information reflected in the financial statements are in compliance with the authorities which govern them, and that public resources are applied in an effective way.

Those charged with governance are responsible for overseeing the Authority's financial reporting process, reviewing the effectiveness of how the entity monitors compliance with relevant legislative and regulatory requirements, ensuring that effective processes and systems are in place to address key roles and responsibilities in relation to governance and risk management, and ensuring the adequacy and effectiveness of the control environment.

Auditor-General's Responsibilities for the Audit

The audit objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion in accordance with the provisions of Section 48 of the Public Audit Act, 2015 and submit the audit report in compliance with Article 229(7) of the Constitution. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with ISSAIs will always detect a material misstatement and weakness when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

In addition to the audit of the financial statements, a compliance audit is planned and performed to express a conclusion about whether, in all material respects, the activities, financial transactions and information reflected in the financial statements are in compliance with the authorities that govern them and that public resources are applied in an effective way, in accordance with the provisions of Article 229(6) of the Constitution and submit the audit report in compliance with Article 229(7) of the Constitution.

Further, in planning and performing the audit of the financial statements and audit of compliance, I consider internal control in order to give an assurance on the effectiveness of internal controls, risk management and governance processes and systems in accordance with the provisions of Section 7 (1) (a) of the Public Audit Act, 2015 and submit the audit report in compliance with Article 229(7) of the Constitution. My consideration of the internal control would not necessarily disclose all matters in the internal control that might be material weaknesses under the ISSAIs. A material weakness is a condition in which the design or operation of one or more of the internal control components does not reduce to a relatively low level the risk that misstatements caused by error or fraud in amounts that would be material in relation to the financial statements being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions.

Because of its inherent limitations, internal control may not prevent or detect misstatements and instances of non-compliance. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the Authority's policies and procedures may deteriorate.

As part of an audit conducted in accordance with ISSAIs, I exercise professional judgement and maintain professional skepticism throughout the audit. I also:

- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for my opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the management.
- Conclude on the appropriateness of the management's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Authority's ability to continue as a going concern or to sustain its services. If I conclude that a material uncertainty exists, I am required to draw attention in the auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify my opinion. My conclusions are based on the audit evidence obtained up to the date of my audit report. However, future events or conditions may cause the Authority to cease to continue as a going concern or to sustain its services.
- Evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.
- Obtain sufficient appropriate audit evidence regarding the financial information and business activities of the Authority to express an opinion on the financial statements.
- Perform such other procedures as I consider necessary in the circumstances.

I communicate with the management regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that are identified during the audit.

I also provide management with a statement that I have complied with relevant ethical requirements regarding independence, and to communicate with them all relationships

and other matters that may reasonably be thought to bear on my independence, and where applicable, related safeguards.



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

Nairobi

21 February 2019

Appendix 1

Amount Owed by KPLC

S/No.	Year	Annual amount Payable Kshs.'000'	Amount Paid Kshs.'000'	Outstanding Kshs.'000'
1	1987/88 (Test run)	900,000		900,000
2	1987/88	258,000	-	258,000
3	1988/89	258,000	-	258,000
4	1989/90	258,000	-	258,000
5	1990/91	258,000	-	258,000
6	1991/92	258,000	-	258,000
7	1992/93	258,000	-	258,000
8	1993/94	258,000	-	258,000
9	1994/95	258,000	45,833	212,167
10	1995/96	258,000	27,500	230,500
11	1996/97	258,000	55,000	203,000
12	1997/98	258,000	55,000	203,000
13	1998/99	258,000	55,000	203,000
Total		3,996,000	238,333	3,757,667

Appendix II

Amount Owed by KENGEN

S/No.	Year	Annual amount payable (Kshs.'000')	Amount Paid (Kshs.'000')	Outstanding (Kshs.'000')
1	1999/00	940,000	55,000	885,000
2	2000/01	420,000	55,000	365,000
3	2001/02	420,000	55,000	365,000
4	2002/03	420,000	55,000	365,000
5	2003/04	420,000	69,900	350,100
6	2004/05	420,000	62,000	358,000
7	2005/06	420,000	62,000	358,000
8	2006/07	420,000	62,000	358,000
9	2007/08	420,000	62,000	358,000
10	2008/09	420,000	62,000	358,000
11	2009/10	420,000	62,000	358,000
12	2010/11	420,000	62,000	358,000
13	2012/13	420,000	62,000	358,000
14	2013/14	420,000	62,000	358,000
15	2014/15	420,000	62,000	358,000
16	2015/16	420,000	62,000	358,000
17	2016/17	420,000	62,000	358,000
18	2017/18	420,000	62,000	358,000
Total		8,080,000	1,095,900	6,984,100

Summary

	<i>Kshs.</i>
KPLC	3,757,667,000
KENGEN	6,984,100,000
TOTAL	10,741,767,000