

The records at Procurement and Finance Departments were also reconciled. Below is a summary/table of manual receipt books received at site the financial year 2015/2016.

Manual Receipt books received from procurement department	Manual receipt books received directly from printer(supplier) Per attached d/notes	Total receipt books with revenue section	Manual receipt books issued to collectors (SGA) Ltd.
570 books	720 books	1,290 books	1,290 books

Annex 9 : Delivery Notes and certificate duly signed

Documents on the Personal Digital Assistants (LPO

Committee Observations

The Committee made the following observations:

1. Revenue collected from these receipt books was accounted for and verified by the Office of the Auditor General for the period and no revenue was lost.
2. KFS has since acquired personal digital assistants (PDAs) which are integrated to the mainstream billing system and connected to main server as a long-term solution to be used in times of power outage.
3. Revenue billed from these gadgets is captured in a real time basis to the main server.

3.3 Irregular motor vehicle toll fees

Auditor's Observation

Kenya Ferry Services does not have any equipment's or means of measuring of motor vehicle length to establish the appropriate charges to be levied on to its customers. This contravenes vehicle toll charges amendment rules, 2013 which provides that the company's levies should be based on the length of the vehicles carried in its ferries.

In the light of the foregoing circumstances it has not been possible to confirm the income from operations amounting to Kshs 410,742,000 for the year ending 30 June 2016 is fairly stated.

Management Response

The basis for charging vehicular toll charges is length in metres as per Legal Notice no. 71 "The Ferries (Vehicle Toll Charges) Amendment Rules 2013" gazzeted on 22nd March 2013 and came into force on 1st May 2013. In the gazzeted notice length of the

vehicle is given as a range. The gazette notice had already established the rates and KFSL was not expected to establish further rates. The length of all categories of vehicles such as sedan cars, trucks and trailers are already identified and their relative toll tariffs indicated in the same legal notice. The ferry charges as already established under the said regulation are publicly displayed for ferry users who are conversant with this form of toll tariff and because of the simple nature of the tariff structure both KFS and its customers can easily understand and apply.

Annex 10: Legal Notice 71

Public Notice to ferry users on toll charges

Evidence of charges per vehicle complying as per the legal notice (Report from the system)

Committee Observations

The Committee made the following observations:

1. The basis for charging vehicular toll charges is length in metres as per Legal Notice no. 71 "The Ferries (Vehicle Toll Charges) Amendment Rules 2013" gazzeted on 22nd March 2013.
2. The length of the vehicle is given as a range. The gazette notice had already established the rates and KFSL was not expected to establish further rates.

MIN/PIC/408/2019: BANK AND CASH BALANCES FY 2015/16

The statement of the financial position as at 30 June 2016 reflects a balance of Kshs 1,020,620,000 in respect of Cash and Bank balance. However, the balances as per the Bank reconciliations availed for audit totaled to Kshs1,020,724,000 resulting to neither unexplained nor reconciled difference of 103,000.

Consequently the accuracy and completeness of the Cash and Bank balance of Kshs 1,020,620,000 as at 30 June 2016 cannot be confirmed.

Management Response

The cash and bank balances amount to Kshs1,020,620,449 as at 30th June 2018 and the same is duly supported by the bank reconciliations attached. This was reconciled.

Annex 11: Audited Financial statements 2016/2017 (Evidence of reconciliation)

Committee Observations

The Committee made the following observation:

The cash and bank balances amount was supported by relevant bank reconciliations.

MIN/PIC/409/2019: LONG OUTSTANDING DEBTS FY 2015/16

Note 17 to the financial statement reflect trade receivables balance of Kshs 88,981,000 which includes two debtors: one of Kshs 12,300,496 and the other Kshs 50,652,633 which, as previously reported have been outstanding since the year

2008/2009. Although the management has indicated that the debts are subject to court case, no documentary evidence has been provided to confirm the management assertion.

Consequently it has not been possible to confirm the authenticity and accuracy of trade receivables balances of Kshs 88,981,000 as at 30 June 2016.

Management Response

The long outstanding debts are owed by M/s Lustman & Co. (1990) Ltd was contracted on 24th September 2010 to manage the infrastructure facility and Nova Media Ltd who was contracted on 1st January 2011 in respect advertisement at ferry sites. These debtors defaulted in remitting revenue collected to Kenya Ferry Services Ltd resulting in outstanding amounts referred to above. The Company initiated a litigation process in a bid to recover these debts.

The case against Lustman & Co. (1990) Ltd has been fixed for a number of occasions but is yet to be heard due to adjournments sought by the defendant. An application to take the case to fast track mode of handling civil claims was made and lawyers are yet to communicate new dates Septemebrr 2019.

M/s Nova Media disputed certain amounts billed leading to the case. The dispute resolution mechanism was filed by the Company with an arbitrator, in Mombasa in early 2017.

Annexure 12: A copy of the plaint and correspondence with the lawyers (Court documents)

Arbitration correspondence

Committee Observations

The Committee made the following observations:

1. The Kenya Ferry Services had sued the long term debtors and provided evidence of court documents on the status of the two cases.
2. An arbitration was filed by M/S Nova disputing the amounts to be paid by the company. KFS lost the arbitration and moved to court to appeal the arbitration outcome.

MIN/PIC/410/2019: TRADE AND OTHER PAYABLES FY 2015/16

Included in the other payables and balance of Kshs 208,620,000 as shown in Note 24 to the financial statements are creditors amounting to Kshs. 177,371,000 out of which creditors of Kshs 58,973,323 are long outstanding, an indication that the management could be having difficulties in meeting credit obligations when they fall due which may lead to legal cases being instituted against the company. Further, records availed for audit indicated that the unpaid invoices for goods received amounting to Kshs 1,116,958 were not posted in the ledger and were hence excluded from these financial statements.

Under the circumstance, it has not been possible to confirm the validity and accuracy of trade and other payables balance of Kshs. 208,620,000 as at 30 June 2016.

Management Response

The company policy states that all payables are settled within 45 days. However, where there are short term liquidity problems and to avoid legal cases with suppliers and or losing critical suppliers the Company enters into a settlement plan with suppliers and because of existing good working relations amount owed is paid as per payment plan agreed up on by the two parties. This would ensure that short term liquidity challenges do not constrain KFS' deliver its mandate. As such, Management has not experienced any legal cases with these suppliers in cases of delays. The long outstanding invoices have since been settled.

All the referred invoices amounting to Kshs 1,116,958 were correctly captured and formed part of the financial statements. The company confirms the validity of the amount of kshs 208,620,000.

All long outstanding debts have since been paid for invoices of up to 45 days and currently the company has outstanding payables of 62M as at 30th June 2019.

Annexe 13: The age analysis of the creditors as at 30th June 2019

Committee Observations

The Committee made the following observations:

1. The long outstanding invoices have since been settled.
2. All the referred invoices amounting to Kshs 1,116,958 were correctly captured and formed part of the financial statements.
3. When experiencing short term liquidity problems and to avoid legal cases with suppliers and/or losing critical suppliers, Management enters into a settlement plan with suppliers and the amount owed is paid as per payment plan agreed up on by the two parties.

MIN/PIC/411/2019: ADMINISTRATION EXPENSES FY 2015/16

The statement of comprehensive income for the year ended 30 June 2016 reflects Kshs 89,817,000 in respect of administration expenses out of which Kshs. 12,605,000 relates to domestic and foreign travel as detailed in Note 6 to the financial statements. Examination of records availed for audit revealed that the company bought ticketing services amounting to Kshs 6,862,280 through direct procurement contrary to section 103(1) of the public procurement and Asset Disposal Act, 2015 which prohibits avoidance of competition of procurement. Further, the management did not provide for audit review analyses for domestic and foreign travel expenditure amounting to Kshs 12,605,000 included in the accommodation expenses for the year under review.

Consequently, the propriety and completeness of the expenditure of Kshs 12,605,000 incurred on the domestic and foreign travel expenses during the year under review cannot be confirmed.

Management Response

The air ticketing services were procured in compliance with the Public Procurement and Asset Disposal Act 2015 under open tender and a framework agreement entered. Only one bidder submitted a responsive bid as at the deadline for submission. The evaluation and award was undertaken in accordance with the Act.

Analysis for domestic and foreign travel expenditure was provided as below;

Description	Amount Ksh
Duty Travel	6,557,546
Air ticket	6,047,068
TOTAL	12,604,614

Annex 14: Tender advertisement, award of tender (Professional opinion), letter of award and acceptance.

Committee Observations

The Committee made the following observations:

1. The company bought ticketing services amounting to Kshs 6,862,280 through direct procurement contrary to section 103(1) of the public procurement and Asset Disposal Act, 2015 which prohibits avoidance of competition of procurement.
2. The advert attracted three bidders of which only one bidder submitted a responsive bid as at the deadline for submission.
3. Management provided an analysis of domestic and foreign travel expenditure for the financial year under review.

MIN/PIC/412/2019: FERRY OPERATION COSTS FY 2015/16

The statement of comprehensive income for the year ended 30 June 2016 reflects ferry operations cost amounting to Kshs 176,577,000 out of which expenditure of Kshs 59,152,000 relates to security services. Records availed for audit review indicates that the Kenya Ferry Services awarded the contract for provision of security, and crowd control to a local security firm. However review of the procurement process revealed the following anomalies:

8.1 Preliminary evaluation

The confidential business questionnaire filled by the bidder indicted that the company was a controlling shareholder contrary to the requirement that the shareholders were

to be directors. This guarded disclosure did not provide transparency as to who actually owned the company. The business questionnaire was to be signed in every page. However the winning bidder's signatures were not appended on the page requiring information about the registration of the company.

Management Response

A review of the bid document submitted by the successful bidder for this tender indicates information that is contrary to the audit observations as follows:

The requirement for directors who have control as introduced by the auditor is an additional criteria not provided in the tender document. The requirement was for disclosure of directors.

The confidential business questionnaire was dully filled and stamped by a representative of contracted firm at the bottom of each page and at the end of the form where the declaration was made as per tender requirements..

Annex 15: Extracts of the successful bidder's tender document - confidential business questionnaire (copy)

Extract of the tender document - Evaluation criteria

Committee Observations

The Committee made the following observation:

The confidential business questionnaire presented before the Committee was filled and stamped by a representative of contracted firm at the bottom of each page and at the end of the form where the declaration was made as per tender requirements.

Committee Resolution

The Committee made the following resolutions:

1. Management should provide a copy of the business questionnaire presented before the Committee to the Auditors for audit verification.
2. The Auditors should confirm whether the requirement for directors who have controlling stake was a criteria provided in the tender document.

8.2 Technical evaluation

The management did not carry out actual vetting of bidders but instead only requested for documents on personnel and did not verify these for authenticity. Further, the personnel were not interviewed to confirm whether the information they provided was true. Further, certificate of good conduct provided by personnel working for the bidder had similar reference numbers and were hand written in contrast to standard certificates which are printed. In addition, validity of secondary school certificates attached could not be confirmed since some indicated male personnel having attached girls schools for ordinary -level education. In view of these

anomalies the validity of qualification of personnel employed by the winning bidder could not be confirmed.

Consequently, the appropriating of the security services expense amounting to Kshs 59,152,000 for the period ended 30 June 2016 cannot be confirmed.

Management Response

The criteria to conduct actual vetting of the bidders during evaluation was not part of the criteria provided in the tender document as it would have been impractical for the company to recruit guards before being awarded a tender.

The tender evaluation and award was fair and in accordance with the Public Procurement law.

Annex 16: Extract of the tender document - Evaluation criteria

Committee Observations

The Committee made the following observation:

The Management of Kenya Ferry Service indicated that this particular audit query was not dealt with in the audit cycle.

Committee Resolution

The Committee made the following resolutions:

1. Kenya Ferry Services and the Auditors should each provide copies of the Management Letter that was issued during the audit process to ascertain whether the audit query was considered during the audit cycle.

MIN/PIC/413/2019: ADVANCES - KENYA PORTS AUTHORITY FY 2015/16

Kenya Ferry Services Ltd owes KPA Kshs336 million in form of advances and it is not clear how the debt shall be paid.

Management Response

The advances amounting to Kshs 336 million have been written off by Kenya Ports Authority vide letter FA/3/2/02 dated 12th July 2017.

Annex 17: Letter from KPA dated 12th July 2017.

Committee Observations

The Committee made the following observations:

1. The Kenya Ports Authority had sought Treasury's approval for write off of the advances amounting to Kshs 336 million vide letter FA/3/2/02 dated 12th July 2017.
2. The copy of the letter referenced above was not sufficient evidence to indicate write off approval had been granted by the National Treasury.

Committee Resolution

The Committee made the following resolution:

Management should provide evidence confirming the advance payments totaling to Kshs 336 Million had been written off by Kenya Ports Authority.

MIN/PIC/413/2019: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/414/2019: ADJOURNMENT

The meeting was adjourned at forty five minutes past one O'clock.

Signed

Date.....

The Hon. Abdullswamad Sharraf Nassir, MP
(Chairperson)

MINUTES OF THE 48TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY 8TH AUGUST, 2019 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 11.00 A.M.

PRESENT

1. The Hon. Babu Owino Paul Ongili, MP
2. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
3. The Hon. Paul Kahindi Katana, MP
4. The Hon. Joash Nyamache Nyamoko, HSC, MP
5. The Hon. Mary Wamaua Njoroge, MP
6. The Hon. James Kamau Githua Wamacukuru, M.P
7. The Hon. Raphael Bitta Sauti Wanjala, MP

ABSENT WITH APOLOGY

1. The Hon. Abdullswamad Sharraf Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Omar Mohamed Maalim Hassan, MP.
4. The Hon. Justus Kizito Mugali, MP
5. The Hon. John Muchiri Nyaga, M.P
6. The Hon. Mohamed Hire Garane, M.P.
7. The Hon. Purity Wangui Ngirici, MP
8. The Hon. Gladys Wanga, MP
9. The Hon. Thuku Zachary Kwenya, M.P
10. The Hon. Rashid Kassim Amin, MP
11. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 2. Mr. Mohamed Boru | - | Second Clerk Assistant |
| 3. Ms. Marlene Ayiro | - | Legal Counsel |
| 4. Mr. Thomas Ogwel | - | Fiscal Analyst |
| 5. Ms. Sharon Rotino | - | Research Officer |
| 6. Ms. Noelle Chelagat | - | Media Relations Officer |
| 7. Ms. Winfred Atieno | - | Audio Recording Officer |

MIN/PIC/399/2019: PRELIMINARIES

The Chairperson called the meeting to order at twenty five minutes past eleven O'clock followed by a word of prayer.

MIN/PIC/400/2019: CONFIRMATION OF MINUTES

1. Minutes of the 38th sitting held on 17th July, 2019 were confirmed as a true record of proceedings having been proposed by the The Hon. James Kamau Githua Wamacukuru, M.P and seconded the Hon. Joash Nyamache Nyamaoko, HSC, MP.

2. Minutes of the 39th sitting held on 17th July, 2019 were confirmed as a true record of proceedings having been proposed by the The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP and seconded by the Hon. James Kamau Githua Wamacukuru, M.P.

MIN/PIC/401/2019: ANY OTHER BUSINESS

The Committee resolved to proceed with the retreat in Mombasa from 12th to 17th August, 2019 to examine audited accounts of State Corporations based in Mombasa. The Committee proposed the retreat be held at English Point Marina.

MIN/PIC/402/2019: ADJOURNMENT

The meeting was adjourned at twenty minutes to twelve O'clock.

Signed

The Hon. Abdullswamad Sharif Nassir, MP
(Chairperson)

Date..... 09/10/2019

MINUTES OF THE 47TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON TUESDAY 6TH AUGUST, 2019 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10.00 A.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
4. The Hon. Joash Nyamache Nyamoko, HSC, MP
5. The Hon. Raphael Bitta Sauti Wanjala, MP
6. The Hon. Justus Kizito Mugali, MP
7. The Hon. Thuku Zachary Kwenya, M.P
8. The Hon. Rashid Kassim Amin, MP
9. The Hon. Babu Owino Paul Ongili, MP
10. The Hon. Paul Kahindi Katana, MP

ABSENT WITH APOLOGY

1. The Hon. Omar Mohamed Maalim Hassan, MP.
2. The Hon. John Muchiri Nyaga, M.P
3. The Hon. Mohamed Hire Garane, M.P.
4. The Hon. Purity Wangui Ngirici, MP
5. The Hon. Gladys Wanga, MP
6. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
7. The Hon. Mary Wamaua Njoroge, MP
8. The Hon. James Kamau Githua Wamacukuru, M.P

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 2. Mr. Mohamed Boru | - | Second Clerk Assistant |
| 3. Ms. Marlene Ayiro | - | Legal Counsel |
| 4. Mr. Thomas Ogwel | - | Fiscal Analyst |
| 5. Ms. Sharon Rotino | - | Research Officer |
| 6. Ms. Noelle Chelagat | - | Media Relations Officer |
| 7. Ms. Winfred Atieno | - | Audio Recording Officer |

IN ATTENDANCE

- | | | |
|---------------------------|---|------------------------------------|
| 1. Mr. Jack Joseph Otieno | - | Deputy Director, Audit |
| 2. Mr. Patrick Kimani | - | Manager, Audit |
| 3. Mr. Josiah Oyuko | - | Manager, Audit |
| 4. Ms. Jackline Omune | - | Manager, Audit |
| 5. Mr. Stephen Mbatia | - | Inspectorate of State Corporations |

MIN/PIC/392/2019: PRELIMINARIES

The Chairperson called the meeting to order at twenty minutes past ten O'clock followed by a word of prayer.

MIN/PIC/393/2019: EXAMINATION OF AUDITED ACCOUNTS OF COMMUNICATION AUTHORITY OF KENYA

Mr. John Wangusi, the Director General of the Communication Authority of Kenya accompanied by Mr. Joseph Kirianga (Director, Finance and Accounting), Mr. Christopher Wambua (Director, Communications and Public Affairs), Mr. Juma Kandie (Director, Human Resource & Administration), Ms. Janet Imunya (Ag. Deputy Director, Supply Chain Management), Mr. Robin Busolo (Ag. Manager, Regulatory Affairs), Mr. James Kinuthia (Ag. Manager, Expenditure) and Ms. Emma Otieno (Manager, Corporate Planning) appeared before the Committee to adduce evidence on the audited accounts of the Authority for FY 2015/16 to FY 2016/17.

MIN/PIC/394/2019: RECEIVABLES FROM ON-EXCHANGE TRANSACTIONS FY 2015/16

2.1 Unexplained reduction in provision

As disclosed in Note 13 to the financial statements the receivables from non-exchange transactions balance of Kshs. 1,764,813,000 was arrived at after a provision for bad and doubtful debts of Kshs. 194,079,000. The provision of Kshs. 194,079,000 was also arrived at after unexplained reduction of Kshs. 50,412,000 from the previous years' figure of Kshs. 244,491,000. Consequently, the authenticity of the reduction in provision of Kshs. 50,412,000 could not be confirmed.

2.2 Offsetting Provision Balances

The provision of bad and doubtful debts figure of Kshs. 194,079,000 was arrived after netting of debit opening balances totalling Kshs. 400,982,954 contrary to International Public Sector Accounting Standards (IPSAS) No.1 (48) which states that assets and liabilities, revenue and expenses, shall not be offset unless required or permitted by an IPSAS. The corporation was therefore in breach of the accounting standards.

2.3 Bad Debts Written Off

The provision for bad and doubtful debts of Kshs. 194,079,000 was arrived at after writing off debts totalling Kshs. 127,550,078 without National Treasury approval in line with section 69 (2) of Public Finance Management Act, 2012 which states that an accounting officer for a national government entity, may with approval of the cabinet secretary write off a loss. Therefore, the corporation was in breach of the law.

2.4 Long Overdue Debts

Further, the receivables from non-exchange transaction balance of kshs.1,764,813,000 includes debts totalling kshs.1,522,226,000 which has remained

unpaid since the year 2000 and whose supporting schedule was not availed for audit review.

In the circumstances, it has not been possible to confirm that the provision for bad and doubtful debts figure of kshs.194,079,000 is adequate and that the receivables from non- exchange transactions balance of kshs.1,764,813,000 as at 30 June 2016 is fairly stated.

Management Response

The Board approved the debt write off for three (3) Licensees amounting to Kshs. 86,638,973.70 as listed in Table 1 below. The write off was considered because the Licensees had ceased operations whereas Flashcom was in the process of being wound up.

Annex 1 - Board Extract approving the Debtors write off

Table 1: Listing of Debtors approved for write off

Licensee	Reduction in Provision for impaired debts	Impaired debt/Write off	Total debt Written Off
Flashcom	40,611,972	27,730,601	68,342,573
EM Communications	9,800,000	1,930,000	11,730,000
Satellite Tracking	-	6,566,400	6,566,400
Total	50,411,972	36,227,001	86,638,973

Annex 2 - Demand Letter to Satellite Tracking Limited

Annex 3 - Demand Letter to EM-Communications

Annex 4 - Demand Letter to Flashcom Limited

Annex 5 - Flashcom Limited Winding Up Cause No. 17 of 2015

Annex 6 -Affidavit claim on behalf the Authority as a Creditor in the winding up cause

Out of the approved debt write off amount, Kshs. 50,412,000 had been initially included in the provisions of bad and doubtful debts. Hence, only Kshs. 36,227,001 was impaired/written off as analysed in Table 1 above.

Annex 7 - Journal Entry for the debt write off

Annex 8 - Financial Statements for the year ended 30th June 2016 Note (13) - Reduction in Provision of bad and doubtful debts of Kshs. 50,411,972 and Note (28) Impairment Loss of Kshs. 36,227,001

There was no netting off of debtors as alleged. The Authority maintains a separate provisions account (Expense) from the debtor's accounts (Asset). Refer to Note (13) both amounts are indicated separately (Annex 23 above).

Based on consultation with the Auditors, the debt write shall be reversed and included in the financial statements for the year ending 30th June 2018 pending The National Treasury approval.

The long outstanding debts were inherited from Kenya Post & Telecommunication Corporation (KPTC) at the formation of the Authority (then Communications Commission of Kenya).

The Authority has relentlessly pursued the debts including through physical visits, denial of renewal of service amongst other enforcement measures. The aged debtors list is attached with Kshs. 1,522,226,000 outstanding.

Annex 9 - The aged debtors listing for the year ended 30th June 2016

Most of these debts are owed by government security agencies that have over time contested payment of the same citing that they offer national strategic services.

Annex 10 - Correspondence from MOICT confirming the NIS, Ministry of Defence has no budget for frequency fees

Committee Observations

The Committee made the following observations:

1. Board approved the debt write off for three (3) Licensees amounting to Kshs. 86,638,973.70
2. The Licensees had ceased operations whereas Flashcom was in the process of being wound up.
3. The Authority maintains a separate provisions account (Expense) from the debtor's accounts (Asset).
4. The long outstanding debts were inherited from Kenya Post & Telecommunication Corporation (KPTC) at the formation of the Authority
5. The aged debtors list is attached with Kshs. 1,522,226,000 outstanding.
6. Debts owed by government security agencies are included and have accumulated over time as these agencies contest payment for frequency citing that they offer national strategic services.
7. Management had developed a credit policy that is yet to be implemented in a bid to address debt collection.

MIN/PIC/395/2019: UNDERSTATED REVENUE FY 2015/16

As disclosed in note 4 to the financial statements the revenue from exchange transactions figure of Kshs. 1,010,963,370.58 was arrived at after netting off withholding tax of Kshs. 227,855,963.66 by three commercial banks out of which only Kshs. 17,216,509 was supported by tax certificate from Kenya Revenue Authority. The balance of Kshs. 210,638,874 has not been supported by tax certificates from Kenya Revenue Authority contrary to Income Tax Act which clearly stated that the payee must be furnished with withholding tax certificate for any tax withheld and paid on their behalf. In the absence of the withholding tax certificates, it has not been possible to confirm that withholding tax totalling Kshs. 210,638,874 was remitted to Kenya Revenue Authority.

Management Response

The Authority provided Withholding tax certificates issued by the banks. At the time, the certificates of tax deduction were issued by the withholding agents (the Commercial banks) in line with the Income Tax Act Cap 470 section (6) states that the person making the tax deduction shall furnish the payee with the certificate indicating the gross amount paid, tax deducted and other such particulars. The banks (withholding agents) issued withholding deduction certificates

Annex 11 - Income Tax Act Cap 470 section (6) stating that the withholder issues the certificates & Income Tax Act Cap 470 section (8) (5) stating that the withholder remits the tax

Annex 12 - Withholding tax certificates issued by the banks

Further, Income Tax Act Cap 470 section (8) (5) states that it is the responsibility of the payer to remit the tax deducted to the Kenya Revenue Authority.

Committee Observations

The Committee made the following observations:

1. The Authority provided Withholding tax certificates issued by the banks amounting to Kshs. 210,638,874.
2. The supporting documents underwent audit verification by the Auditor and the query was resolved.

MIN/PIC/396/2019: IRREGULAR PROCUREMENT METHODS FY 2016/17

As disclosed in Note 12 to the financial statements the general expenses figure of Kshs. 1,969,111,000 includes an amount of Kshs. 95,408,000 in respect of consumer affairs.

The figure of Kshs. 95,408,000 also includes Kshs. 13,302,560 being cost of event management services during the authority's ICT forum held on 11 November 2016 whose service provider was identified through request for quotations method of procurement yet the tender amount exceeded the allowable threshold of Kshs. 2 Million. This is contrary to Public Procurement and Asset Disposal Act, 2015. In

addition, no signed formal contract between the Authority and the service provider was availed for audit review.

Further, the figure of Kshs. 95,408,000 includes an amount of Kshs. 20,130,998 paid to another firm in respect of event management service for Kikao Kikuu in Busia without a signed contract agreement contrary to section 44(1)(f) of the public procurement and asset disposal Act, 2015 which requires an accounting officer to approve and sign all contracts of the procuring entity.

In the Circumstances, it has not been possible to confirm the propriety of expenditure totalling Kshs. 33,433,557 for the year ended 30th June 2017

Management Response

The Communications Authority of Kenya through its procurement plan of 2016/2017 planned to carry out ICT Consumer education forums in Bungoma, Makueni, Nyeri, Busia and Baringo Counties. For each of the forums, the Authority required the services of an event manager. Event management and related services had been reserved for Youth, Women, and persons with disabilities "reservations" as PPDA means exclusive preference to procure goods, works and services set aside to a defined target group within a specified threshold or region"

Annex 1-Procurement Plan 2015/2016 indicating Event Management and related services reservation for Youth, Women, and persons with disabilities

In November 2016, the Authority commenced its ICT Consumer education forum in Bungoma County. At the time the Authority had not prequalified/registered firms to participate in Access to Government Procurement opportunities. Therefore, the Authority invited bids from 10 firms that had been registered by The National Treasury as disadvantaged groups in the category of youth women and persons with disabilities as per the provision of Public Procurement and Assets Disposal Act Section 157 (17) " The National Treasury shall operationalize a preference and reservations secretariat to be responsible for the implementation of the preferences and reservations under this Act which shall be responsible for_(a) Registration, prequalification and certification of the persons, categories of persons or groups as provided for in under Part XII.

The tender for event management was therefore tendered using The National Treasury list of firms registered under disadvantaged group of Youth, Women and Persons with Disabilities and awarded to M/s Sum Decorators.

Annex 2 - Legal Notice No. 114 dated 18th June 2013 and List of firms registered by The National Treasury invited to bid

The Authority issued purchase order 1637 to M/s Sum Decorators of Kshs. 13,302,560 after receiving their acceptance letter.

Annex 3 - The list and copies of the documents of the tendering process (Quotations sent to firms, evaluation report and professional opinion)

Annex 4- Offer letter, Acceptance letter and Purchase Order 1637 to M/s Sum Decorators

The purchase order in this instance is a formal contract bidding parties as it meets the threshold of the Section 44(1)(f) and Section 135 (1) PPADA ACT 2015.

Committee Observations

The Committee made the following observations:

1. The Authority cited Section (157 (17) of the Public Procurement and Disposal Act (2015) upon which Management based the decision to procure for the services from The National Treasury list of firms registered under disadvantaged group of Youth, Women and Persons with Disabilities.
2. Procurement of event management services is placed under AGPO (Access to Government Procurement Opportunities) and reserved for specific groups of citizens.
3. The Authority obtained the list of service providers from the Public Procurement Regulatory Authority.

Committee Resolution

The Authority was requested to submit tender documents for the contracts awarded to the two companies as well as tender committee minutes and calls for quotation for each of the two contracts.

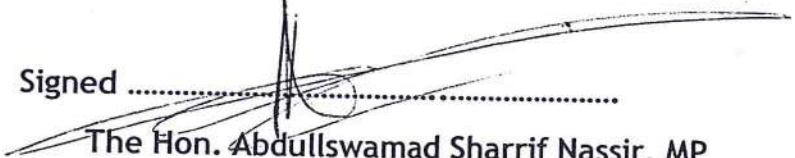
MIN/PIC/397/2019: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/398/2019: ADJOURNMENT

The meeting was adjourned at eighteen minutes past twelve O'clock.

Signed


The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

Date.....07/10/2019

MINUTES OF THE 46TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY 1ST AUGUST, 2019 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 11.00A.M.

PRESENT

1. The Hon. Abdullswamad Sharraf Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Joash Nyamache Nyamoko, MP
4. The Hon. Paul Kahindi Katana, MP
5. The Hon. Mary Wamaua Njoroge, MP
6. The Hon. Mohamed Hire Garane, M.P.
7. The Hon. James Kamau Githua Wamacukuru, M.P
8. The Hon. Omar Mohamed Maalim Hassan, MP.

ABSENT WITH APOLOGY

1. The Hon.Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
2. The Hon. Purity Wangui Ngirici, MP
3. The Hon. Gladys Wanga, MP
4. The Hon. Thuku Zachary Kwenya, M.P
5. The Hon. Babu Owino Paul Ongili, MP
6. The Hon. Rashid Kassim Amin, MP
7. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
8. The Hon. Justus Kizito Mugali, MP
9. The Hon. John Muchiri Nyaga, M.P
10. The Hon. Raphael Bitta Sauti Wanjala, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 2. Mr. Mohamed Boru | - | Third Clerk Assistant |
| 3. Ms. Sharon Rotino | - | Research Officer |
| 4. Ms. Noelle Chelagat | - | Media Relations Officer |
| 5. Ms. Winfred Atieno | - | Audio Recording Officer |

IN ATTENDANCE

- | | | |
|-------------------------|---|----------------|
| 1. Mr. Joshiah Oyuko | - | Manager, Audit |
| 2. Mr. Bob Kyalo | - | Manager, Audit |
| 3. Ms. Monica Kang'ethe | - | Manager, Audit |

MIN/PIC/386/2019: PRELIMINARIES

The Chairperson called the meeting to order at twenty sevenminutes pastelevn O'clock followed by a word of prayer.

MIN/PIC/387/2019: EXAMINATION OF AUDITED ACCOUNTS OF KENYA WILDLIFE SERVICE

Mr. John Waweru, the Director General of the Kenya Wildlife Service accompanied by Prof. Charles Musyoi (Director, Parks Management) and Ms. Ann Kahihia (Ag. Deputy Director, Development and Communication) appeared before the Committee to adduce evidence on the audited accounts of the Kenya Wildlife Service for financial year 2015/16 to financial year 2016/17.

MIN/PIC/388/2019: COMPENSATION FOR LAND HIVED-OFF

2.1 Standard Gauge Railway (SGR) FY 2015/16 TO FY 2017/18

Compensation for land hived-off from the National Park for the construction of Standard Gauge Railway as per the agreement was Kshs.1,475,000,000 out of which Kshs.1,469,000,000 was received leaving an unexplained deficit of Kshs.6,000,000. The money was meant for environmental restoration but due to huge underfunding of its operational activities, the Service utilized the funds under its recurrent expenditure. There was no approval from National Treasury for diversion of the funds contrary to the Public Finance and Management Act, 2012.

Further, the service signed another grant for environmental easement with the Kenya Railways for Phase 2A of SGR for Kshs. 4,000,000,000. The total received as at 30th June 2018 was Kshs. 3,5000,000,000 resulting to an unexplained balance of Kshs. 500,000,000.

Management Response

It's true that KWS was to received Kshs.1,475,000,000 from Kenya Railways for restoration of Tsavo ecosystem after construction of SGR. However, only Kshs1,469,000,000 was received leaving a balance of Kshs.6,000,000 which is still outstanding to date.

On 30tht May, 2016 the Board through the Ministry of Environment and Natural Resources, during presentation of revised budget for year 2015/2016 requested the National Treasury approval for utilization of the SGR funds noting that during the year KWS budget was greatly reduced. Further follow up with the National Treasury on the same confirmed this request was noted.

Committee Observations

The Committee made the following observations:

1. The money was meant for environmental restoration but due to huge underfunding of its operational activities, the Service utilized the funds under its recurrent expenditure.
2. The Service had 'borrowed' the amount and intends to return it to be used for its original purpose.
3. Approval to utilize the amount for recurrent expenditure was sought from Treasury but no approval was given.
4. An outstanding payment of Kshs. 6,000,000 that was due to the Service has not been paid to date.

5. Kenya Railways owed the KWS Kshs. 500,000,000 that was outstanding to date.

Committee Resolution

1. The Service was advised to seek the support of the parent Ministry to regularize the expenditure and resolve the audit query.
2. The Service was further asked to follow up with Kenya Railway for payment of the balance.

2.2 Southern Bypass

Similarly, revenue from compensation for land hived-off Nairobi National Park for construction of Southern Bypass road was Kshs.3,740,713,840 as agreed with the National Government, out of which Kshs.1,266,003,840 was received leaving an unexplained deficit of Kshs.2,474,710,000. The funds were to be deposited in Wildlife Endowment Fund but due to alleged underfunding of the recurrent operations of the Service, they were utilized on its recurrent operations. However, there was no approval obtained from National Treasury for diversion of the funds contrary to the Public Finance and Management Act, 2012

As a result, there has been excess vote of Kshs.2,735,003,340. Further, the unpaid compensation of Kshs.2,480,710,000 has not been accrued in the financial statements for the year under review.

Management Response

It's true that Kshs.3,740,713,840 was the amount agreed upon between KWS and KENHA for easement funds for the southern bypass. Kshs.1,266,003,840 was received leaving an outstanding balance of Kshs.2,474,710,000. This amount is still outstanding to date despite several written demand letters to KENHA.

In 2015/2016 Financial year this amount of Kshs.1,266,003,840 was included in the revised estimates to the National Treasury for approval to utilize the funds for KWS activities instead of transferring to Endowment Fund. This was due to a huge drop in A-I-A (internal revenues) and reduction in Government support. We followed the approval with the National Treasury and they confirmed that this was noted in the revised budget.

Current Status

Evidence of revised budget reflecting the same verified.

Committee Observations

The Committee made the following observations:

1. KWS had received Kshs.1,266,003,840 from KENHA leaving an outstanding balance of Kshs.2,474,710,000. This amount is still outstanding to date despite several written demand letters to KENHA.

2. The amount received should have been deposited in the endowment fund but ended up being utilized under recurrent expenditure.

Committee Resolution

The Committee made the following resolutions:

1. The balance of the payment should be made directly to the Endowment Fund to avoid being utilized as recurrent expenditure.
2. KWS should follow up with KENHA to secure the balance of the payment due.

MIN/PIC/389/2019: TRADE & OTHER PAYABLES FY 2015/16 TO FY 2016/17

Trade and other receivables balance of Kshs.940,282,000 as at 30 June 2016 include Kshs.80,000,000 being excess medical expenses incurred on staff and out of which Kshs.28,000,000 relates to deceased employees. The likelihood that these advances will be recovered is minimal.

Consequently, the accuracy and recoverability of the trade and other receivables of Kshs.940,282,000 as at 30 June 2016 cannot be ascertained.

Management Response

The unrecovered medical bills totaling Kshs 28,000,000 relating to deceased staff which arose when KWS used to operate an inhouse medical scheme whereby all payments over and above an individual allocation used to be paid in return a recovery is effected through payroll. However, this arrangement was discontinued. The balance relates to bills of staff who passed on while still having uncleared balances. The management has considered reintroduction of medical exgratia to be included in the budget and then seek board approval to write off these amounts.

The balance of Kshs.52,000,000 for the existing staff is being recovered through the payroll on monthly basis

Committee Observations

The Committee made the following observations:

1. The recovery of excess medical claims of Kshs.80,000,000 is on-going. The balance as at 30th June 2018 Kshs.53,000,000.
2. Board of Trustees sought Treasury's approval for write off of deceased's claim and was granted. Write off was confirmed.

Committee Resolution

The audit query has been resolved.

MIN/PIC/390/2019: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/391/2019: ADJOURNMENT

The meeting was adjourned at twenty eight minutes past five O'clock.

Signed.....

Date.....08/08/2019 ^

The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

MINUTES OF THE 45TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON TUESDAY 30TH JULY 2019 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10.00A.M.

PRESENT

1. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
2. The Hon. John Muchiri Nyaga, M.P
3. The Hon. Rashid Kassim Amin, MP
4. The Hon.Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
5. The Hon. Paul Kahindi Katana, MP
6. The Hon. Purity Wangui Ngirici, MP
7. The Hon. Raphael Bitta Sauti Wanjala, MP
8. The Hon. James Kamau Githua Wamacukuru, M.P
9. The Hon. Thuku Zachary Kwenya, M.P
10. The Hon. Mohamed Hire Garane, M.P.

ABSENT WITH APOLOGY

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Justus Kizito Mugali, MP
3. The Hon. Omar Mohamed Maalim Hassan, MP.
4. The Hon. Joash Nyamache Nyamoko, MP
5. The Hon. Gladys Wanga, MP
6. The Hon. Babu Owino Paul Ongili, MP
7. The Hon. Mary Wamaua Njoroge, MP
8. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 2. Mr. Mohamed Boru | - | Third Clerk Assistant |
| 3. Mr. Thomas Ogwel | - | Fiscal Analyst |
| 4. Ms. Marlene Ayiro | - | Legal Counsel |
| 5. Ms. Sharon Rotino | - | Research Officer |
| 6. Ms. Noelle Chelagat | - | Media Relations Officer |
| 7. Ms. Winfred Atieno | - | Audio Recording Officer |

IN ATTENDANCE

- | | | |
|----------------------|---|------------------------------------|
| 1. Mr. Peter Lugerah | - | Director, Audit |
| 2. Mr. Charles Kiage | - | Manager, Audit |
| 3. Ms. Anne Maina | - | Manager, Audit |
| 4. Mr. George Ombua | - | Inspectorate of State Corporations |

MIN/PIC/368/2019: PRELIMINARIES

The Chairperson called the meeting to order at fortyminutes pastten O'clock followed

by a word of prayer.

MIN/PIC/369/2019: EXAMINATION OF AUDITED ACCOUNTS OF NATIONAL BIOSAFETY AUTHORITY

Prof. Dorington Ogoyi, the Chief Executive Officer of the National Biosafety Authority accompanied by CPA Florence Binja (Director, Finance and Accounting) and Mr. Lesley Kasale (Finance Officer) appeared before the Committee to adduce evidence on the audited accounts of the National Biosafety Authority for financial year 2010/11 to financial year 2017/18.

MIN/PIC/370/2019: TOP UP ALLOWANCE FY 2010/11 & FY 2011/12

During the year under review, the Authority paid top- up allowances totaling to Ksh. 5,954,696 to the Ministry's staff seconded to it as disclosed in note 10. Although the top - up allowances had been approved by the Board of Management, the decision later on rescinded and instructions issued that 50% of the amount paid be recovered through the payroll. However, the Acting Chief Executive Officer who has since been redeployed to his former working station, left without being recovered Ksh. 2,639,310. The amount has been included under receivables as shown at note 5 but no efforts appear to have been made to recover the outstanding amount from the officer. Consequently, the recoverability of Kshs. 2,639,310 paid to the former Chief Executive Officer could not be ascertained.

Management Response

The allowances were made to the former CEO with the understanding that they were allowable as approved by the Board. When the decision was rescinded and instructions issued to recover 50% of the amount paid, the Authority went ahead to implement the instructions. However, the officer left the Authority while the recoveries were ongoing. With the guidance received from this honourable committee, the management put great effort towards recovering the allowances paid which efforts have borne fruits. The officer has since refunded the full amount through bank transfers to the NBA's bank account at KCB on various dates and cheques received at NBA cash office as evidenced by the official receipts issued (Appendix I).

Committee Observations

The Committee made the following observations:

1. The decision to pay the allowances to the former CEO was rescinded by the Board and instructions were issued to Management to recover 50% of the amount paid
2. The officer has since refunded the full amount through bank transfers to the NBA's bank account at KCB on various dates and cheques received at NBA cash office.

Committee Resolution

The audit query has been resolved.

MIN/PIC/371/2019: BOARD EXPENSES FY 2011/12 TO FY 2017/18

According to Sub-section 10(1) of the State Corporations Act, Cap 446 of the Laws of Kenya, the Chairman and Members of a Board, other than the Chief Executive are to be paid sitting allowance from the funds of the state corporation upon attending Board and/or Committee meetings. However, in the year under review, the Authority paid a total of Kshs. 480,000 to non-Board members in attendance during Board and committee meetings. The Authority was therefore in breach of the Law to the extent of these payments.

Management Response

The Authority wrote to the Inspectorate of State Corporations on 20th July 2015 vide letter Ref: NBA/FIN/C08/15 to initiate the process of recovering the funds from the affected officer. The Inspectorate responded, vide letter Ref: ISC/INS/POL/227/I dated 14th September 2015, indicating that consultations were ongoing regarding the payments made to the former Assistant Inspector General.

The Authority wrote again on 14th May 2016 and 11th April, 2017 vide letters Ref: NBA/AUD/C01/10 seeking to be updated on the progress/ position on the matter (Appendix IIA)

Subsequently, the Inspectorate availed a copy of a letter Ref: C824 (31) dated 4th July 2017, addressed to the Inspector General (Corporations) by the Auditor General clarifying the matter (Appendix II B)

Further, on 3rd January 2018 the Authority received the Circular Ref: ISC/ADM/78 Vol II (III) dated 19th December 2017 (Appendix II C) advising that ;

"This is to inform you that the Auditor General vide letter Ref: No. C.824 (31) dated 4th July 2017 clarified the issued relating to the payment of sitting allowance to the Inspector General (Corporations) and his staff while attending committee and Board meeting (See copy attached). In this regard therefore, the matter relating to payment of sitting allowance to the Inspector General (Corporations) and his staff are resolved".

Committee Observations

The Committee made the following observations:

1. The Inspectorate of State Corporation made reference to communication with the Office of the Auditor General noting concurrence on the legality of payments made to Inspectors sitting in Boards of State Corporations.
2. The Auditors did not recognize the communication between the two offices regarding the payments made.
3. The matter was recurring the audited accounts of the Authority until the financial year 2017/18.
4. The Attorney General had reportedly issued an opinion in 2013 to the effect that Inspectors sitting in Boards are not Board members and ought not to be paid allowances due to Board members.

Committee Resolutions

The Committee made the following resolutions:

1. The Inspectorate of State Corporation should provide copies of correspondence with the Office of the Auditor General regarding the matter.
2. The Committee would clarify the correct legal position on the matter before making a determination on it.

MIN/PIC/372/2019: INTEREST ON FIXED DEPOSIT FY 2012/13

Note 7 to the financial statements reflect income in respect to interest on fixed deposit of Kshs. 2,240,087. However, no documents were provided in support of income. Under the circumstances, the accuracy and validity of the figure could not be confirmed.

Management Response

The fixed deposit is a non-statement bank product. The fixed deposit receipt or certificate is the evidence of the customer's claim against the bank's assets. The fixed deposit was for a three months period starting June 2012 with an initial principal amount of Kshs. 20 Million. The agreed arrangement was that upon maturity, if no further instructions are given by the Authority, the total sum of principal and interest be rolled over for the same period under the prevailing interest rates. At the end of the year, the cumulative interest amount net of taxes would be recognized as income earned in the Authority's books. (Appendix III).

Committee Observations

The Committee made the following observations:

1. Documentation in support of the income from the account was provided outside of the audit period.
2. The fixed deposit account had since been liquidated by the Authority.

Committee Resolution

Management was asked to provide evidence on approval sought to open the bank account.

MIN/PIC/373/2019: FINANCIAL PERFORMANCE FY 2012/13 TO FY 2014/15

The Authority statement of comprehensive income for the year under review reflects a deficit of Kshs. 19,466,727 (2011/2012 Surplus of Kshs. 51,648,456). This was mainly due to reduced income and increased staff emoluments. Although the authority utilized revenue reserve to finance the deficit, it has not been explained the measures management intends to put in place to ensure future sustainability.

Management Response

The decline in the Authority's financial performance was as a result of reductions in annual budgetary allocations by Treasury over the years, despite the requested budget every financial year. The Authority largely depends on Government grants for its financial requirements and occasionally receives donations from development partners.

Owing to the regulatory nature of its mandate and the limited powers to generate own revenue in the Act that establishes it, the Authority is purely at the mercy of the exchequer. The issue has continued being a management concern as demonstrated by the various letters written to the Ministry and annual budget proposals that reflect appropriate financial requirements.

Over the years, the Authority has received allocations not exceeding Kshs. 108.6 Million from the exchequer every financial year. However, for the FY 2019/2020 the Authority was allocated a budget of Kshs. 161 Million and there is hope that this budgetary enhancement will continue into the foreseeable future. (Appendix IV)

Committee Observations

The Committee made the following observation:

The source of funding for the Authority is limited to Government grants and donor funding since its mandate is regulatory in nature and does not earn income.

Committee Resolution

The Committee made the following resolution:

The Authority should come up with a financing strategy to address the financial challenges it faces.

MIN/PIC/374/2019: BUDGETARY CONTROL & PERFORMANCE FY 2015/16

The statement of comparison of budget and actual amounts for the year ended 30 June 2016 shows that the Authority incurred expenditure totaling to Kshs. 1,988,891 on repairs and maintenance, which sum however exceeded the approved final budget limit of Kshs. 970,000 by Kshs. 1,018, 891 being 105% above the budgeted amount. In addition, the statement reflects an amount of Kshs. 6,338,509 as having been incurred on remuneration of the Board of Directors, while the approved final budget was Kshs. 5,832,755.00 resulting in an excess expenditure of Kshs. 505,754.00. The excess expenditure in both cases had not been approved. No explanation has been provided for the failure to obtain relevant approval for the excess expenditure, as required under section 12 of the state Corporation Act, CAP 446.

Management Response

The Board had a budget of Ksh. 5,832,755 but spent a total of Ksh. 6,338,509 during the FY 2015/16. The higher actual expenditure was as a result of additional Board payments for additional induction and orientation meetings following the appointment of new Board members on 2nd October 2015. The over expenditure of

Ksh. 505,754 translates to 8.67% of the revised budget which is within the allowable budget variance of 10%.

Repairs and Maintenance

The budget allocation of Ksh. 970,000 was deemed adequate for the projected motor vehicle repairs for the year. However, some vehicles suffered major breakdown towards the tail end of the financial year. The actual expenditure of Ksh. 1,988,891 thus turned out to be way higher than the estimation made. In view of the cost involved to convene a full Board meeting to approve another revised budget under the prevailing budgetary constraints management opted to utilize savings made from other votes to defray the repairs expenditure.

Committee Observations

The Committee made the following observations:

1. The appointment of a new Board of Directors necessitated induction for the members which lead to increased spending.
2. The over-expenditure of Ksh. 505,754 translates to 8.67% of the revised budget which is within the allowable budget variance of 10%.
3. Management opted to utilize funding from a different budget line to repair vehicles as they did not want to convene a Board meeting to address this single agenda item. The Committee found the explanation to be unsatisfactory.

Committee Resolutions

The Committee resolved that the then CEO of the Authority, Dr. Willy Tonui should appear before it to explain the use of different budget line to carry out vehicle repairs.

MIN/PIC/375/2019: CURRENT LIABILITIES FY 2015/16
The statement of financial position as at 30 June 2016 reflects a balance of Kshs. 11,950,102 under current liabilities, which includes contract retention money of Kshs. 988,675 that has not been supported with a schedule, analysis or any verified documents. Consequently, completeness and accuracy of the balance of Kshs. 11,950,102 cannot be confirmed.

Management Response

The contract retention amount relates contract retention percentage at 10% usually withheld by a project procuring entity until the defect period lapses and an appropriate decision made. In this case, the amount of Ksh. 988,675 was retained being 10% of the office partitioning project at the Commission for University Education (CUE) complex. At the expiry of the defect period, the contractor was not paid the amount due to defects that had to be addressed but the repairs were never done.

The Authority moved out of the CUE building in June 2018 and is now located at the Pest Control Products Board (PCPB) building. In view of the current office status, the repairs are no longer necessary. The management intends to table a request to the Board once in place to approve write off of the obligation and free the funds for other priority applications.

Committee Observations

The Committee made the following observations:

1. The amount of Ksh. 988,675 was retained being 10% of the office partitioning project at the Commission for University Education (CUE) complex.
2. At the expiry of the defect period, the contractor was not paid the amount due to defects that had to be addressed but the repairs were never done despite requests by the Authority.
3. The contractor was paid a total of Kshs. 7,699,672 for the partitioning.
4. The Authority utilized the offices for 6 years before moving out after being given notice of vacation by the landlord, the Commission for University Education.
5. The Department of Public Works had valued the cost of the partitioning at Kshs. 3,000,000.

Committee Resolution

Management should provide a copy of the contract for the partitioning as well as the vacation notice from the Commission for University Education.

MIN/PIC/376/2019: RECIEVABLES FROM EXCAHNGE TRANSACTIONS FY 2016/17

The statement of financial position as 30 June 2017 reflects a balance of Kshs. 4,091,804 under receivables from exchange transactions. As disclosed in Note 13 to the financial statements, the amount comprises of three balances of Kshs. 1,502,554, Kshs 24,000 and Kshs. 2,565,250 relating to accounts receivables, salary receivables and imprests respectively. The amounts relating to accounts receivables and salary receivables have not been supported by analysis or any other documentary evidence.

The balance of Kshs. 2,565,250 relating to imprests also differs with the amount of Kshs. 4,000,943 has not been reconciled or explained. Further, although section 71(2) of the Public Finance Management Act, 2012 read together with regulation 93(5) of the Public Finance Management (National Government) Regulations, 2015 require that all advances (including imprests) be accounted for promptly, no explanation has been provided for failure to have the imprests accounted for on or before 30 June 2017. The completeness and accuracy of a balance of Kshs. 4,091,804 Under receivables from exchange transactions as at 30 June 2017 could not be confirmed under the circumstances.

Management Response

The balance of Kshs. 4,091,804 under receivables from exchange transactions as disclosed in note 13 is correct. This figure includes Kshs.1,502,554 that relates to accounts receivables comprising of the rent deposit paid to the Commission for Higher Education of Kshs. 750,000.00, an unpaid amount of Ksh.119,310 from Mr. Harrison Macharia Kamau and an unpaid invoice to Monsanto Kenya Ltd. of Ksh.633,240. Salaries receivables figure Kshs. 24,000 relates to salary advance to one officer that had not been cleared at the end of the financial year and a copy of the officer's June 2017 pay slip was availed for review. The salary advance has since been cleared vide recoveries made in the months of July and August 2017 and copies of pay slips for the three months attached.

The Authority has since stopped issuance of salary advances to staff. An analysis of the pending imprests which tallies with the reported amount of Kshs.2,565,250 was provided (Appendix V). Some of the imprests relate to activities that were supported by the development partners' funds whose contract years differ with the GOK financial years. Other imprests relate to activities that were still ongoing at the end of the financial year.

Supporting documents have been attached (Appendix V).

Committee Observation

The Committee made the following observations:

1. The Authority has since stopped issuance of salary advances to staff.
2. The rent deposit paid to the Commission for Higher Education of Kshs. 750,000.00, an unpaid amount of Ksh.119,310 from Mr. Harrison Macharia Kamau and an unpaid invoice to Monsanto Kenya Ltd. of Ksh.633,240. Have all since been recovered by the Authority.
3. Salaries receivables figure Kshs. 24,000 relates to salary advance which has since been cleared vide recoveries made in the months of July and August 2017 and copies of pay slips for the three months attached.

Committee Resolution

The audit query has been resolved.

MIN/PIC/377/2019: DEFERRED INCOME FY 2016/17

The statement of financial position as at 30 June 2017 reflects a balance of Kshs. 1,852,459 under deferred income relating to Program for Biosafety Systems (PBS) as disclosed under Note 18 to the financial statements. However, no analysis or documentary evidence has been provided to support the amount. Consequently, the validity and accuracy of the balance could not be confirmed.

Management Response

The deferred income only relates to development partners' funds due to the differences in accounting periods with the GoK funds. An analysis of the deferred amount together with relevant ledger extracts was provided for audit. The same are hereby attached (**Appendix VI**).

Committee Observation

The relevant ledgers were provided for audit and verified by the Auditors.

Committee Resolution

The audit query has been resolved.

MIN/PIC/378/2019: REMUNERATION TO THE BOARD

The statement of financial performance for the year ended 30 June 2017 reflects an expenditure of Kshs. 5,505,906 against remuneration of the Board. As disclosed in Note 6 to the financial statements, the amount relates to various allowances and other expenses of the Board. The amount, however, differs with the amount of Kshs. 5,035,346 shown in the supporting schedule by Kshs. 470,560. The differences has not been reconciled or explained and as a result the completeness and accuracy of the expenditure of Kshs. 5,505,906 could not be confirmed.

Management Response

The Board expenses for the financial year was Kshs. 5,505,906 and the supporting schedules provided for the audit review tally with the expenditure amount disclosed under note 6 of the financial statements (**Appendix VII**).

Committee Observation

The correct schedules for Board expenses in the financial year under consideration were provided and the differences reconciled. The schedules were verified by the Auditors.

Committee Resolution

The audit query has been resolved.

MIN/PIC/379/2019: CONTRACTED SERVICES FY 2016/17

The statement of financial performance reflects an expenditure of Kshs. 2,826,955 under contracted services, which includes, as disclosed under Note 9 to the financial statements, an amount of Kshs. 404,910 relating to refined fuel. The amount of Kshs. 404,910 differs from the amount of Kshs. 578,626 shown in the supporting schedule by Kshs. 173,716

Management Response

The Authority spent a total of Kshs. 404,910 on refined fuel as supported by the schedule whose total of Kshs. 404,910 agrees to the reported expenditure in the financial statements under note 9 (**Appendix VIII**).

Committee Observation

The correct schedules for contracted services in the financial year under consideration were provided and the differences reconciled. The schedules were verified by the Auditors.

Committee Resolution

The audit query has been resolved.

MIN/PIC/380/2019: EMPLOYEE COSTS FY 2016/17

Further, the statement of financial performance reflects an expenditure of Kshs. 67,894,044 under employee costs. As disclosed in Note 5 to the financial statements, the amount includes an expenditure of Kshs. 26,609,861 relating to housing benefits and other allowances which however differs from the amount of Kshs. 26,547,860 reflected in supporting schedule by 62,001.

Management Response

During the year, the Authority incurred employees costs of Ksh.26,609,861 relating to housing benefits and other allowances as reported in the financial statements and also reflected under note 5. The provided supporting schedule to this figure tally with the figure in the financial statement of Ksh.26,609,861 and is hereby resubmitted for your review (Appendix IX).

Committee Observation

The correct schedules for employee costs in the financial year under consideration were provided and the amount was Kshs. 26,609,861. The schedules were verified by the Auditors.

Committee Resolution

The audit query has been resolved.

MIN/PIC/381/2019: GENERAL EXPENSES FY 2016/17

The statement of financial performance in addition, reflects an expenditure of Kshs. 15,591,201 under general expenses, which as disclosed in Note 10 to the financial statements includes an amount of Kshs. 424,470 relating to conferences and seminars. This amount however, differs from the amount of Kshs. 849,070 in supporting schedules by Kshs. 424,600. Similarly, the expenditure of Kshs. 15,591,201 under general expenses included an amount of Kshs. 231,267 relating to general office supplies which differs from the amount of Kshs. 216,132 shown in supporting schedules. The completeness and accuracy of general expenses totaling Kshs. 15,591,201 could not therefore be confirmed.

Management Response

The total expenditure under general expenses was Kshs. 15,591,201 as disclosed under Note 10 (general expenses). The figure of Kshs. 424,470 relates to conferences

and seminars. The Amount of Kshs. 849,070 in the supporting schedule for conferences and seminars includes an amount of Kshs. 424,600 which relates to payment for the FY 2015/2016 that was made towards the end of the FY and had to be reversed to reflect in the correct Financial Year. Initially, the reversal was not successful and we had to work with the system vendor and eventually aligned it appropriately. Journal entries to reverse the amount have been availed and the correct schedule that agrees with the figure of Kshs. 424,470 has now been availed (Appendix X).

Committee Observation

The correct schedules for general expenses in the financial year under consideration were provided and were verified by the Auditors.

Committee Resolution

The audit query has been resolved.

MIN/PIC/382/2019: PROJECT COSTS FY 2016/17

The statement of financial performance also reflects an expenditure of Kshs. 7,340,859 under project costs, which, however, differs from the amount of Kshs. 6,278,909 shown in the supporting schedules by Kshs. 1,061,950. No reconciliations or explanations have been provided for this anomaly, as a result of which, the completeness and accuracy of the expenditure of Kshs. 7,340,859 could not be confirmed.

Management Response

During the financial year, the Authority spent Kshs. 7,340,859 under projects costs which were correctly reported in the statement of financial performance. Supporting schedules that agree to the figure of Kshs.7,340,859 as reflected in the statement of financial performance under project costs for FY ending 30th June 2017 were provided for review (Appendix XI).

Committee Observation

The relevant supporting documents for project costs in the financial year under consideration were provided and the differences reconciled. The schedules were verified by the Auditors.

Committee Resolution

The audit query has been resolved.

MIN/PIC/383/2019: CASH AND CASH EQUIVALENT FY 2017/18

The statement of financial position as at 30 June 2018 reflects cash and cash equivalents balance of Kshs. 18,682,217. As disclosed in Note 12 to the financial statements, the balance includes a bank balance of Kshs. 18,637,377 which, however, differs with the cash book bank balance of Kshs. 18,487,356 indicated in the bank

reconciliation statement as at 30 June 2018. The resulting balance of Kshs. 150,021 relates to unidentified deposits, which have been treated as reconciling items.

As a result, the accuracy of cash and cash equivalents balance of Kshs. 18,682,617 cannot be confirmed.

Management Response

The unreconciled balance of Kshs. 150,021 comprises of deposits made directly into the Authority's bank account without details to enable full capture of the transactions in our books particularly the sender and the payment description. Some measures have been taken with the bank with a view to obtaining adequate details or have the funds returned to sender but without success. The authority has twice written to the bank and also made several follow up calls. Our preliminary analysis shows that most of the unidentified deposits are funds paid in via the Single Window System payments for goods' entry at the border points. The management is still pursuing the matter and will not relent until a solution has been found (Appendix XII).

Committee Observation

The Authority had unreconciled balances of Kshs. 150,021 in its accounts since it could not trace details of the depositors who had made the payments.

Committee Resolution

The Authority was asked to automate its systems to ease the process of tracing payments and reconciling its accounts.

MIN/PIC/384/2019: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/385/2019: ADJOURNMENT

The meeting was adjourned at five minutes past twelve O'clock.

Signed.....

The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

Date 08/08/2019

MINUTES OF THE 44TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY 25TH JULY 2019 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10.30A.M.

PRESENT

1. The Hon. AbdullswamadShariff Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
4. The Hon. Raphael Bitta Sauti Wanjala, MP
5. The Hon. Gladys Wanga, MP
6. The Hon. Joash Nyamache Nyamoko, HSC, MP
7. The Hon. John Muchiri Nyaga, M.P
8. The Hon. Justus Kizito Mugali, MP
9. The Hon. Purity Wangu Ngirici, MP
10. The Hon. Thuku Zachary Kwenya, M.P
11. The Hon. Mohamed Hire Garane, M.P
12. The Hon. Rashid Kassim Amin, MP
13. The Hon. Babu Owino Paul Ongili, MP

ABSENT WITH APOLOGY

1. The Hon. Paul Kahindi Katana, MP
2. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
3. The Hon. Mary Wamaua Njoroge, MP
4. The Hon. James Kamau Githua Wamacukuru, M.P
5. The Hon. Omar Mohamed Maalim Hassan, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 2. Mr. Mohamed Boru | - | Third Clerk Assistant |
| 3. Mr. Thomas Ogwel | - | Fiscal Analyst |
| 4. Ms. Sharon Rotino | - | Research Officer |
| 5. Ms. Marlene Ayiro | - | Legal Counsel |
| 6. Ms. Noelle Chelagat | - | Media Relations Officer |
| 7. Ms. Winfred Atieno | - | Audio Recording Officer |

IN ATTENDANCE

- | | | |
|----------------------|---|-------------------|
| 1. Mr. Charles Kiage | - | Manager, Audit |
| 2. Ms. Jane Chege | - | Manager, Audit |
| 3. Mr. Daniel Kuria | - | Supervisor, Audit |

MIN/PIC/360/2019: PRELIMINARIES

The Chairperson called the meeting to order at nine minutes to eleven O'clock followed



by a word of prayer.

MIN/PIC/361/2019: EXAMINATION OF AUDITED ACCOUNTS OF NEW KENYA COOPERATIVE CREAMERIES

Mr. Nixon Sigey, the Managing Director of the New Kenya Cooperative Creameries accompanied by Ms. Samuel Ichura (Chief Manager, Finance), Mr. Hassan Gyo (Manager, Finance), Ms. Yvonne Masinde (Ag. Company Secretary) and Mr. Samuel Onyango (Head of ICT) appeared before the Committee to adduce evidence on the audited accounts of the Bureau for FY 2016/17 to FY 2017/18.

MIN/PIC/362/2019: TRADE AND OTHER PAYABLES FY 2016/17 & FY 2017/18

The trade and other payables' balance of Kshs.1,078,901,682 as at 30 June 2017 includes an amount of Kshs.26,447,283 which has remained outstanding for more than two years. This casts doubt on the validity of the above transactions and the Company's ability to pay its debts as they fall due.

Management Response

Management resolved the outstanding price variances as the prices variances relating to stock balances at the year ended (30th June 2011) were utilized and absorbed as the material were consumed in the year 2011/2012.

The related debits were posted after supporting documents were received in the subsequent year 2011/2012 as at 30th June 2012 the balances in the cashbook was equal to the bank statements.

Committee Observations

This was a reconciliation issue that was subsequently done and the matter resolved

Committee Resolution

New KCC should always reconcile its books in time and avail all documents for audit verification

MIN/PIC/363/2019: PROPERTY, PLANT AND EQUIPMENT FY 2017/18

As previously reported, property, plant and equipment balance of Kshs.4,122,379,669 as at 30 June 2018 has the following unresolved issues;

- i. Title documents for twenty-two (22) properties with a value of Kshs.853,900,000 whose title documents were not availed for audit verification.
- ii. The property, plant and equipment balance of Kshs.4,122,379,669 excludes four (4) parcels of land and buildings which have not been valued.
- iii. Twenty three (23) disputed unvalued properties were registered in the name of third parties. The company has failed to disclose in the financial

statements the Ethics and Anti-Corruption Commission had cleared two disputed properties; LR No.37/371 and LR No.37/22 situated in Upper Hill, Nairobi which had legally been transferred to third parties.

- iv. Five (5) acres out 32.94 acres (13.33ha) LR.NO.MN/VI/2860 on which Miritini factory is located have been encroached by squatters some of whom have already put up permanent structures thereby exposing the Company to likely loss of vital property. Although New Kenya Co-operative Creameries Limited (NKCC) has a filed a case in Mombasa ELC case No.183 of 2015 (New Kenya Co-operative Creameries Limited (NKCC) vs Hassan Ali Mboga and Others) seeking the remove of squatters, and stoppage of any other developments on the land, the case is yet to be determined.

Management Response

New Kenya Co-operative Creameries (NKCC) has initiated legal process to recover the disputed properties and has also engaged the National Land Commission and the Ministry of Lands and Housing. The processes are still ongoing.

Committee Observation

The Committee made the following observations:

1. Valuation of all assets has since been done and a breakdown of all the valued assets availed for verification
2. The case of contested land has taken inordinately long to conclude
3. The New KCC did not avail titles to LR. No. 17601 and LR No. 23413 properties for audit verification

Committee Resolutions

New KCC management to avail titles to LR. No. 17601 and LR No. 23413 properties for verification

MIN/PIC/364/2019: TRADE & OTHER RECEIVABLES FY 2017/18

Included in trade and other receivables balance of Kshs.1,996,009,658 as at 30 June 2018 is an amount of Kshs.1,628,317,392 reflected in note 18(a) for trade receivables which in turn includes Kshs.379,914,225 relating to receivables from Nakumatt Holding Limited of Kshs.290,839,391 and Uchumi Supermarkets Limited of Kshs.89,074,834. Information available indicates that the companies are either in receivership or liquidation.

Although management has made provisions for these receivables, the value from these companies is therefore doubtful and may not be recovered.

Management Response

Management has made specific provision for the debts.

Committee Observation

11

The Committee made the following observations:

- The New KCC has issued demand letters to Nakumatt and Uchumi.
- The New KCC has since gone to court to pursue the matter

Committee Resolutions

- New KCC to expedite the court process anåß

MIN/PIC/365/2019: CONFIRMATION OF MINUTES

1. Minutes of the 36th sitting held on 2nd July, 2019 were confirmed as a true record of proceedings having been proposed by the Hon. Ahmed Abdisalan Ibrahim, MP and seconded the Hon. Justus Kizito, MP.
2. Minutes of the 37th sitting held on 4th July, 2019 were confirmed as a true record of proceedings having been proposed by the Hon. Joash Nyamache Nyamaoko, HSC, MP and seconded by the Hon. John Muchiri Nyagah, MP.

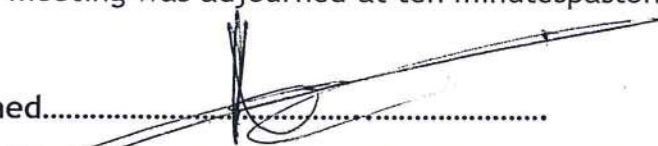
MIN/PIC/366/2019: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/367/2019: ADJOURNMENT

The meeting was adjourned at ten minutes past one O'clock.

Signed.....


The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

Date..... 08/08/2019.



THE STATE OF NEW YORK, COUNTY OF ALBANY, ss. I, the undersigned, Clerk of the said County, do hereby certify that the within and foregoing is a true and correct copy of the original of the same, as the same appears from the records of the said County.

MINUTES OF THE 43RD SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON TUESDAY 23RD JULY 2019 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10A.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Joash Nyamache Nyamoko, HSC, MP
4. The Hon. Mohamed Hire Garane, M.P.
5. The Hon. John Muchiri Nyaga, M.P
6. The Hon. Omar Mohamed Maalim Hassan, MP.
7. The Hon. Raphael Bitta Sauti Wanjala, MP
8. The Hon. Paul Kahindi Katana, MP
9. The Hon. Gladys Wanga, MP
10. The Hon. Thuku Zachary Kwenya, M.P
11. The Hon. Rashid Kassim Amin, MP
12. The Hon. Mary Wamaua Njoroge, MP
13. The Hon. James Kamau Githua Wamacukuru, M.P

ABSENT WITH APOLOGY

1. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
2. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
3. The Hon. Babu Owino Paul Ongili, MP
4. The Hon. Purity Wangui Ngirici, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 2. Mr. Mohamed Boru | - | Third Clerk Assistant |
| 3. Ms. Sharon Rotino | - | Research Officer |
| 4. Ms. Marlene Ayiro | - | Legal Counsel |
| 5. Mr. Thomas Ogwel | - | Fiscal Analyst |
| 6. Ms. Noelle Chelagat | - | Media Relations Officer |
| 7. Ms. Winfred Atieno | - | Audio Recording Officer |

IN ATTENDANCE

- | | | |
|-------------------------|---|------------------------------------|
| 1. Mr. Richard Nyachieo | - | Director, Audit |
| 2. Mr. Peter Lugerah | - | Deputy Director, Audit |
| 3. Mr. Joshiah Oyuko | - | Manager, Audit |
| 4. Mr. John Wangila | - | Manager, Audit |
| 5. Mr. Isaac Odeh | - | Inspectorate of State Corporations |

MIN/PIC/349/2019:

PRELIMINARIES

The Chairperson called the meeting to order at twenty minutes past ten O'clock followed by a word of prayer.

MIN/PIC/350/2019:

EXAMINATION OF AUDITED ACCOUNTS OF CENTRAL BANK OF KENYA

Dr. Patrick Njoroge, the Governor of the Central Bank of Kenya, accompanied by Ms. Sheila Mbiyiwe (Deputy Governor) Mr. Moses Ng'otho (Ag. Director, Finance), Mr. Wallace Kantai (Head of Communication), Mr. Kennedy Abuga (Director, Governor's Office), Mr. Stanley Lanngat (Head of Financial Reporting), Mr. Richard Njoroge (Partner, PwC) and Mr. Dickson Ndegwa (Protocol Officer) appeared before the Committee to adduce evidence on the audited accounts of Central Bank of Kenya for the financial year 2012/13 to financial year 2017/18.

The Committee heard that the Auditor General issued unqualified audit report for Central Bank of Kenya for the financial years from 2012/13 to 2017/18.

MIN/PIC/351/2019:

OTHER MATTER FY 2017/18

In the financial year under consideration, the Board of Central Bank of Kenya was not fully constituted. Only five board members were present during the period of audit instead of (11) eleven as required by Section 11 of the Central Bank Act. Further, only one Deputy Governor is in place instead of two as required by Section 13 B (1) of the Act.

Management Response

Management has notified the appointing authority that there are vacancies in the Board and that only one Deputy Governor is in place instead of two. The Bank is awaiting the appointment of the Board members by the appointing authority.

Committee Resolution

Management should follow up with the appointing authority to ensure the vacant positions are filled.

MIN/PIC/352/2019:

EXAMINATION OF AUDITED ACCOUNTS OF NATIONAL IRRIGATION BOARD

Mr. Gitonga Mugambi, the General Manager of the National Irrigation Board accompanied by Mr. Raphael Ogengo (Deputy General Manager, Irrigation and Infrastructure Development Services), Eng. Daniel Atula (Deputy General Manager, Operations and Irrigation Management Services), Eng. Charles Muasya (Chief Engineer), Ms. Jedidah Narocho (Head of Finance) and Mr. Tirus Kabuthia (Accountant) appeared before the Committee to adduce evidence on the audited accounts of the Board for FY 2014/15 to FY 2016/17.

MIN/PIC/353/2019:

UNALLOCATED IRRIGATION WORKS FY 2015/16

Included in the Board's audited accounts for the audit period under consideration is an unexplained amount of Kshs. 3,603,941,641 on nine (9) irrigation projects without indicating the cost per each project. Consequently, and as in the previous year, the validity and accuracy of the inventories balance of Kshs. 278,456,000 as at 30 June 2013 could not be ascertained.

Management Response

The figure of Kshs. 3,603,941,641 in question refers to the expenditure on development projects from the Government of Kenya. The allocation was made to specific projects as per the table below:

PROJECT	BUDGET AMOUNT (Ksh)	ACTUAL AMOUNT (Ksh)
Mwea Irrigation Development Project-MIDP (Thiba Dam & Irrigation Area)	350,000,000	349,546,252
National Expanded Irrigation Programme (NEIP)	2,205,000,000	2,110,286,587
Bura Irrigation Development Programme	500,000,000	499,465,213
Galana/Kulalu Food Security Project	615,000,000	614,643,589
Rwabura Irrigation Development	30,000,000	30,000,000
Total GoK. Development allocation	3,700,000,000	3,603,941,641

Committee Observations

The Committee made the following observations:

1. Documentation to support the breakdown of the amounts spent per project was provided for audit verification outside the audit period.
2. The auditors had reviewed the documentation and resolved the audit query.

Committee Resolutions

The Board should provide relevant documentation to the Auditors during the audit cycle to avoid raising unnecessary audit queries.

MIN/PIC/354/2019: RETAINED EARNINGS' ADJUSTMENTS FY 2015/16

The retained earnings balance of Kshs.14,606,538,943 is arrived at after deducting from the opening balance Kshs.6,564,404,316 being completed community projects and Kshs.55,000,000 being Water Resource Management Authority's account. This is contrary to IPSAS 3 paragraph 47 (b). Further, no explanation for this has been provided as required under IPSAS. In the circumstances, the accuracy of the retained earnings balance could not be confirmed.

Management Response

The policy of NIB is to adjust to retained earnings the projects which are completed and handed over to the communities within the financial year under review. In this regard, the figure of Ksh. 5,684,395,617 relates to the projects which were completed within the current year under review. A list of written off projects amounting to KShs.5, 684,395,617 was provided. The necessary disclosures were made under notes numbered 15 and 20 to the financial statements. Please refer to annex XI.

Committee Observations

The Committee made the following observations:

1. The relevant supporting documents were provided outside the audit period.
2. The auditors had reviewed the documentation and resolved the audit query.

Committee Resolutions

The Committee resolved to make amendments to the Public Audit Act to provide for punitive measures when accounting officers fail to provide documentation to the Auditors during the audit period.

MIN/PIC/355/2019: BOARD MEMBERS EXPENSESFY 2015/16

The Board members' expenses balance of Kshs.22, 650,506 is understated by Kshs.6, 014,845 being expenses of the Board not posted in the account. Further, Board members expenses increased from Kshs.3, 407,152 in the previous year (2014/2015) to Kshs.28, 665,351 in the year under review, an increase of Kshs.25, 258,199 or 740%. Management has not explained the reason for such a huge increase. In the circumstance, propriety of the Board members expenses of Kshs.28, 665,351 incurred during the year under review could not be confirmed.

Management Response

NIB had a fully constituted Board up to September 2013 when the term of most of the independent directors expired. The term of the remaining 2 directors also expired in May 2014. Thereafter, NIB did not have a fully constituted Board and the affairs of the Board were being handled by the Government representatives in the Board and the Chairman in liaison with the parent ministry. The Chairman was appointed on 10th January 2014. The next Board consisting of 6 independent members was appointed on 17th April 2015 and an additional of 3 more directors were appointed on 2nd October 2015.

The new Board served the office up to 31st May 2016 (which was a period of one year) when a new Board was again appointed.

In view of the above, it is evidence that there was a lot of pending issues that required to be handled by the Full Board. At the same time, the Board had to be inducted to understand the operations of the organization. This required visiting both the Schemes/Stations and the projects all over the country so as to be well informed before embarking on decision making in the boardroom. The same exercise had to be undertaken after one year when the Board was again replaced. These were costs that were not envisaged during budgeting as a full term of an ordinary Board is three years.

Committee Observations

The Committee made the following observations:

1. The National Irrigation Board had Board of Directors appointed on two separate occasions in 2015 and 2016.
2. Induction of Board members on both occasions which included travel around the country accounted for the huge increase in Board Members' expenses.

MIN/PIC/356/2019: OTHER MATTER- IRRIGATION PROJECTSFY 2015/16

1.1 Bura Irrigation Project Phase I

The Board awarded a contract for the construction of Bura Irrigation and Settlement Rehabilitation project to M/S IVRCL at a contract sum of Kshs. 7,355,829,104 for a contract period of 124 weeks starting May 2013 with the expected completion date of November 2015. No feasibility study was carried out before the contract was awarded.

The company was awarded the project despite its bad past record. As at 30 June 2016, one year after the expected completion date, the project was only 15% complete. In view of the long delay, completion of the project remains doubtful.

Management Response

The procurement of the contract was through Open International Tender and the Firm, IVRCL was the awarded after evaluation being the lowest evaluated bidder. The contracted did not perform as expected due to inadequate mobilization of machinery and equipment despite the employer giving various instructions. *Annex XIII.*

Committee Observation

The Committee made the following observations:

1. The National Irrigation Board procured for the construction of Bura Irrigation and Settlement Rehabilitation project without carrying out a feasibility study.
2. The contractor was facing financial challenges and struggled to complete the works as per the contract duration.
3. NIB terminated the contract at 30 % completion and procurement of balance of the works is ongoing.
4. The contractor had been paid a total of Kshs. 2,200,000,000 for works done.

Committee Resolutions

Management was asked to provide a copy of the technical evaluation conducted before contracting M/S IVRCL to undertake the works.

1.2 Great Bura Irrigation Project-Feasibility Study

The Board awarded the contract at contract sum of Kshs.167,086,400 for contract duration of 40 weeks starting 28 February 2012 and ending 31 December 2012. The contract price was varied to Kshs.177, 476,400 an increase of Kshs.10, 390,000. The project ended in May 2015 eleven months after its expected completion date. No liquidated damages have been claimed. The project was added a provisional sum of Kshs.19,488,000 to finance stakeholders' consultative meetings and tasks critical to the assignment, contrary to the Public Procurement and Disposal Act 2005.

Management Response

The project had an eleven month delay in implementation. The contract sum for the project was Kshs. 177,476,400 and not Kshs. 167,086,400. The increase in Kshs. 10,390,000 is attributed to taxes which was not included in the amount. The consultancy was completed and no variation was made to the contract.

Committee Observation

The Committee made the following observations:

1. The increase in Kshs. 10,390,000 is attributed to taxes which was not included in the amount.
2. The consultancy was completed and there was no variation in the contract amount.

Committee Resolution

Management was asked to provide a copy of the contract to substantiate the actual contract sum for the consultancy.

1.3 Ndula Magongoni Irrigation Scheme Phase 1

The Board awarded the project to M/S Dalicent Ltd at a contract sum of Kshs.199, 599,465 and a project duration of 12 months or 48 weeks starting 5 December 2014 to 5 December 2015 to irrigate 280 acres of land. The project was not in the annual procurement plan and further, no feasibility study was carried out before it was contracted. On the due date of the completion, the project was 70% complete and was therefore non-operational. However, the project engineers proceeded to issue a certificate of completion on 28 January 2016 and recommended for payments which were made in March 2016. In the circumstance, no benefit has been derived from the expenditure of Kshs.199, 599,465 incurred on the project as it has not been operationalized.

Management Response

The project was included in the annual procurement plan and was planned to be implemented in 2 phases. The scope of phase 1 was limited to the main infrastructure which included construction of intake works and installation of 22.5 km of the mainline. During this phase, irrigation water was only availed to section of the farmers in a line called Ndula line and irrigation activities commenced. Phase 2 was to cover the remaining 7 km of the mainline, secondary distribution pipelines and the infield systems to the rest of the farmers to allow for commencement of production.

Feasibility studies were carried out before implementation of the project and payments were done for certified works. Please refer to annex XV.

Current Status

Committee Observation

The Committee made the following observations:

1. The project was included in the annual procurement plan for the financial year under consideration.
2. Phase 1 of the project was completed and handed over to farmers.
3. Ndula line which was completed during this phase is under production.

Committee Resolutions

The audit query is resolved.

1.4 Ndula Magongoni Irrigation Scheme Phase 2

The Board awarded the project to M/S Dalicent Limited at a contract sum of Kshs.224, 584,458 and a project duration of 14 months or 56 weeks starting 5 September 2015 to 28 December 2016. However, no documents on the project were made available for audit

verification. It has therefore not been possible to ascertain the propriety of the expenditure of Kshs.224, 584,458 allocated to the project.

Management Response

The contract sum for this phase is Kshs. 239,676,239.86. All the documents pertaining to the implementation of Ndula Magongoni phase 2 are available which include contract document, payment certificates for certified works and design document. The project is at 95%. Please refer to annex XVI.

Current status

Committee Observation

The Committee made the following observations:

1. All the documents pertaining to the implementation of Ndula Magongoni phase 2 were provided by Management.
2. Production has commenced in the project in the completed sections and the pending works are installation of infield irrigation system for which is ongoing and expected to be completed by July 2019 for full production to be realized.
3. The project is 95% complete.

Committee Resolution

The audit query is resolved.

1.5 Oldonyiro Irrigation Scheme Development-Isiolo County

The Board awarded the contract to M/S Dido and Sons Limited at a contract sum of Kshs.93,506,875 and contract duration of 12 Months or 48 weeks. However, there was no project feasibility study conducted before the project was launched. As at the time of reporting, one year after the expected completion time, the project was 85% complete with price variation of Kshs.15, 741,275 to Kshs.109, 248,150 contrary to the provisions of Public Procurement Act, 2005.

Management Response

Feasibility study was carried out before the implementation of the project and the project was planned to be implemented in two phases. The Act was followed and the necessary approvals secured before the variation of the project and it has fully completed. Please refer to annex XVII.

Current status

The works in this phase were completed.

Committee Observation

The Committee made the following observations:

1. Feasibility study was undertaken for the project and was verified by the Auditors.
2. The provisions of the Public Procurement and Disposal Act (2015) were adhered to in varying the contract sum for the project.
3. The project was fully completed.

Committee Resolution

1.6 Oldonyiro Irrigation Scheme Development-Phase 2

The Board contracted M/S Dido and Sons Limited to develop the above project at contract sum of Kshs.224, 584,457 and in a duration of one year stating 4 September 2015. At the expected completion time, only 74% of the project was complete. A payment of Kshs.40,000,000, made to the contractor was not supported with any certificate of work done. Further, the project is yet to be completed.

Management Response

The delay in the completion of the project was occasioned by the delayed delivery of equipment notably pumps and turbines which were being manufactured from China which is completely a new technology in Kenya. Payments to the contractor was done for measured certified works which were fully inspected as per the contract provisions and the works were fully inspected before payment. Please refer to annex XVIII.

Committee Observation

The Committee made the following observations:

1. The delay in the completion of the project was occasioned by the delayed delivery of equipment notably pumps and turbines which were being manufactured from China which is completely a new technology in Kenya
2. The equipment's have been imported, delivered and installed. The project is currently 90% completion and the pending works will be delivered by July 2019.

Committee Resolution

The audit query has been resolved.

1.7 Rahole Canal Irrigation Scheme-Garissa County

The contract was awarded to M/S Concordia Building and Civil Engineers Limited at contract sum of Kshs.300, 365,375. No feasibility study was done before it was implemented which led to challenges during implementation such as construction during the rainy season leading to stoppages and destruction of work done; and failure to include targeted beneficiaries in the planning stage. The project is not yet complete and may not benefit the intended group as they were not involved in its planning from the start. As a result, the project may not achieve its intended purpose.

Management Response

Feasibility studies were carried out before the implementation of the Rahole canal Irrigation Project. The project was to be implemented in 3 phases; this phase of the project was Phase 1 which comprised of construction of intake works and main conveyance canal. All the works completed and were dully certified. Please refer annex XIX.

Current Status

This phase of the project was completed.

Committee Observation

The Committee made the following observations:

1. Feasibility studies were carried out before the implementation of the Rahole canal Irrigation Project and a copy of the study was provided.
2. All the works completed and were dully certified.

Committee Resolution

The audit query has been resolved.

1.8 Rahole Canal Irrigation Scheme-Phase 2

The project design was changed during implementation from open pipe system to closed pipe system. There was a huge change in material required, contract sum and contract duration. Absence of a feasibility study report to guide the projects execution was the main course of the change. Further, management made two payments of Kshs.20, 000,000 and KShs.18, 096,612 to the contractor which however, were not supported with the certificate of work done.

Management Response

Feasibility study and detailed design were undertaken before start of the project. Variation was carried out in accordance with the Act. All the payments done were dully certified and supported. Please refer to annex XX.

Committee Observation

The Committee made the following observations:

1. Feasibility studies were carried out before the implementation of the Rahole canal Irrigation Project and a copy of the study was provided.
2. The provisions of the Public Procurement and Disposal Act (2015) were adhered to in varying the contract sum for the project.
3. This phase of the project was completed.

Committee Resolution

The audit query has been resolved.

1.9 Runga Rehabilitation Works Irrigation Project

The Board contracted M/S Mwanja General Contractors Limited to carry out the project at contract sum of KShs.81, 196,196 with contract duration of 24 Months. The project was not in the approved annual plan as required under Public Procurement and Disposal Act 2005. Further, there was no feasibility study done before it was implemented. As at 30 June 2016 (six months after expected completion time) the project was 70% complete and the contractor had stopped work due to failure of the Board to pay for the work done. It is not clear when the project will be completed and if additional costs will need to be incurred to have it completed.

Management Response

The project was included in the approved annual procurement plan as per the Public Procurement and Disposal Act 2005 and feasibility study and detailed designs were carried out before implementation. It was completed within the budget (cost) and handed to the beneficiaries. The delay in payment was caused by prolonged delay in exchequer release from

the National Treasury and budget cut. Payment was done fully to the contractor for all the works done. Please refer to annex XXI.

Committee Observation

The Committee made the following observations:

1. The project was included in the approved annual procurement plan and feasibility study and detailed designs were carried out before implementation.
2. It was completed within the budget (cost) and handed to the beneficiaries.
3. The delay in payment was caused by prolonged delay in exchequer release from the National Treasury and budget cut.
4. The project is complete and full operational with the targeted area of 300 acres under production.

Committee Resolution

The audit query has been resolved.

1.10 Construction Works of the Mukengesya Irrigation Scheme

The Board contracted a firm to construct the Mukengesya Irrigation Scheme water pan at contract sum of KShs.70, 252,600. Though the project was said to be 92% complete and the certificate issued, it was observed that core deliverables had not been met. More excavation work was required to enable it hold the required volume of water, the site house had not been done, green houses were yet to be constructed, the pump and the pump house were yet to be installed, the tank had not been supplied and its stand had not been constructed and the fencing had not been done. The percentage of completion stated in the certificate appears to be higher than the actual work done.

Management Response

All the components of the project which comprised of excavation works, installation of greenhouses, construction of stand, supply of tanks, fencing and construction of site office were fully completed and all the payments made based on measured and certified works which were fully supported as indicated in the attached final inspection report. Please refer to annex XXII.

Committee Observation

The Committee made the following observation

The project is fully completed and is under production and the water which is the only source of water in the area is being utilized by the community for irrigation and domestic use.

Committee Resolution

The audit query has been resolved.

2.0 Bank Loan for Galana Kulalu Food Security Project

The Board took a bank loan of US\$71,408,014 (KShs.7, 283,617,428) from the Bank of Leumi Israel for the construction works of the 10,000 acres model farm for the Galana Kulalu Food Security Project. However, most of the loan terms are not to the best interest of the Kenya Tax payer. The loan interest will be determined from time to time by the bank depending on

the prevailing economic conditions (clause 6). The borrower will pay any additional costs the bank will incur while mobilizing funds for loan disbursements (clause 7). The Board confirms the Bank's books and account entries in relation to this loan to be correct and binding to the Board (clause 24). The borrower will not be entitled to contest any payment made by the Bank and may not justify its failure to fulfill its payment obligation in accordance with the terms and conditions of the agreement.

Management Response

The Galana Model Farm loan was negotiated by the National Treasury on behalf of the Government of Kenya.

Committee Observation

The Committee made the following observations:

To date Ksh. 3,443,133,322.39 of the loan amount has been utilized leaving available credit of Ksh. 2,447,110,870.00. An amount of KES 841,501,428.00 was used for payment of ASHRA Insurance Premium.

Committee Resolution

Management was asked to provide a copy of the loan agreement during the next meeting to enable the Committee to interrogate the matter.

MIN/PIC/357/2019: CONFIRMATION OF MINUTES

1. Minutes of the 27th sitting held on 30th April, 2019 were confirmed as true record of the proceedings after being proposed by the Hon. Omar Mohamed Maalim Hassan, MP and seconded by the Hon. Rashid Kassim Amin, MP.
2. Minutes of the 28th sitting held on 2nd May, 2019 were confirmed as true record of the proceedings after being proposed by the Hon. Ahmed Abdisalan Ibrahim, MP and seconded by the Hon. Gladys Wanga, MP.
3. Minutes of the 29th sitting held on 7th May, 2019 were confirmed as true record of the proceedings after being proposed by the Hon. Gladys Wanga, MP and seconded by the Hon. Zachary Thuku Kwenya, MP.
4. Minutes of the 30th sitting held on 9th May, 2019 were confirmed as true record of the proceedings after being proposed by the Hon. Paul Kahindi Katana, MP and seconded by the Hon. Gladys Wanga, MP.
5. Minutes of the 31st sitting held on 11th June, 2019 were confirmed as true record of the proceedings after being proposed by the Hon. Gladys Wanga, MP and seconded by the Hon. Paul Kahindi Katana, MP.
6. Minutes of the 32nd sitting held on 13th June, 2019 were confirmed as true record of the proceedings after being proposed by the Hon. Omar Mohamed Maalim Hassan, MP and seconded by the Hon. Rashid Kassim Amin, MP.
7. Minutes of the 33rd sitting held on 18th June, 2019 were confirmed as true record of the proceedings after being proposed by the Hon. Omar Mohamed Maalim Hassan, MP and seconded by the Hon. Rashid Kassim Amin, MP.

8. Minutes of the 34th sitting held on 20th June, 2019 were confirmed as true record of the proceedings after being proposed by the Hon. Gladys Wanga, MP and seconded by the Hon. Paul Kahindi Katana, MP.
9. Minutes of the 35th sitting held on 25th June, 2019 were confirmed as true record of the proceedings after being proposed by the Hon. Rashid Kassim Amin, MP and seconded by the Hon. Joash Nyamache Nyamoko, HSC, MP.

MIN/PIC/358/2019: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/359/2019: ADJOURNMENT

The meeting was adjourned at thirty eight minutes past twelve O'clock.

Signed.....

The Hon. Abdullswamad Sharraf Nassir, MP
(Chairperson)

Date.....

08/08/2019

MINUTES OF THE 42ND SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON FRIDAY 19TH JULY 2019 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 11.00 A.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Joash Nyamache Nyamoko, MP (Chairing)
3. The Hon. Justus Kizito Mugali, MP
4. The Hon. Mohamed Hire Garane, M.P.
5. The Hon. James Kamau Githua Wamacukuru, M.P

ABSENT WITH APOLOGY

1. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
2. The Hon. John Muchiri Nyaga, M.P
3. The Hon. Omar Mohamed Maalim Hassan, MP.
4. The Hon. Raphael Bitta Sauti Wanjala, MP
5. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
6. The Hon. Paul Kahindi Katana, MP
7. The Hon. Purity Wangui Ngirici, MP
8. The Hon. Gladys Wanga, MP
9. The Hon. Thuku Zachary Kwenya, M.P
10. The Hon. Babu Owino Paul Ongili, MP
11. The Hon. Rashid Kassim Amin, MP
12. The Hon. Mary Wamaua Njoroge, MP
13. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 2. Mr. Mohamed Boru | - | Third Clerk Assistant |
| 3. Ms. Sharon Rotino | - | Research Officer |
| 4. Ms. Noelle Chelagat | - | Media Relations Officer |
| 5. Ms. Winfred Atieno | - | Audio Recording Officer |

IN ATTENDANCE

- | | | |
|------------------------|---|------------------------------------|
| 1. Mr. Peter Lugerah | - | Deputy Director, Audit |
| 2. Mr. Joshiah Oyuko | - | Manager, Audit |
| 3. Mr. Fredrick Kitili | - | Manager, Audit |
| 4. Mr. George Ombua | - | Inspectorate of State Corporations |

MIN/PIC/341/2019: PRELIMINARIES

The Chairperson called the meeting to order at seventeen minutes past eleven O'clock followed by a word of prayer.

MIN/PIC/342/2019: EXAMINATION OF AUDITED ACCOUNTS OF KENYA VETERINARY BOARD

Dr. Indraph Ragwa, The Chief Executive Officer of the Kenya Veterinary Board accompanied by Mr. Simon Wainaina (Finance Officer) appeared before the Committee to adduce evidence on the audited accounts of the Kenya Veterinary Board for financial year 2014/15 to financial year 2017/18.

MIN/PIC/343/2019: CASH AT BANK FY 2014/15 & FY 2015/16

The cash and cash equivalents balance of Kshs. 13,372,444 and as disclosed under note 7 to the accounts, excludes bank receipts of Kshs.1,084,435 not in the cash book, some dating as far back as the year 2012. This has resulted in understatement of revenue by the same amount based on the financial records of the Board.

Management Response

Pursuant to the provisions of the Veterinary Surgeons and Veterinary Paraprofessional (VSVP) Act, 2011, the Board gets revenue (AiA) from registering and licensing practitioners, payments are done through cash or bank deposits, For direct payments to the bank account, the depositors are required by the Board to forward the deposit slips indicating their KVB registration numbers or national identity card to facilitate verification and issuance of the receipts. The Kshs.1,084,435 thus represents the money directly deposited to the Board bank account, and the depositors had not forwarded deposit slips, this amount was not consequently recorded in the cash book for lack of details from depositors. However, they were presented as un-reconciling items in the bank reconciliation statement. (Annex I)

In the subsequent FY 2015/2016, the Board continued sensitizing, the veterinary practitioners on the requirements after depositing funds to the Board's bank accounts. Later on in the FY 2016/2017 the Board registered a mobile platform with Safaricom and was issued with a paybill account No 787888. This platform has greatly assisted the Board to identify persons making payment since the mobile and account numbers are mandatory and these details are shown in the Safaricom pay bill statement. This makes issuance of receipts and recording of income manageable.

Committee Observations

The Committee made the following observations:

1. The Kshs.1,084,435 represents the money directly deposited to the Board bank account, and the depositors had not forwarded deposit slips. This amount was not consequently recorded in the cash book for lack of details from depositors.
2. In the FY 2016/2017 the Board registered a mobile platform with Safaricom and was issued with a paybill account No 787888 which has greatly assisted the Board to identify persons making payment and issue receipts.

Committee Resolution

The audit query has been resolved.

MIN/PIC/344/2019: OTHER MATTER (AG. CHIEF EXECUTIVE OFFICER) FY 2014/15

As reported in the previous year, the office of the Chief Executive Officer of Kenya Veterinary Board has been held in acting capacity for the last four (4) years since 9 May, 2012. No explanation has since been provided for the failure of the Board of Directors to have the position filled substantially, in order to enhance independence in decision making. My opinion is not qualified in respect of this matter.

Management Response

The then Acting Chief Executive Officer was deployed by the PS-Ministry of Livestock Development in 2012 as a Chief Executive Officer to allow the Board to carry out recruitment of the CEO (Annex IIa). Before this could be effected, the Board received a letter from the Chief of Staff and Head of Public Service stopping filling of vacancies in Boards as well as the CEOs across all state corporations unless authority is sought and granted by his office (Annex IIb). During the period under review, the Board had to operate with the acting CEO until further directions were issued.

After Board Resolution of 21st August 2015, the Chairman wrote to the Head of Public Service and Kenya Veterinary Board was granted authority to recruit the Chief Executive Officer and the position filled competitively in October 2016. (Annex IIc, IId, IIe, IIIf, IIg, IIh & IIi)

Committee Observations

The Committee made the following observations:

1. The Board had failed to recruit a substantive CEO during the period under review due to a moratorium on recruitment that had been put in place by the Head of Public Service.
2. The Board had recruited a substantive CEO in October 2016.

Committee Resolution

The audit query has been resolved.

MIN/PIC/345/2019: Emphasis of Matter (Operating loss of Kshs. 12,941,456)

The statement of financial performance reflects an operating loss of Kshs.12, 941,456 for the year ended 30 June 2016 compared to a surplus of Kshs.542, 814 realized in the year 2014/2015.

Management Response

The Board made a loss of Kshs 12,941,456 during the financial year under consideration. The loss for the year is attributed to

- A decline in Government Grant by Kshs.7,474,218 (Kshs.16,895,900 received in 2015/2016FY compared with Kshs.24,370,118 received in 2014/2015 FY)
- Increase in expenditure during the year under review, the Board approved various activities; regional workshops, development of organizational structures and Human Resource Manuals, engagement of staff resulting to increased staff costs, enforcement of VSVP act through compliance and inspection, increased vehicle operating cost (Fuel, insurances and Maintenance), revision of Strategic Plan, registration of veterinary professionals country wide among other activities that utilized Board reserves.

In the two subsequent years 2016/2017 and 2017/2018, the Board recorded a surplus of Kshs.7,291,126 and Kshs.11,067,490 respectively (Annex V).

Committee Observations

The Committee made the following observations:

1. The operating costs of the Board were high in the financial year under review due to several issues including development of an organization structure, Human Resource Manual, staff recruitment and revision of the strategic plan.
2. In the two subsequent years 2016/2017 and 2017/2018, the Board recorded a surplus of Kshs.7,291,126 and Kshs.11,067,490 respectively.

Committee Resolution

The audit query has been resolved.

MIN/PIC/346/2019: EXAMINATION OF AUDITED ACCOUNTS FY 2016/17 to FY 2017/18

The Committee heard that the Auditor-General issued an unqualified Opinion on the Board's financial statements for the financial year 2016/17 and financial year 2017/18.

MIN/PIC/347/2019: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/348/2019: ADJOURNMENT

The meeting was adjourned at forty nine minutes past eleven O'clock.

Signed

Date.....08/08/2019

The Hon. Abdullswamad Sharraf Nassir, MP
(Chairperson)

MINUTES OF THE 41ST SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY 18TH JULY 2019 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 3.00 P.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Justus Kizito Mugali, MP
3. The Hon. John Muchiri Nyaga, M.P
4. The Hon. Mohamed Hire Garane, M.P.
5. The Hon. James Kamau Githua Wamacukuru, M.P
6. The Hon. Omar Mohamed Maalim Hassan, MP.
7. The Hon. Raphael Bitta Sauti Wanjala, MP

ABSENT WITH APOLOGY

1. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
2. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
3. The Hon. Joash Nyamache Nyamoko, MP
4. The Hon. Paul Kahindi Katana, MP
5. The Hon. Purity Wangui Ngirici, MP
6. The Hon. Gladys Wanga, MP
7. The Hon. Thuku Zachary Kwenya, M.P
8. The Hon. Babu Owino Paul Ongili, MP
9. The Hon. Rashid Kassim Amin, MP
10. The Hon. Mary Wamaua Njoroge, MP
11. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 2. Mr. Mohamed Boru | - | Third Clerk Assistant |
| 3. Ms. Sharon Rotino | - | Research Officer |
| 4. Ms. Noelle Chelagat | - | Media Relations Officer |
| 5. Ms. Winfred Atieno | - | Audio Recording Officer |

IN ATTENDANCE

- | | | |
|-------------------------|---|----------------|
| 1. Mr. Joshiah Oyuko | - | Manager, Audit |
| 2. Mr. Bob Kyalo | - | Manager, Audit |
| 3. Ms. Monica Kang'ethe | - | Manager, Audit |

MIN/PIC/329/2019: PRELIMINARIES

The Chairperson called the meeting to order at four minutes past three O'clock followed by a word of prayer.

MIN/PIC/330/2019: EXAMINATION OF AUDITED ACCOUNTS OF KENYA WILDLIFE SERVICE

Mr. John Waweru, the Director General of the Kenya Wildlife Service accompanied by Prof. Charles Musyoi (Director, Parks Management) and Ms. Ann Kahihia (Ag. Deputy Director, Development and Communication) appeared before the Committee to adduce evidence on the audited accounts of the Kenya Wildlife Service for financial year 2013/14 to financial year 2016/17.

MIN/PIC/331/2019: PROPERTY, PLANT & EQUIPMENT FY 2013/14

The property, plant and equipment balance of Kshs. 8,189,495,000 as at 30 June 2014 (Kshs. 5,749,119,000 as at 30 June 2017) excludes as similarly reported in the previous years, the value of various parcels of land across the country without title documents on which the Service has put up various developments including buildings. The parcels of land without title documents comprise twelve (12) National Parks, twenty nine (29) national Reserves, nine (9) sanctuaries, nine (9) marine parks and one hundred and twenty seven (127) field plots. It has not been possible in the circumstances, to ascertain the completeness and accuracy of the property, plants and equipment balance Kshs. 8,202,884,000 as at 30 June 2013.

Management Response

KWS owns a total of 222 parcels of land out of which 45 have title deeds. The rest are at various stages of title acquisition. The organization is currently strategizing on the valuation of the titled land to enable incorporation in our financial statements. However, due to the vastness of the land masses involved, it's quite expensive and considering revenue shortfalls it becomes difficult to fund internally. The management has written to the Board requesting for the valuation of the entire KWS assets noting that the last exercise was done 10 years ago in 2008.

Committee Observations

The Committee made the following observations:

1. KWS faced challenges in acquiring titles for their land ranging from slow processing of documents by the Ministry of Lands to lack of budgetary provision for processing of title documents.
2. The Service is working with the Ministry of Tourism and Wildlife to expedite the issuance of the title deeds.

Committee Resolution

The Committee resolved that KWS should expedite the process of title acquisition to address the audit query.

MIN/PIC/332/2019: ACCOUNT PAYABLES - KSHS. 1,042,626,000

The payables balance of Kshs.1,042,626,000 as at 30 June 2014 including outstanding accrued expenses Kshs.138,680,329 as well as stale cheques amounting to Kshs.4,529,244 for which no explanation was offered regarding their status and non-remittance.

In the circumstances the accuracy and propriety of Kshs.143,209,573 could not be confirmed as at 30 June 2014

Management Response

Accrued expenses account is a temporally account which is used to consolidate all KWS outstanding obligations emanating from non-regular suppliers and also to account for unpaid leave as at 30th June every year. The amounts are usually cleared during the first quarter of the subsequent financial year. The figure quoted outstanding amount of Kshs.138,680,329 represent the leave unpaid leave days for the staff who had outstanding leave balance as at 30th June 2014. It should be noted that KWS leave calendar runs from 1st January to 31st December every year, therefore the Kshs.138,538,564 represents half year unutilized. Consequently, as at 30th June when accounts are being prepared, half year expenditure on leave won't have been recognized thus leading to the accrual.

The stale cheques amounting to Kshs.4,529,244 were cheques issued to third parties but had not presented by them to the bank for payment for more than six months. This amount was adjusted in the financial statements through the stale cheques account.

Committee Observations

The Committee made the following observations:

1. The amount of Kshs.138,680,329 represent the leave unpaid leave days for the staff who had outstanding leave balance as at 30th June 2014.
2. The KWS leave calendar ran from 1st January to 31st December every year.
3. The leave calendar had since been adjusted to run concurrently with the financial year to avoid recurrence of the audit query.

Committee Resolution

The audit query has been resolved.

MIN/PIC/333/2019:

ENDOWMENT FUND FY 2013/14 to FY 2016/17

The endowment fund was created by the management with an aim of enhancing long term plans to meet its future need and increasing funding independence from partners and supporters. However, the fund had a balance of Kshs. 67,803,513 as at 30 June 2014 and contribution to this fund was stopped from 2013. In addition, the policy document for this fund has never been approved or fully operationalized.

Consequently, it has not been possible to establish whether the fund is meeting its intended objectives.

Management Response

The initial policy as prepared had envisaged that a separate board would be appointed to manage the endowment fund. However on advice from the Attorney

General in 2010, it was noted that the endowment fund could only be operationalized through a separate Board from the one of KWS. The fund was initially scheduled to be launched on 27th August 2012. However, since deliberations were going on with regards to the new Wildlife Act, it was agreed to wait for the new Act to come into force. With the change of the Wildlife Conservation Management Act 2013, there was a requirement to put in place regulations as per the new Act. A consultant was procured and completed the regulations in April 2015. The Wildlife Conservation Management Act, 2013 recognizes Endowment fund and how it's supposed to be operationalized and managed through a board of trustees. The Service has written to the National Treasury for regularization.

Committee Observations

The Committee made the following observations:

1. The Fund was set up to provide long term financial security for the Kenya Wildlife Service.
2. Following advice from the Attorney General in 2010, it was noted that the endowment fund could only be operationalized through a separate Board from the one of KWS.
3. Amendments to the Wildlife Conservation Management Act (2013) had been passed by Parliament in 2019 to enable the operationalization of the Fund.
4. The Endowment Fund had currently accumulated Kshs. 3,800,000,000 since inception and accrued interest of Kshs. 400,000,000.
5. The amounts accumulated in the Fund cannot be utilized as the Cabinet Secretary for Tourism and Wildlife had not appointed a Board to administer the Fund.

Committee Resolution

The Cabinet Secretary for Tourism and Wildlife should urgently appoint a Board to administer the Kenya Wildlife Service Endowment Fund.

MIN/PIC/334/2019: LOSS FROM ACCIDENT ON KWS BELL HELICOPTER FY 2013/14

During the year under review, an accident occurred at KWS hanger involving KWS Bell Helicopter Registration number 5y-KWM and a water bowser registration KAX 791R belonging to an oil marketing company. The accident occurred while the Helicopter was being fueled by a fuel bowser owned by the oil marketing company.

KWS claimed the accident was caused solely by negligence and non-observation of standard operating procedures for fueling while the oil marketing company claimed that the accident would not have occurred had the KWS employee not rotated the helicopter rotor blades. These claims and counter claims resulted to dispute on settlement of damages for the helicopter.

The oil marketing company declined to admit liability which led the Kenya Wildlife Service to institute legal proceedings against the oil marketer. The damage for the helicopter as assessed by insurance company contracted by the Service amounted to US dollars 618,990.90. This amount represents the cost for repairs and related charges and loss of use of the helicopter for 90 days the time the helicopter took to resume to full operation.

As the dispute proceeded, the oil marketing company accepted to pay for the cost of repairs and related charges but declined to compensate the Service for loss of use of the helicopter.

Consequently, the matter was settled out of court and the oil marketing company agreed to pay the Service Kshs.13,739,825(US\$ 159,990.90) but declined to pay for loss of use value amounting to US\$459,000 or approximately Kshs.42,228,000

No justification has been provided why the Service agreed and received compensation of Kshs.13,739,825 for damages and forfeited Kshs.42,688,000 for loss of use of the aircraft, the time during which the helicopter was under repair.

Management Response

The KWS Bell Helicopter got an accident involving Kenya Shell fuel tanker while refueling. The Service made a claim for repairs USD 159,990.90 which was settled by the company as observed by auditors. However, the loss of use Kshs.42,688,000 wasn't settled due to challenges on contractual documentation to third parties usage of Aircraft to support KWS revenue loss claim.

Committee Observations

The Committee made the following observations:

1. The matter was settled out of court and the oil marketing company agreed to pay the Service Kshs.13,739,825(US\$ 159,990.90) but declined to pay for loss of use value amounting to US\$459,000 or approximately Kshs.42,228,000.
2. The contractual agreement between the two parties did not contain a clause on compensation from economic loss.

Committee Resolution

The Committee made the following resolutions:

1. Any future contractual agreement between the Service and any other service provider should contain a clause on compensation for economic loss.
2. Management should bring the matter to the Board's attention and seek concurrence for writing off of the Kshs. 42,688,000 to resolve the audit query.

MIN/PIC/335/2019: ACCURACY AND COMPLETENESS OF THE FINANCIAL STATEMENTS FY 2014/15

The financial statements for the year 2014/2015 contain uncorrected misstatements in regards to profit and loss, assets and reserves of Kshs.95,259,000, Kshs.106,824,000 and Kshs.11,565,000 respectively.

Consequently, the accuracy and completeness of the financial statements of Kenya Wildlife Service could not be confirmed.

Management Response

The profit and loss, assets and reserves misstatements in the 2014/2015 financial statements were adjusted in the subsequent year

Committee Observations

The Committee made the following observations:

1. Some financial entries were not included in the financial statements.
2. The audit of the Service's accounts had been outsourced to PriceWaterhouse Coopers for the financial years 2013/14 and 2014/15.
3. The inaccurate entries should have been noted and corrected during the audit process.
4. Financial statements for year 2015/2016 were reviewed for adjustments.

Committee Resolutions

The audit query has been resolved.

MIN/PIC/336/2019: INVENTORIES FY 2014/15

The inventories balance of Kshs.465,946,000 as at 30 June 2015 was based on the latest price and not on the recommended method of first in first out or weighted average cost basis. This was an unexplained departure from the International Financial Reporting Standards under which the financial statements are prepared. Further, the service did not maintain proper records to conduct effective year end stock take.

In the circumstances, the accuracy and completeness of the inventory balance of Kshs.455,946,000 could not be ascertained.

Management Response

KWS undertakes an annual stock take exercise at the end of every financial year. However, both the stocktaking exercise and the stores management systems are manual. This makes the exercise cumbersome and subjective. The Service is in the process of upgrading the accounting where one of the deliverables includes procurement module which incorporates stores management system. This will facilitate easier stock valuation using the recommended standard valuation methods.

The Kshs.455,946,000 was based on the last-in-last-out method(LIFO) of valuation of stocks . LIFO method is easier to administer given our manual systems and also taking cognizance that KWS is not a trading entity.

Committee Observations

KWS undertakes an annual stock take exercise at the end of every financial year through a manual process. Stock taking and valuation was done using the last-in-last-out method (LIFO) of valuation which was easier to administer given the manual nature of the process.

Committee Resolution

Management should expedite the automation of the stock taking exercise and adhere to the International Financial Reporting Standards under which the financial statements are prepared.

MIN/PIC/337/2019: FINANCIAL PERFORMANCE AND SERVICE SUSTAINABILITY FY 2014/15 to FY 2016/17

During the year under review, the Service recorded a deficit of Kshs.680,519,000 (2013/2014) deficit of Kshs.546,253,000 bringing the accumulated deficit to Kshs.4,428,098,000 (2013/2014 accumulated deficit of Kshs.3,747,579,000). The continued sustainability of the Service is therefore dependent on the regular Government support, creditors and or development partners' support. This scenario is untenable considering the vital importance of Wildlife Conservation for the present and future generations as envisioned in the Constitution of Kenya.

Management Response

KWS was established with the overall mandate of conservation and management of wildlife. Since inception in 1989, the Service has been relying on GOK subvention to supplement its internal revenues to discharge its mandate. It's true that the Service has been making deficit because the combined internal revenues and Government support has not been adequate to cater for the operating costs and personnel emoluments. Further, KWS is categorized as a Service parastatal and its mandate extend even to areas where no revenues are generated. Internal revenues which KWS relies on are mainly dependent on international tourism which has been declining over the recent years due to the slump in the tourism industry.

The Service mandate covers twelve (23) National Parks, twenty nine (29) national Reserves, nine (9) sanctuaries, nine (9) marine parks totaling 70 and 127 field stations. Out of these, only 6 parks are able to breakeven. The rest are cost centres and hardly generate any revenues. The Services budget comprises of 41% internal revenues, 13% Donation and Grants and heavily relies on GOK at 44% to meet its vast mandate.

Amidst all the challenges the management has devised the Endowment Fund as a long term strategy to ensure sustainability and also looking for ways to diversify revenue streams to reduce overreliance on the Government.

Committee Observation

The Committee made the following observations:

1. The Service has been making deficit because the combined internal revenues and Government support has not been adequate to cater for the operating costs and personnel emoluments.
2. KWS is also dependent on international tourism which has been declining over the recent years due to the slump in the tourism industry.

Committee Resolution

The Endowment Fund should be operationalized expeditiously as a long term strategy to ensure financial sustainability of the Service.

MIN/PIC/338/2019: OTHER MATTER

Weak Internal Information Technology Control

During the period under review, some users of the system who had either retired or resigned had active accounts. Staff who had been transferred during the period had their old accounts active. Further, one vendor account which was activated was not monitored. In addition, password parameters had not been enabled as per the ICT policy providing room for abuse of user access rights.

Consequently, the Service is operating a weak information system that casts doubt on the integrity of the financial information from the system.

Management Response

KWS Finance department uses a financial system called Sunsystem of accounting. The system is structured in such a way that different users are assigned different levels of user rights depending on the function of each staff.

The Service has cleaned the system and removed all users who have exited the organization. For the staff on transfer to other stations, the system is spread to the entire KWS Parks and Stations thus they continue using the system. The organization is in the process of upgrading the financial system with enhanced performance and security features.

Committee Observation

The KWS financial system is structured in such a way that different users are assigned different levels of user rights depending on the function of each staff. This ensures the integrity of the system is upheld by controlling access to the system

Committee Resolution

The audit query has been resolved.

MIN/PIC/339/2019: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/340/2019: ADJOURNMENT

The meeting was adjourned at twenty eight minutes past five O'clock.

Signed

Date.....08/08/2019

The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

MINUTES OF THE 40TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY 18TH JULY 2019 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 11.00 A.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
3. The Hon. Rashid Kassim Amin, MP
4. The Hon. Justus Kizito Mugali, MP
5. The Hon. Omar Mohamed Maalim Hassan, MP
6. The Hon. Raphael Bitta Sauti Wanjala, MP
7. The Hon. James Kamau Githua Wamacukuru, M.P
8. The Hon. Joash Nyamache Nyamoko, MP
9. The Hon. John Muchiri Nyaga, M.P
10. The Hon. Mohamed Hire Garane, M.P

ABSENT WITH APOLOGY

1. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
2. The Hon. Gladys Wanga, MP
3. The Hon. Babu Owino Paul Ongili, MP
4. The Hon. Thuku Zachary Kwenya, M.P
5. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
6. The Hon. Mary Wamaia Njoroge, MP
7. The Hon. Paul Kahindi Katana, MP
8. The Hon. Purity Wangui Ngirici, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 2. Mr. Mohamed Boru | - | Third Clerk Assistant |
| 3. Mr. Thomas Ogwel | - | Fiscal Analyst |
| 4. Ms. Sharon Rotino | - | Research Officer |
| 5. Ms. Marlene Ayiro | - | Legal Counsel |
| 6. Ms. Noelle Chelagat | - | Media Relations Officer |
| 7. Ms. Winfred Atieno | - | Audio Recording Officer |

IN ATTENDANCE

- | | | |
|-----------------------|---|------------------------------------|
| 1. Mr. Peter Lugerah | - | Deputy Director, Audit |
| 2. Mr. Joshiah Oyuko | - | Manager, Audit |
| 3. Ms. Sharon Wangari | - | Manager, Audit |
| 4. Mr. Victor Momanyi | - | Inspectorate of State Corporations |

MIN/PIC/318/2019: PRELIMINARIES

The Chairperson called the meeting to order at six minutes past eleven O'clock

followed by a word of prayer.

MIN/PIC/319/2019: EXAMINATION OF AUDITED ACCOUNTS OF NATIONAL IRRIGATION BOARD

Mr. Gitonga Mugambi, the General Manager of the National Irrigation Board accompanied by Mr. Raphael Ogengo (Deputy General Manager, Irrigation and Infrastructure Development Services), Mr. Daniel Atula (Deputy General Manager, Operations and Irrigation Management Services), Ms. Jedidah Narocho (Head of Finance) and Mr. Patrick Olimba (Accountant) appeared before the Committee to adduce evidence on the audited accounts of the Board for FY 2014/15 to FY 2016/17.

He briefed the Committee as follows:

MIN/PIC/320/2019: LEASE OF GALANA RANCH FY 2013/14 TO FY 2017/18

During the year, the Board incurred an expenditure of Kshs. 60 million for the lease of 20,000 acres land from Agricultural Development Corporation (ADC) for a period of five (5) years with effect from 1 April 2013. According to the lease agreement, the Board is to pay Kshs. 3,000 per acre for the lease land.

However, a review of similar lease agreements entered into between Agricultural Development Corporation (ADC) and some private investors revealed that Corporation was charging between Kshs. 200-300 per acre and although the management has explained that the rate of Kshs 3,000. Per acre was based on the advice by the Ministry of Housing and Urban Development Ref VAL71/A/V dated 7 April 2014, it is not clear whether this advice was based on any valuation carried out on the lease land. In addition, no logical explanation has been given as to why the rate changed to the Board (NIB) which is a Government institution materially differs with those charged to private firms for the same acreage of land leased.

Management Response

NIB raised objections as to why ADC had requested to be paid more money than what was being charged to the private investors as proposed in their letter addressed to the Cabinet Secretary, Ministry of Agriculture, Livestock & Fisheries dated 4th December 2013. In the letter dated 29th January 2014, NIB gave a counter offer to pay Ksh. 150/= per acre as in the case of Super Grow Ltd instead of Kshs. 6,000/= acre which ADC had proposed.

In negotiations, ADC had confirmed that the rates agreed with the private investors were not based on any valuation being historical and that they had written to all the lessees to hold any activities on the leased land until such a time when the new rates would be agreed upon as per the letter to Agricultural Integration Co. Ltd (ARAFCO) dated 12th September 2013.

When it was determined that NIB would jointly work with ADC on the leasing of land to the public, ADC empowered NIB to write to all the lessees of the land to confirm

that they will abide to new conditions in order to continue with their leases in line with the Government recommendations based on the plans of the irrigation project.

Committee Observations

The Committee made the following observations:

1. The Agricultural Development Corporation was overcharging the National Irrigation Board for leasing of the Galana Ranch. The Corporation was leasing the ranch to NIB at a rate of Kshs. 3,000 per acre compared to a rate of Kshs. 200-300 charged to private firms for leasing similar land.
2. The Board had raised objection to the rate being charged and wrote to the Cabinet Secretary, Ministry of Agriculture, Livestock & Fisheries in a letter dated 29th January 2014 in which NIB gave a counter offer to pay Ksh. 150/= per acre.

Committee Resolution

The Committee made the following resolutions:

1. The Board was asked to provide a copy of the letter to the Ministry of Agriculture seeking renegotiations of the lease rate.
2. The Committee further resolved to take up the matter with Agriculture Development Corporation during examination of the Corporation's audited accounts.

MIN/PIC/321/2019: WORKS IN PROGRESS FY 2014/15

Included in the statement of financial position WIP figure of Kshs.16,937,607,320 are costs totaling Kshs.9,695,074,003 that relate to periods prior to 2012/2013. The projects are ongoing although some behind schedule. It is not possible to confirm whether the projects will be completed in the near future or to determine the additional costs, if any that would be necessary to complete the project, or the losses that the Board would suffer in the event that the projects are not completed. Consequently, it is not possible to give an opinion on the carrying value of the work in progress as reflected in the financial statements.

Management Response

As noted by the auditor the projects are ongoing though some are behind schedule. The main reason for delay in some of the projects which are behind schedule is the cash flow problem due to budget cuts.

Current Status

Most of the projects captured were completed and completion certificates issued. Please refer to annex I.

Committee Observations

The Committee made the following observations:

1. The delay in completion of some of the projects was caused by cash flow problem due to budget cuts.
2. The projects had since been completed and completion certificates issued.

Committee Resolution

The audit query had been resolved.

MIN/PIC/322/2019: COMPENSATION FOR LAND FY 2015/16

Included in the free hold land balance of Kshs.1,189,586,062 as at 30 June 2016 are compensation payments for Thiba dam totaling Kshs.357,895,014, Lower Sio Kshs.10,922,017 and Lower Kuja Kshs.6,331,485 but for which management has not provided details on persons compensated, the rates of compensation, and the acreage of the land acquired during the period.

It has therefore not been possible to ascertain the accuracy of Kshs.375, 148,516 shown in the financial statements as value of the free hold land acquired.

Management Response

i. Details of Kshs. 357, 895,014 paid as compensation for Mwea Irrigation Development Project (Thiba Dam)

National Irrigation Board paid Kshs. 357,895,014 to 65 project affected persons to acquire 43.78 acres of land together with improvements thereon. The List of the project affected persons compensated and the rates are hereby attached. *Annex I.*

ii. Details of Kshs. 10,922,017 paid as compensation for Lower Sio Irrigation Development Project

National Irrigation Board paid Kshs. 10,922,017 to 15 Project affected persons to acquire 31.66 acres of land together with improvements thereon. The List of the project affected persons compensated and the rates are hereby attached. Please refer to annex II.

Current Status

The required supporting schedules have been provided as per annex II.

iii. Details of Kshs. 6,331,485 paid as compensation for Lower Kuja Irrigation Development Project

National Irrigation Board paid Kshs. 6,331,485 to 71 Project affected persons to acquire 64.81 acres of land together with improvements thereon The List of the project affected persons compensated and the rates are hereby attached. Please refer to annex III.

Committee Observations

The Committee made the following observations:

1. The National Irrigation Board provided details of persons compensated, the rates of compensation, and the acreage of the land acquired for the Thiba dam, Lower Sio and Lower Kuja projects.
2. The audit query arose due to delayed submission of documents to the Auditor by the Board.

Committee Resolution

The Committee made the following resolutions:

1. The Committee would propose amendments to the Public Audit Act to provide for punitive measures in instances where accounting officers fail to provide documentation to the Auditor during the audit period resulting in audit queries.
2. The audit query had been resolved.

MIN/PIC/323/2019: BUILDINGS FY 2015/16

Building materials had been included in the balance under buildings with no specific building project.

The Fixed asset register does not have a record of NIB buildings as the Board's assets.

Management Response

The figure of Kshs.32, 611,964 relates specifically to major repairs carried out to workshops, and drying floors, offices and staff houses as per the summary in table ii below.

NIB maintains a fixed asset register which include buildings which are all over the various Irrigation Schemes. Please refer to annex IV.

Current Status

The assets register for property plant and equipment is hereby attached. Annex V.

Committee Observations

The assets register for property plant and equipment was provided by Management.

Committee Resolution

The audit query had been resolved.

MIN/PIC/324/2019: WORKS IN PROGRESS FY 2015/16

Included in the statement of financial position is work-in-progress balance of Kshs.15,014,397,659 as at 30 June 2016 comprising of projects relating to periods prior to 2012/2013 whose total cost as at that date was Kshs.880,008,698.

The projects have stalled and are far behind schedule. It was not possible to confirm whether they will be completed in the near future and the additions cost(s) if any, that will be required to complete them or the losses the Board may suffer in the event that the projects are not completed.

Management Response

All the project were completed and attached are the completion certificates. Annex V.

Current Status

The projects are under production being managed by the farmers.

Committee Observations

The stalled projects had since been completed and handed over to farmers.

Committee Resolution

The audit query had been resolved.

MIN/PIC/325/2019: PAYABLES FROM EXCHANGE TRANSACTIONS FY 2015/16

3.1 Outstanding KRA Dues

Included in the payables from exchange transactions' balance of Ksh.4, 198,630,672 as at 30 June 2016 is a balance of Kshs.623,242,634 due to Kenya Revenue authority which has been outstanding over a long period. However, the management has not explained how it intends to settle the balance. Further, interest and penalties on the outstanding balance have not been recognized in the Board's books of account.

Management Response

NIB has been settling the KRA bills as and when it receives funding from the Treasury. In February 2019, the management negotiated a debt settlement plan with KRA whereby it committed itself to set aside Ksh. 200,000,000 from each quarterly exchequer receipt from the National Treasury for settlement of the outstanding debt.

Current Status

To date a total of Ksh. 630,000,000 in respect of the old debt has been paid. The management has also undertaken a deliberate stand not to ever again accumulate KRA debt but to settle the bills as they fall due. Annex VI.

Committee Observations

The Committee made the following observations:

1. In February 2019, the management negotiated a debt settlement plan with KRA whereby it committed itself to set aside Ksh. 200,000,000 from each quarterly exchequer receipt from the National Treasury for settlement of the outstanding debt.
2. A total of Ksh. 630,000,000 in respect of the old debt has been paid. No penalties were charged by the Revenue Authority.

Committee Resolution

The audit query had been resolved.

3.2 Dues to Contractors

Further, included in the trade payables balance of Kshs.4,198,630,672 is an amount of Kshs.2,106,175,301 due to contractors whose projects (contracts) are ongoing or stalled. This is an indication that the Board is unable to meet its obligations to contractors. In addition, interest and penalties due on late payments on the said projects have not been factored in the Board's books of account. Further, the completion of some of the projects is in doubt due to lack of funds.

In the circumstances, it has not been possible to ascertain the carrying amount of trade payables balance of Ksh.4, 198,630,672.

Management Response

The amount due to contractors of Ksh. 2,106,175,301 is part of NIB's pending bills of Ksh. 4, 249,843,292 as at 30 June 2016. The management has made efforts to engage The National Treasury through the State Department of Irrigation in the Ministry of Agriculture, Livestock, Fisheries and Irrigation with the view to convince the National Treasury to consider allocating more funds through supplementary review.

At the same time the management has strived to ensure that the Board continues executing ongoing projects and close the year with minimum pending bills so that we can embark on 2016-17 projects and programs on a sound footing.

Current Status

As at June 2019, NIB's pending bills stood at Ksh 2.4 billion as opposed to Ksh. 4.2 billion in the financial year 2015/2016. With continued support from The National Treasury, the management shall continue to honor its financial obligations as and when they fall due.

Committee Observations

The Committee made the following observations:

1. All certified pending bills had been paid by the Board.
2. The Board did not incur any interest on delayed payments to contractors following negotiations between the two parties.

Committee Resolution

Agreements between State Corporation and contractors on non-payment of interest accumulated due to delayed payment should be in writing to avoid any future claims.

3.3 Staff Gratuity

Include in the trade payables balance' of Kshs.4,198,630,672 is an amount of Kshs.22,605,637 being staff gratuity, some dating as far back as 2013/2014 not remitted to the pension administrator. Failure to make statutory remittances suggests that the Board may be facing financial constraints. The interest and

penalties on the unremitted amounts have not been factored in the Board's books of account.

Management Response

NIB has four categories of staff serving under different terms i.e. Contract Terms. Permanent, Temporary and casual.

Staff who serve on a 3-year contract terms do not make any contribution towards their retirement benefits. However, the employer at the end of every financial year makes a provision of 31% on basic salary earned. These provisions are treated as staff liabilities and paid on expiry of the contracts.

The balance of Kshs 22,605,637 refers to an amount which had been accumulated as liability owed to staff engaged under contractual terms at the end of the financial year. This is supported by the schedule and sample of paid gratuity. Please refer to annex VII.

Committee Observation

National Irrigation Board does not have any outstanding dues to the pension fund and no risk of penalties is anticipated.

Committee Resolution

The audit query had been resolved.

3.4 Retention Money

Included in the balance from trade payables of Ksh.1, 735,753,197 is an amount of Ksh.136, 902,560 referred to as retention money. However, the analysis provided for the retention money and the bank balance for the same reflects a balance of Ksh.111, 804,362 resulting in an unexplained and unreconciled difference of Ksh.25, 098,198.

Management Response

The difference of Ksh. 25,098,198 refers to the retention money deducted from contractors' payments but not transferred from the main development bank account to the retention bank account as before.

Currently NIB is paying retention liabilities to contractors directly from the development bank account without having first to transfer to the retention account.

Committee Observations

The Committee made the following observations:

1. The Board had reviewed its payment mechanism to address the audit query.
2. NIB had not provided this explanation to the auditor hence the audit query.

Committee Resolution

The audit query had been resolved.

MIN/PIC/326/2019: GALANA KULALU FOOD SECURITY PROJECT FY 2015/16

4.2 Under-utilization Leased Land

Information and documents available indicate that the model farm covers 10,000 acres out of the 20,000 acres leased. The remaining 10,000 acres are idle and will remain so since they are not included in the model farm programme. Management has not explained why they leased 20,000 acres of land when they required only 10,000 acres. In the circumstance, it has not been possible to confirm that Kshs.150,000,000 being lease charges payable by the Board for the five years for the idle land is a proper charge to public funds.

Management Response

NIB Board approved the leasing of 20,000 acres based on the pre-feasibility and pre-investment study that the water available in Galana River on direct abstraction could irrigate 20,000 acres. Based on this, NIB planned to implement the Model Farm measuring 10,000 acres and then develop the remaining 10,000 acres but this has delayed due to lack of funds. Board minutes are hereby attached.

Committee Observations

The Committee made the following observations:

1. The Board could not access funding for the development of the full 20,000 acres.
2. Out of the leased land of 20,000 acres, 10,000 acres is occupied by the model farm and part of the remaining 10,000 acres is occupied by the contractor's camp site, the employer staff houses, the pumping stations, police camp and the workers houses.
3. The National Irrigation Board has not paid the lease since the financial year 2015/16.

Committee Resolution

The audit query has not been resolved.

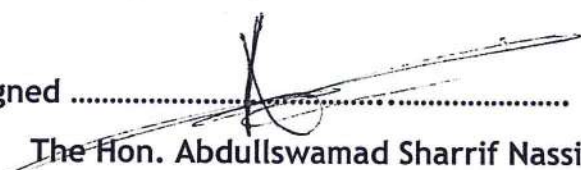
MIN/PIC/327/2019: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/328/2019: ADJOURNMENT

The meeting was adjourned at three minutes past one O'clock.

Signed


The Hon. Abdullswamad Sharrif Nassir, MP

(Chairperson)

Date.....

08/08/2019

1

MINUTES OF THE 39TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON WEDNESDAY 17TH JULY 2019 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 3.00 P.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Omar Mohamed Maalim Hassan, MP
3. The Hon. Raphael Bitta Sauti Wanjala, MP
4. The Hon. Joash Nyamache Nyamoko, MP
5. The Hon. John Muchiri Nyaga, M.P
6. The Hon. Mohamed Hire Garane, M.P
7. The Hon. Paul Kahindi Katana, MP
8. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
9. The Hon. Justus Kizito Mugali, MP
10. The Hon. Thuku Zachary Kwenya, M.P

ABSENT WITH APOLOGY

1. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
2. The Hon. Babu Owino Paul Ongili, MP
3. The Hon. James Kamau Githua Wamacukuru, M.P
4. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
5. The Hon. Mary Wamaua Njoroge, MP
6. The Hon. Purity Wangui Ngirici, MP
7. The Hon. Rashid Kassim Amin, MP
8. The Hon. Gladys Wanga, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 2. Mr. Mohamed Boru | - | Third Clerk Assistant |
| 3. Mr. Thomas Ogwel | - | Fiscal Analyst |
| 4. Ms. Sharon Rotino | - | Research Officer |
| 5. Ms. Marlene Ayiro | - | Legal Counsel |
| 6. Ms. Noelle Chelagat | - | Media Relations Officer |
| 7. Ms. Winfred Atieno | - | Audio Recording Officer |

IN ATTENDANCE

- | | | |
|------------------------|---|------------------------------------|
| 1. Mr. Kalinda Muli | - | Deputy Director, Audit |
| 2. Mr. Joshiah Oyuko | - | Manager, Audit |
| 3. Ms. Grace Atila | - | Manager, Audit |
| 4. Mr. Bernard Ngulalu | - | Inspectorate of State Corporations |

MIN/PIC/311/2019: PRELIMINARIES

The Chairperson called the meeting to order at ten minutes past three O'clock followed by a word of prayer.

MIN/PIC/312/2019: EXAMINATION OF AUDITED ACCOUNTS OF KENYA NATIONAL HIGHWAYS AUTHORITY

Eng. Peter Mundinia, the Director General of the Kenya National Highways Authority accompanied by Mr. William Masita (Director, Audit Services), Mr. James Bowen (Director, Corporate Services), Eng. David Muchilwa (Director, Development), Mr. Chanje Kera (Deputy Director, Finance & Accounting), Eng. Okeyo Charles (Deputy Director, Development), Eng. Philemon Kandie (Deputy Director, Road Asset Management), Ms. Levira Wanyonyi (Deputy Director, Supply Chain Management) and Ms. Jessica Mbae (Senior Legal Officer) appeared before the Committee to adduce evidence on the audited accounts of the Board for FY 2014/15 to FY 2016/17.

The Director General submitted the following documents requested by the Committee during the previous meeting:

1. A schedule of interest paid by KENHA due to delayed payment to contractors;
2. Correspondence with the Ministry of Roads regarding the stolen Computers, Touch Smart Desktop Computers, Laptop Computers and Integrated Services Routers for the Mechanical and Transport Department;
3. The contract amount for the Homabay-Oyugis project.

MIN/PIC/313/2019: KENYA TRANSPORT SECTOR SUPPORT PROGRAMME IDA CREDIT NO. 4926 FY 2015/16 & FY 2016/17

2.2 Rehabilitation of Bachuma Gate-Maji ya Chumvi Section of Nairobi- Mombasa Road (A109).

As reported in the previous year, the project was awarded on 10th December, 2013 to M/s China Dalian International Economic and Technical Co-operation Group Co Ltd at a contract sum of Kshs. 4,986,218,100.73 for a period of 24 Months commencing 3rd November, 2014 and a defects liability period of 12 Months. The project was behind schedule. Review of the progress in the year under audit revealed that the Monthly progress report no.32 of June 2017 showed that the percentage of physical works completed was 85% while percentage of time elapsed was 128%, an indication of slow progress in project implementation.

Management Response

The Contractor's progress was slowed down due to various circumstances beyond the control of the parties such as adverse weather (heavy rainfall), delayed exchequer releases to the Authority hence cash flow to the contractor, and delays in compulsory acquisition of parcels of land essential to the project due to inadequate budget. These circumstances entitled the contractor to extensions of time, as per contractual provisions.

Arising from the project being behind schedule, the contractor was instructed to work extra hours in order to recover the lost time. The contractor was further instructed to

deploy additional road works equipment to facilitate completion of the pending works as per the program of works earlier approved. Currently, the project is substantially complete and a Taking Over Certificate (copy attached and marked as **Appendix KeNHA/2017/2.1-0**) issued on 30th October 2018.

Committee Observations

The Committee made the following observations:

1. The delay in completion of the project was occasioned by adverse weather (heavy rainfall), delayed exchequer releases to the Authority and delays in compulsory acquisition of parcels of land essential to the project due to inadequate budget.
2. The project was completed in October 2018 with no extra cost incurred by the Authority.

Committee Resolution

The audit query has been resolved.

2.3 Construction of three (3) interchanges along A104 at Nyahururu turnoff, Njoro turnoff and Mau Summit.

As reported in the previous year, the contract was awarded to M/s China Railway No10 Eng Group Co at a contract sum of Kshs.2, 690,008,029.77 for a period of fifteen Months. The project commenced 2 February, 2015 and was originally scheduled to be completed on 2 May, 2016. The project was behind schedule. Review of the progress in the year under audit revealed that Monthly Progress Report No. 24 of May 2017 shows that the percentage of time elapsed was 80% while the physical works completed were at 56.5% an indication of slow progress in project implementation.

Management Response

The delay was occasioned by the following;

- a. Delayed acquisition of land from project affected persons as listed below:-
 - Mau Summit Interchange-Chamгаа petrol station compulsory land acquisition was delayed. The same was resolved on 4th March, 2016.
 - Njoro Interchange land had a court case resulting in injunction against KeNHA under ELC petition 33 of 2015. The matter was resolved on 15th May, 2016.
 - Nyahururu Interchange, compulsory acquisition of part of Shell petrol station, Hotel Kunste and Total petrol station was delayed. The issue was resolved on 15th May, 2016
- b. Significant delays in clearance of plant and equipment from the port of Mombasa took place due to delayed issuance of temporary exemptions of customs duty on construction equipment.

- c. Adverse climatic conditions (heavy rainfall) were experienced during the better part of the project implementation period.
- d. The project experienced delays in the relocation of service lines, such as water pipes and electrical infrastructure, from the right of way by service providers despite having made compensation payments were experienced, affecting utilities.

However every effort was made to mitigate the delays and accelerate progress, such that the status of the three interchanges is listed below:-

- Mau and Njoro Turnoff interchanges were substantially completed by 21st December, 2017 and are open to public traffic. The project objectives of decongestion and improvement in road safety have been realized at these locations. The Taking Over Certificates were issued on 21st December 2017.
- Nyahururu Interchange was substantially completed and a Taking Over Certificate issued on 30th April 2018.

Copies of the Taking Over Certificates are attached and marked as *Appendices KeNHA/2017/2.3-1* and *KeNHA/2017/2.3-2*

Committee Observations

The Committee made the following observations:

1. The delay in completion of the project was occasioned by adverse weather (heavy rainfall), delays in compulsory acquisition of parcels of land essential to the project compulsory land acquisition, a court case resulting in an injunction against KeNHA. There was also a delay in clearance of plant and equipment from the port of Mombasa took place due to delayed issuance of temporary exemptions of customs duty on construction equipment.
2. The Mau and Njoro Turnoff interchanges were substantially completed by 21st December, 2017 and Nyahururu Interchange was substantially completed and a Taking Over Certificate issued on 30th April 2018.

Committee Resolution

The audit query has been resolved.

MIN/PIC/314/2019: CONSTRUCTION OF THUA BRIDGE AND APPROACHES FY 2014/15 & FY 2015/16

The contract was awarded to M/S KIU Construction at a cost of Kshs. 424,605,676.74 for 16 months with 24 months defect liability period. The contract was however extended to 21 August 2015.

The tender committee members through circulation for concurrence on 18th February, 2015 considered and approved the interim extension of time of 60 days for works contract from 22nd February, 2014 to 21st April, 2014 and used direct

procurement method to procure supervision consultancy services for a period of sixty days from 22nd February, 2014 to 21st April, 2014 from M/s Ochieng Oboudha & Associates Ltd contrary to section 12(6) of the Public Procurement and Disposal Regulations, 2006 where tender committees are required to prepare minutes of all meetings held including register of attendance, date of meeting, matters considered, dissenting opinions among tender committee members, such records.

It is not clear under which guidelines the Authority tender committee (TC) approves tenders through circulation for concurrence.

In the circumstance, the Authority has contravened the Public Procurement and Disposal Regulations, 2005.

Further, the Authority paid interest on delayed payments to the contractor amounting to Kshs. 194,642,060.98 which was wasteful expenditure.

Management Response

The procurement law has given TC the mandate to deliberate all procurements above Kshs. 500,000/=. This therefore results in a situation where the TC in KeNHA is required to deliberate on a high number of agenda due to the value of procurements done by KeNHA.

The TC membership including alternates is composed of heads of Departments / sections. To facilitate flow of work, it was therefore agreed by KeNHA management that TC be scheduled every Thursday and members were required to set aside this day for the meeting.

There are however instances where critical matters need to be executed before the scheduled TC sitting, due to time related urgency. Members though available on that day may not be available at the same time. It is in line with this that the Authority applied Section 31(7) of the Public Procurement Act 2005 which provides for the use of creative approaches in order to enhance efficiency of procurement processes and project implementation. Members are presented with the issue at hand and signify their approval or otherwise in writing. They freely express their views and in some instances seek clarification which is then given to them. Matters circulated are again included in the subsequent TC meeting where members again re-affirm the earlier approval they granted and minutes are prepared.

Committee Observations

The Committee made the following observations:

1. The Authority incurred nugatory expenditure of Kshs. 194,642,060.98 as interest on delayed payments due to the contractor occasioned by delayed exchequer releases.
2. The justification given by the Authority for use of direct procurement was not satisfactory.

Committee Resolution

The audit query has not been resolved.

MIN/PIC/315/2019: CONSULTANCY SERVICES FOR MANAGEMENT CONTRACTS OF WEIGHBRIDGE STATIONS ACROSS THE NATIONAL ROAD NETWORK FY 2014/15, FY 2015/16 & FY 2016/17

Kenya National Highways Authority (KeNHA) has privatized the management and operations of all overloading control centres also known as weighbridges on major trunk roads. The objective of this is to attain a sustainable and safe road network by ensuring that axle loads applied to road pavements are not exceeded. The weighbridge stations were divided into five clusters for the purpose of these management consultant contracts.

3.1 Request for Expression of Interest and Request for Proposals

Interested firms were invited for expression of interest after which selected four consultancy firms were shortlisted. The shortlist was approved by the Tender Committee in their meeting held on 21 June 2012. Request for Proposals (RFP) were issued to the shortlisted firms on 25 July 2012.

3.2 Proposal Response and Evaluations

The firms returned the RFP depending on the cluster for evaluation and as detailed in table below (4.4). However, only one firm was found to be responsive upon preliminary evaluation in all clusters and was awarded the contracts after technical and financial evaluations. The reasons for the rest being non-responsive were having provided bid bonds valid for 120 days instead of 150 days.

3.3 Tender Committee, Award and Negotiations

The Tender Committee in their meeting No. 92 held on 22 November 2012 approved the award of the five contracts to M/s SGS Kenya Limited being the only evaluated tenderer. The consultant was notified of the award on 22 November 2012. This was followed by negotiations between the KeNHA and the consultant on 11 December 2012. The contracts were later signed between the two parties on 04 February 2013 and order to commence given on the same date for a period of three (3) years ending 04 February 2016.

3.4 Tender Sums Visa Vis Engineers Estimates

Examination of records and documents relating to these consultancy contracts revealed that the tender sums may not have been competitive and consequently exceeded the engineers estimate by a total of Kshs.1,177,105,157.53 as follows:-

No	Weighbridge Station Cluster	Engineer's Estimate	Contractor's Tender Sum	Variance
1.	Webuye, Malaba and	263,978,880.00	519,321,725.85	255,342,845.83

	Eldoret cluster plus adjacent road network			
2.	Gilgil and Mai Mahiu cluster plus adjacent road network	287,508,320.00	508,704,606.32	221,196,286.32
3.	Mariakani and Mtwapa cluster plus adjacent road network	361,605,640.00	532,728,641.29	171,123,001.29
4.	Athi River, Thika Road and Isinya cluster plus adjacent road network	340,277,300.00	650,869,902.86	310,592,602.86
5.	Busia, Isebania and Kisumu cluster plus adjacent road network	233,354,880.00	452,205,301.23	218,850,421.23
	Total	1,486,725,020.00	2,663,830,177.53	1,177,105,157.53

3.5 Exhaustion of Contract Sums

It was observed that three (3) year contract period expired on 4 February 2016 and there was no evidence of approval for extension of the contract period. In addition, as at the end of contract period, review of payment vouchers relating to these consultancy contracts in 2016/2017 financial year revealed, the consultant has been paid in excess of the contract amounts in some items as shown below: -

No	Weighbridge Station Cluster	Item Description	PC No	Amount in Contract Kshs.	Amount paid Kshs.	Excess paid Kshs.
1.	Webuye, Malaba and Eldoret cluster plus adjacent	Engineer's superintendence	34	30,500,000	58,028,748	27,528,748

	road network					
2.	Gilgil and Mai mahiu cluster plus adjacent road network	Engineer's superintendence	34	25,250,000	62,214,275	36,964,275
3.	Marakani and Mtwapa cluster plus adjacent road network	Engineer's superintendence	33	41,000,000	71,390,898	30,390,898
4.	Athi River, Thika Road and Isinya cluster plus adjacent road network	Management and Operations Engineer's superintendence	31 31	137,005,163 41,000,000	293,064,158 85,056,500	156,058,995 44,056,500
5.	Busia, Isebania and Kisumu cluster plus adjacent road network	Management and Operations Engineer's superintendence	31 31	76,704,263 18,400,000	183,960,109 51,332,138	107,255,846 32,932,138
	Total			369,859,426	805,046,826	435,187,400

Management Response

The procurement process had commenced with calling for Expression of Interest (EOI) which was evaluated, and the shortlisted bidders invited for RFP. The RFP bid document required the bidders to bid for the weighbridge management, operation and maintenance components, but also propose and provision (in form of Provisional Sums) for weighbridge improvements and automation, in order to remove discretion (which, had hitherto, tended to promote corrupt tendencies) at the weighbridges.

At the RFP tender submission date, the Engineer was required to come up with an Engineering estimate based on the human capital required for weighbridge management activities during the life of the contract. This figure was to be used to compare the bids and for conducting sensitivity analysis of the bids but was not for use as bases for tender award. It was expected that the RFP bids would excite good response to allow for picking of the lowest responsive and evaluated bidder. But at the end only one bidder reached the financial evaluation of the two-envelope evaluation process.

From the foregoing, Engineers Estimate was for weighbridge management component, and did not include the cost of improvements of the weighbridge. The improvements and weighbridge automation, as per RFP document, was to be proposed and appropriate cost provisioned (in Provisional Sums) by the bidders. However, the tender sum (by bidders) as per Request for Proposal relates to weighbridge management component, improvement and automation costs.

The Engineers estimate was used for sensitivity analysis i.e. to determine whether contractors were frontloading or had submitted imbalanced bids. The Engineers estimate could have not been the basis for disqualifying a bidder, as this was provided for in Public Procurement and Disposal Act 2005.

The Engineers Estimate, as illustrated in the request to Director General (DG) for authority for the Evaluation Committee to proceed with Negotiations (before procedural award), for the weighbridge management only was KSh 1,486,725,020.00 while the successful bidder had KSh 1,810,638,585.00 for the same. For Capex (Provisional Sums), the provisional capital expenditure was KSh 869,269,192.70. The Contract, therefore was for continuation of operation, management and maintenance of the thirteen weighbridges at KSh 1,810,638,585 with a provision of expending the KSh 869,269,193 if Kenya National Highways Authority were to source for these extra funds.

The Authority thereafter approached the Kenya Roads Board with a view of requesting for allocation from the Minister's 10% of Fuel Levy Funds. KRB agreed to KeNHA's request and an allocation of KSh 200 Million was promised for 2013/2014, 2014/2015 and 2015/2016 Financial Years respectively, adding up to KSh 600 Million. The Authority was then to provision for KSh 269 Million. Consequently, the Contractor was instructed to proceed with the Provisional Capex amounts of the KSh 869 Million which included high speed weigh in motion scales at four weighbridges along the Northern Corridor (Mariakani, Athi River, Gilgil and Webuye) with their automated weighbridge and traffic control as well as weighbridge traffic control systems at all the 9 weighbridges.

The summary of the five (5) weighbridge cluster systems and the DG's approval to proceed with Contract negotiations is as attached **Appendix KeNHA/2017/3.4-1**. This approval was given after the assurance that the Authority would provide enough budgets for the 3-year projects period to take care of the management, operation and maintenance component of the contracts.

The first three years contract for Management, Operation and Maintenance for the five (5) Weighbridge Stations Clusters ended on 31st December 2015 while the current three year contract commenced on 1st January 2016. Therefore, there was never any need to vary the previous contracts. Excerpts copies of the contracts are attached **Appendix KeNHA/2017/3.5-1**.

Payment of consultants in excess of contract sum: Projects appraisals were carried out and approved by the tender committee in September, 2015. The appraisal resulted increase of the contract sums as per attached **Appendix KeNHA/2017/3.5-2**.

Committee Observations

The Committee made the following observations:

1. Only one firm was found to be responsive upon preliminary evaluation in all clusters and was awarded the contracts after technical and financial evaluations. The reasons for the rest being non-responsive were having provided bid bonds valid for 120 days instead of 150 days.
2. The project should have been retendered since all bids except one were found to be non-responsive.
3. The tender sums exceeded the Engineer's estimate by a total of Kshs.1,177,105,157.53. The Engineer's Estimate was for weighbridge management component, and did not include the cost of improvements of the weighbridge.
4. The technology that was installed at the weighbridges is new technology and is only used in South Africa.
5. None of the bidders who missed out on the contract for the project had raised any objection with the Public Procurement Regulatory Authority.
6. The successful bidder was required to deposit a bank guarantee of Kshs. 500,000 which was relatively small for a project with a contract sum of Kshs. 2,700,000,000.

Committee Resolution

The Committee resolved that the Authority should provide a copy of the contract for the project, the list of bidders and their respective Expressions of Interest.

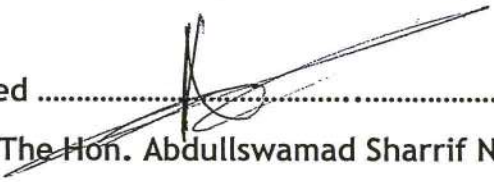
MIN/PIC/316/2019: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/317/2019: ADJOURNMENT

The meeting was adjourned at twenty minutes past five O'clock.

Signed


The Hon. Abdullswamad Sharraf Nassir, MP
(Chairperson)

Date.....

08/08/2019

MINUTES OF THE 38TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON WEDNESDAY 17TH JULY 2019 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10.00 A.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
3. The Hon. Omar Mohamed Maalim Hassan, MP
4. The Hon. Raphael Bitta Sauti Wanjala, MP
5. The Hon. James Kamau Githua Wamacukuru, M.P
6. The Hon. Joash Nyamache Nyamoko, MP
7. The Hon. John Muchiri Nyaga, M.P
8. The Hon. Mohamed Hire Garane, M.P
9. The Hon. Babu Owino Paul Ongili, MP
10. The Hon. Thuku Zachary Kwenya, M.P
11. The Hon. Paul Kahindi Katana, MP

ABSENT WITH APOLOGY

1. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
2. The Hon. Gladys Wanga, MP
3. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
4. The Hon. Mary Wamaia Njoroge, MP
5. The Hon. Purity Wangui Ngirici, MP
6. The Hon. Rashid Kassim Amin, MP
7. The Hon. Justus Kizito Mugali, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 2. Mr. Mohamed Boru | - | Third Clerk Assistant |
| 3. Mr. Thomas Ogwel | - | Fiscal Analyst |
| 4. Ms. Sharon Rotino | - | Research Officer |
| 5. Ms. Marlene Ayiro | - | Legal Counsel |
| 6. Ms. Noelle Chelagat | - | Media Relations Officer |
| 7. Ms. Winfred Atieno | - | Audio Recording Officer |

IN ATTENDANCE

- | | | |
|------------------------|---|------------------------------------|
| 1. Mr. Kalinda Muli | - | Deputy Director, Audit |
| 2. Mr. Joshiah Oyuko | - | Manager, Audit |
| 3. Ms. Grace Atila | - | Manager, Audit |
| 4. Mr. Bernard Ngulalu | - | Inspectorate of State Corporations |

MIN/PIC/303/2019: PRELIMINARIES

The Chairperson called the meeting to order at sixteen minutes past ten O'clock followed by a word of prayer.

**MIN/PIC/304/2019: EXAMINATION OF AUDITED ACCOUNTS OF KENYA
NATIONAL HIGHWAYS AUTHORITY**

Eng. Peter Mundinia, the Director General of the Kenya National Highways Authority accompanied by Mr. William Masita (Director, Audit Services), Mr. James Bowen (Director, Corporate Services), Eng. David Muchilwa (Director, Development), Mr. Chanje Kera (Deputy Director, Finance & Accounting), Eng. Okeyo Charles (Deputy Director, Development), Eng. Philemon Kandie (Deputy Director, Road Asset Management), Ms. Levira Wanyonyi (Deputy Director, Supply Chain Management) and Ms. Jessica Mbae (Senior Legal Officer) appeared before the Committee to adduce evidence on the audited accounts of the Board for FY 2014/15 to FY 2016/17.

He briefed the Committee as follows:

**MIN/PIC/305/2019: REGIONAL ROADS COMPONENT (MERILLE-MARSABIT
ROAD) PROJECT NO. KE/001/09 (LOAN AGREEMENT NO.
KE/FED/2009/021-655) FY 2014/15**

5.1 Interest on delayed payments

As reported in the previous year, the Authority has not been paying the Contractor's dues as the same fall due. As at 30th June, 2016, the Contractor had claimed Interest on delayed dues to the tune of Kshs 38,892,979.63. The interest on delayed payment is a nugatory expenditure which should not have been incurred had the Authority paid the Contractor's dues on time.

Management Response

The situation of accumulation of interest on delayed payment from contract since inception upto 30th June, 2015 of Kshs.38,892,979.63 was occasioned by inadequate budgetary provisions and delayed Exchequer releases to financing development works.

Committee Observation

The Authority had accumulated interest due to delay payments for the contract occasioned by inadequate budgetary provision and delayed exchequer releases.

Committee Resolution

The Authority was asked to provide a schedule of all delayed payments due to inadequate budgetary provision and delayed exchequer releases as well as the amount of interest accumulated from FY 2014/15 to FY 2018/19.

**MIN/PIC/306/2019: NAIROBI SOUTHERN BYPASS ROAD PROJECT LOAN NO.
CHINA EXIM BANK PBC NO. (2011) 32 TOTAL NO.(183)
NO. (14020303052011211528) FY 2014/15**

Project Implementation & Nugatory Expenditure

The project was awarded to China Road and Bridge Corporation at a contract sum of Kshs 17,199,793,766 and commenced on 2 July 2012 with completion date of 31 July 2015. However, as per progress report of June 2015, time elapsed was 97.2% while works completed were at 81.3%. In addition as at June 2015, the contractor had not gotten possession of site for National Park Section of the Project. Although Management has explained and provided evidence that the Contractor was issued with possession of site for the National Park Section on 2 November 2015, the project is behind schedule and this may lead to escalation of project cost.

In addition, included in the cumulative expenditure of Kshs 9,580,876,998 as at 30 June 2015 is an expenditure totalling to Kshs 236,261,048.16 incurred in payment of interest on delayed certificates which is a nugatory expenditure. Management Response

Management Response

The delay in project implementation is attributed to the lengthy court case by Friends of the Nairobi National Park who had obtained an injunction stopping the Authority from constructing the road through the park. The Court eventually ruled that the Authority follows due process and have the section of the park that was to be used for road construction appropriately gazetted. Upon gazetting as ordered there followed prolonged negotiations towards the acquisition of a section of the National Park to facilitate the construction of the road project. As at June 2015, KeNHA was in negotiations with KWS on the grant of easement of some part of the National Park in order to facilitate the construction and completion of the Project.

The negotiations between KeNHA and KWS for the grant of easement of the above were subsequently completed and the agreement was signed on 23rd September 2015. The contractor was subsequently issued with possession of site on 2nd November 2015 and the works were substantially completed on 22nd June, 2016 with defect liability of 12 months.

Interest on delayed payments of Kshs. 236,261,048.16 which was charged for delayed payments from the inception of the project to 30th June, 2015 was a function of inadequate budgetary provisions and delayed Exchequer releases. The Authority is making a concerted effort, liaising with line Ministry and National Treasury, to make sure that timely payments are made for all the certified works. This will resolve cash flow problems and the contractors will be able to work smoothly and improve on progress.

Committee Observations

The Committee made the following observations:

1. Interest on delayed payments of Kshs. 236,261,048.16 was paid to the Contractor having arisen due to inadequate budgetary provisions and delayed Exchequer releases.

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2. The Authority had a delay in project implementation attributed to a court case by 'Friends of the Nairobi National Park' who had obtained an injunction stopping the Authority from constructing the road through the park. The Court eventually ruled that the Authority follows due process and have the section of the park that was to be used for road construction appropriately gazette.
3. The Authority reached an agreement on the amount of compensation to be paid to the Kenya Wildlife Service for the land acquired to build the road but the Authority had yet to honour the payment to the wildlife agency.

Committee Resolution

The Authority was asked to make budgetary provisions to clear the outstanding amount owed to Kenya Wildlife Service for the land acquired to build the Southern bypass.

MIN/PIC/307/2019: NORTHERN CORRIDOR TRANSPORT IMPROVEMENT PROJECT(IDA CREDIT NO. 3930-KE AND 4571-KE) FY 2014/15

7.1 Rehabilitation of Kericho-Mau Summit(B1) Road Section - Interest on delayed payments

As reported in the previous year's audit report, the contract was awarded to a contractor on 26th October, 2009 at a contract sum of Kshs. 6,832,657,486.36. The contract commenced on September, 2010 for a period of 24 months with the expected completion date of 15 September 2012. However, a review of the project during the year under audit has indicated that after several extensions of contract period, the project was inspected for substantial completion on 29th May 2015, and recommended for take over with effect from 4 March, 2015. However an expenditure amounting to Kshs. 148,054,139 has been incurred to pay interest on delayed payment which amounts to nugatory expenditure.

Management Response

The matter was tabled and discussed by the PIC on 19th November, 2015.

Delay in project completion was occasioned by inadequate budgetary provisions and delayed Exchequer releases for financing development works & attendant services.

The interest on delayed payments amounting to Kshs. 148,054,139 charged for the 50 months period from September 2010 to June 2015 was as a result of inadequate budgetary provisions and delayed release of Exchequer. However Authority is making a lot of effort, liaising with line Ministry and National Treasury, to make sure that timely and adequate payments are made for all the certified works to curtail slowed progress of works and interest on delayed payments. This will resolve cash flow problems in future contracts and the Contractors will be able to work smoothly

Committee Observations

The Committee made the following observations:

1. The audit query had been considered in the 19th Report of the Public Investments Committee on audited accounts of State Corporations.
2. The Authority had incurred expenditure as interest on delayed payments amounting to Kshs. 148,054,139 charged for the 50 months period from September 2010 to June 2015

7.2 Emergency Restoration of Public Assets: Repair/Renovation of the Ministry of Roads and Public Works Offices in Homabay, Oyugis (Homabay County) and Kisumu County.

During the year under review, the Authority directly procured the services of a Consulting Engineer to supervise the emergency restoration of public assets in Kisumu and Homabay Counties at a contract sum of Kshs.23,857,720

Management Response

The works were originally under supervision of the Department of Public Works under the Ministry of Lands, Housing and Urban Development.

The works were characterized by slow progress and poor quality that required full time supervision. It was therefore agreed during the World Bank Mission held in June 2014 that the supervision of the works be enhanced. Due to inadequate time to allow for other methods of procurement and since the NCTIP credit was expiring in December 2015, KeNHA requested for Bank's clearance to engage a consultant through single sourcing as per IDA procurement rules to supervise the works.

The World Bank granted clearance on the request to engage M/S Conte Designs of P.O. Box 66669-00800 Nairobi at the consultancy amount of Ksh. 23,857,720 on 7th August 2014, see *Appendix V*. Conte Designs was considered for the following reasons;

- The Consultants was successfully supervising similar works at Isebania, Taveta and Lungalunga One Stop Border Posts funded by the World Bank.
- The Consultant was procured competitively under the World Bank guidelines.

The procurement of the services were in line with the World Bank Procurement Guidelines since the works and the services are fully funded by the World Bank under the NCTIP credit.

The quality of works improved with the engagement of full time consultant.

Committee Observations

The Committee made the following observations:

1. The World Bank granted clearance on the Authority's request to directly procure consulting services from M/S Conte Designs. at a contract sum 23,857,720 on 7th August 2014. The procurement process was done in

accordance with the International Development Association procurement rules under which the project was funded.

2. The Authority justified the need for fulltime supervision of the project due to slow implementation and poor quality and got the World Bank's concurrence.

Committee Resolution

The audit query has been resolved.

7.3 Supply of Computers and related Equipment.

Computers, Touch Smart Desktop Computers, Laptop Computers and Integrated Services Routers for the Mechanical and Transport Department of the Ministry of Roads (Lot 1)

Included in Annex 2A-Analysis of Pending Bills is Invoice No. 812 from M/s Intermass Technologies (E.A) Limited dated 19 November 2013. The supplier was competitively awarded the contract for the supply of the 3 No. Rack-Mount type computers server; 94No. Standard Desktop Computers; 12 No. Touch Smart Desktop Computers; 8 No. Laptop Computers and 46 No Integrated Service Routers on 13 June 2013 at their tender sum of Kshs. 25,564,350.00.

The supplier is said to have delivered the goods to Mechanical and Transport Department of Ministry of Transport and Infrastructure on 19 November 2013 vide delivery note No. 1063. The Inspection and Acceptance committee inspected and accepted only 8 No. laptop computers and 19No integrated service routers all valued at Kshs.2,975,150.00. It's reported that the rest of the goods though delivered were stolen before they could be inspected by the inspection and acceptance committee.

Despite the forgoing and although the goods received notes were issued, the Authority paid for all the goods vide Payment Voucher Number 17690 dated 23 July 2014 for Kshs. 22,589,200.00.

In the circumstances, no value for money was obtained from the expenditure of Kshs. 22,589,200.

Management Response

The Supplier delivered the goods in quantities as per the contract. The delivery note was subsequently issued and signed. The delivery and receipt of the goods on 19th November 2013 was further confirmed in writing by the Beneficiary (Mechanical and Transport Department of Ministry of Transport & Infrastructure).

Prior to inspection and acceptance, the Beneficiary/Custodian reported that the goods had been stolen. The same was reported to the Kenya Police and investigations launched which led to the arrest of part of the private security guards & the vehicle used in the theft. The beneficiary has already initiated legal proceedings to recover the value of the stolen goods from the private security firm whose employees were captured by the Department's CCTV facilitating the theft from government stores.

The Inspection Team proceeded to inspect the remaining Goods; the 8No. Laptops and 19 No. (Not 9 No as mentioned above) Integrated service routers. The goods inspected were all found to conform to the technical specifications as per the contract hence there was no ground that could influence management in believing that the stolen goods were of different or inferior specifications.

The payment of the referenced amount was done on the basis of the delivery note, user's confirmation of delivery and the contract document. Further, the Authority was obliged to settle the amount given that the delivery conditions had been met as per contract terms, and to forestall the accrual of interests on delayed payments as well as the potential risk of protracted court cases, as the vendor was not responsible for the provision of security for goods in government warehouses. This was a security lapse as confirmed by the user's formal request to the Attorney General to institute legal proceedings against the security service provider. We further wish to clarify that the amounts paid were within the contract sum.

Failure to pay for goods delivered as per the contract will expose the Authority to unnecessary litigations and claims. Attached and marked **Appendix VI** is a copy of the invoice and delivery order duly received by the user.

Committee Observations

The Committee made the following observations:

1. The audit query was considered in the 19th Report of the Public Investments Committee.
2. The matter was reportedly taken up by the Public Accounts Committee.
3. The Authority was following up on the matter with the Ministry of Transport and Infrastructure and the police.

Committee Resolutions

The Committee made the following resolutions:

1. The Committee will confirm whether the Public Accounts Committee handled the audit query.
2. The Authority should provide correspondence with the Ministry of Roads regarding the stolen Computers, Touch Smart Desktop Computers, Laptop Computers and Integrated Services Routers for the Mechanical and Transport Department.
3. The Authority should provide documentation on the follow up mechanisms it has undertaken to recover the stolen equipment.

**MIN/PIC/308/2019: TIMBOROA-ELDORET ROAD REHABILITATION PROJECT NO.
P-KE-DBO- 019 LOAN AGREEMENT NO. 210050023344 FY
2014/15**

Rehabilitation of Timboroa-Eldoret (A104) Road

The above contract was awarded to China Wu Yi Co. Ltd at original contract sum of KES 3,113,871,197.73. The works commenced on 28th May 2012 for 24 months with original completion date of 27th May 2014 revised to 10th September 2014.

Although the works are under defects liability period from 10th July 2015 to 9th July 2016, as at June 2015, the contract had been varied from KES 3,113,871,197.73 to KES 5,213,921,839 a variation of 68% over and above the authorised limit contrary to Section 31 of the PPD Regulations.

In the circumstances, the Authority contravened the law. It also not possible to confirm whether the Authority obtained value for money in incurring the expenditure of KES 5,213,921,839.

Building materials had been included in the balance under buildings with no specific building project.

The Fixed asset register does not have a record of NIB buildings as the Board's assets.

Management Response

The works construction was being financed largely by AfDB through a Loan Agreement in addition to a contribution from the Government of Kenya.

However, in the course of the project design review, it was noted among other issues, that owing to the long period between the original design time and the tendering stage, the road pavement had deteriorated further and required further reconstruction and improvements with climbing lanes to facilitate smooth flow especially of the multi-national heavy goods traffic between Kenya and its neighboring countries. The tender works quantities were therefore insufficient to complete the project as desired.

This necessitated issuance of Addendum No. 1 and 2, dated May 2014 and February 2015 respectively, which relates to change in the scope of works in accordance with the conditions of works contract.

A No objection for the same was obtained from the co-financier (AfDB). This project is now substantially complete.

In Accordance with sections 6(1) and 7(1) of the Public Procurement and Disposal Act, 2005, the Variation was procured in line with the African Development Bank (AfDB) conditions contained in the Loan Agreement and the project Aide Memoire as they were the major financiers of the project and it was not possible to segregate which portions of the works were to be financed by GoK. This was the basis of issuance of the No Objection hence the addenda to vary the contract. (*Attached the Loan Agreement and the Bank's No Objections for the Variations Appendix VII*)

The Bank further availed additional funding to finance the increased scope following granting of the 'No objection'. This project has been handed over to the Employer and is currently open to traffic.

It was noted the variation was absolutely necessary to enable completion of the project in order to achieve the economic benefits and the objectives of the project. The variation was done based on prices that were competitively obtained and hence the Authority achieved value for money.

Committee Observations

The Committee made the following observations:

1. The contract for the project had been varied from KES 3,113,871,197.73 to KES 5,213,921,839 a variation of 68% over and above the authorized limit contrary to Section 31 of the Public Procurement and Disposal Regulations.
2. The Variation was procured in line with the African Development Bank (AfDB) conditions contained in the Loan Agreement and the project Aide Memoire as they were the major financiers of the project. This was the basis of issuance of the No Objection hence the addenda to vary the contract.
3. The conditions of the funding agreement with the AfDB prevailed over the provision of Public Procurement and Disposal Act (2005) regarding contract sum variation as provided for in Section 6 and 7 of the Act.

Committee Resolution

The Authority was asked to submit a certified copy of the financing agreement for the project.

MIN/PIC/309/2019: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/310/2019: ADJOURNMENT

The meeting was adjourned at thirty three minutes past twelve O'clock.

Signed

Date.....05/08/2019.

The Hon. Abdullswamad Sharraf Nassir, MP
(Chairperson)

MINUTES OF THE 37TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY 4TH JULY 2019 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10.00 A.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Raphael Bitta Sauti Wanjala, MP
3. The Hon. Gladys Wanga, MP
4. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
5. The Hon. Paul Kahindi Katana, MP
6. The Hon. Mohamed Hire Garane, M.P
7. The Hon. John Muchiri Nyaga, M.P
8. The Hon. Mary Wamaua Njoroge, MP
9. The Hon. Purity Wangui Ngirici, MP
10. The Hon. Joash Nyamache Nyamoko, HSC, MP
11. The Hon. Babu Owino Paul Ongili, MP
12. The Hon. James Kamau Githua Wamacukuru, M.P

ABSENT WITH APOLOGY

1. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
2. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
3. The Hon. Justus Kizito Mugali, MP
4. The Hon. Omar Mohamed Maalim Hassan, MP
5. The Hon. Thuku Zachary Kwenya, M.P
6. The Hon. Rashid Kassim Amin, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 2. Mr. Mohamed Boru | - | Third Clerk Assistant |
| 3. Ms. Sharon Rotino | - | Research Officer |
| 4. Ms. Marlene Ayiro | - | Legal Counsel |
| 5. Ms. Noelle Chelagat | - | Media Relations Officer |
| 6. Ms. Winfred Atieno | - | Audio Recording Officer |

IN ATTENDANCE

- | | | |
|-----------------------|---|------------------------------------|
| 1. Mr. Joshiah Oyuko | - | Manager, Audit |
| 2. Mr. John Wangila | - | Manager, Audit |
| 3. Ms. Edith Lubanga | - | Legal Counsel, Audit |
| 4. Mr. James Mbatia | - | Inspectorate of State Corporations |
| 5. Mr. James Sitienei | - | Inspectorate of State Corporations |

MIN/PIC/299/2019:

PRELIMINARIES

The Chairperson called the meeting to order at fifteen minutes past ten O'clock followed by a word of prayer.

MIN/PIC/300/2019: EXAMINATION OF AUDITED ACCOUNTS OF NATIONAL BANK OF KENYA

Mr. Wilfred Musau, the Managing Director of National Bank of Kenya accompanied by Mr. George Oraro (Legal Counsel), Mr. Jacob Ochieng (Legal Counsel), Mr. Habil Waswani (Company Secretary), Mr. Sam Karanja (Executive Director, Strategies) and Mr. Roberts Ogindo (Head of Compliance and Ethics) appeared before the Committee to explain why the National Bank of Kenya has excluded itself from audit by the Office of the Auditor General.

The Legal Counsel from M/S Oraro and Company Advocates who were representing National Bank of Kenya voluntarily decided to extricate themselves from the meeting once they were advised by the Chairperson of the Committee that they would not be responding on behalf of the Bank. The Committee clarified that the Lawyers would be allowed to advise the Managing Director as and when necessary and the Managing Director would then respond to the Committee.

The Managing Director briefed the Committee as follows:

The issue of whether National Bank of Kenya Limited ("the Bank") should its financial statements for audit by the Auditor General has been discussed severally by both parties including the National Treasury and the Office of the Attorney General since the year 2003. Infact, the Public Investments Committee did summon the Bank in June 2003 and lastly on 27th November 2013 (see Annexure 1) where the same issues were responded to.

a) What is the legal Status of National Bank? Is the Bank a State Corporation?

This is most fundamental issue around this matter i.e. whether the Bank is a State Corporation within the definition of the State Corporations Act (Cap 446 of the laws of Kenya). *See Annexure 2*. Section 2 of the State Corporations Act defines a state corporation to *inter alia* be:

- (i) S.2(b)(v) - a body corporate established before or after the commencement of this Act by or under an Act of Parliament or other written law but not a company incorporated under the Companies Act (Cap. 486) which is not wholly owned or controlled by the Government or by a state corporation (emphasis ours).
- (ii) S.2(c) - a bank or a financial institution licensed under the Banking Act (Cap. 488) or other company incorporated under the Companies Act (Cap. 486), the whole or the controlling majority of the shares or stock of which is owned by the Government or by another state corporation(emphasis ours).

The Bank was incorporated under the Companies Act, Cap 486 Laws of Kenya on 19th June, 1968 (Certificate of Incorporation No.C.7763 - *See Annexure 3*) and was initially wholly owned by the Government through The National Treasury before the

Government divested its shareholding by offloading shares to the public in 1994 and 1996 which diluted its shareholding threshold to 22.5%. Even before the said privatization process was done, His Excellency the President of the Republic of Kenya had vide Gazette Notice dated 27th February 1987 (*see Annexure 4*), exempted operations of the Bank from the provisions of the State Corporations Act.

The current shareholding structure of the Bank as at 31st March 2019 is as follows:

	Shareholder Name	Existing No. of Shares	% Holding
1	National Social Security Fund	162,802,746	48.05
2	The Permanent Secretary Treasury	76,230,000	22.50
3	Kenya Reinsurance Corporation Limited	4,840,000	1.43
4	Best Investment Decisions Limited	2,350,271	0.69
5	Dizzyland Limited	1,946,000	0.57
6	Stanbic Nominees Limited A/C NR5551514	1,864,863	0.55
7	Equity Nominee Ltd A/C00084	1,256,343	0.37
8	NBK Client A/c 1	1,143,450	0.34
9	Eng. Ephraim Mwangi Maina	1,105,003	0.33
10	George Muhia Mwaura	1,028,240	0.30
11	Others [48,977 shareholders]	84,214,284	24.86
	TOTAL	338,781,200	100.00

From the above table, it is clear that the shareholding threshold of the Government (through the National Treasury) stands at 22.5% which is way lower than that of controlling majority threshold (i.e. 50%+1), whereas, the National Social Security Fund (NSSF) owns 48.05% of the ordinary share capital of the Bank.

The second critical issue is whether NSSF is a State Corporation or owned by Government. This issue was reviewed in depth and guidance given by the **Presidential Taskforce on Parastatal Reforms** appointed on 23rd July 2013 (in their Report submitted to His Excellency the President of the Republic of Kenya in October 2013). On page 103 of this report (*refer to Annexure 5*), the Taskforce analyzed the status of the Bank and that of NSSF made the following observation:-

"The National Social Security Fund and National Social Security Fund Board of Trustees are established separately by the National Social Security Fund Act Cap. 258 (now repealed and replaced by the National Social Security Fund Act, 2013). The Fund is established under Section 3(1) of the Act with a proviso that it shall be managed by a Board of Trustees. The Board on the other hand is established as a body corporate by Section 5 (1) of the Act as National Social Security Fund Board of Trustees. The Fund comprises members' contribution and is not established as a body corporate while the Board of Trustees is established as a Government agency to manage the fund. In this regard the Board is an Executive Agency. With the separation of the two entities it becomes clear that investments by National Social Security Fund are not Government investments as the Fund and its Board of Trustees are different entities. It follows therefore that the NSSF investments in the form of shareholding in National Bank of Kenya and East African Portland Cement Company are not Government investments (shares). The two Corporations have in the past been treated as Government Owned entities as a result of combined shareholding of the Government and NSSF.

*In view of separation of the Fund and its Board of Trustees it is recommended that the **National Bank of Kenya** and East African Portland Cement Company should be treated like any other company in which the Government owns minority shares but not as State Corporations"*

A similar clarification was rendered by the Hon. Attorney General vide opinion dated 14th December 2011 (*see Annexure 6*), where he had been tasked to analyse the case of East African Portland Cement, which has an almost similar shareholding structure with National Bank of Kenya Limited. In summary the Hon. Attorney General observed that both Government and NSSF had different representation on the board of the company and when votes are taken each vote if counted separately and as such, neither had controlling rights within the said company. The Hon. Attorney General went further to refer to a recommendation by a Taskforce established on 8th August 2011 which had recommended *inter alia* that the company should comply with provisions of the Capital Markets Act and cease operating as a state corporation as it had been erroneously categorized as such by virtue of combined shareholding of GoK and NSSF.

The above position would similarly apply to National Bank of Kenya considering that:

- (i) It is first a limited liability company incorporated under the Companies Act, whose affairs and operations and those of its Board are governed by its Memorandum and Articles of Association,
- (ii) It is a Bank regulated under the Banking Act and regulations and respective Prudential Guidelines,
- (iii) It is public company listed on the Nairobi Securities Exchange and therefore regulated under the Capital Markets Act and its Regulations.

The import of the above positions, which has always been the view of the Bank is that, National Bank of Kenya is not a state corporation and as such, the Auditor General has no legal right or basis to seek to audit the books of the Bank.

b) Is the Bank funded from public funds?

Article 229(5) of the Constitution provides that the Auditor-General may audit and report on accounts of any entity that is funded from public funds.

As explained earlier, the Government floated the Bank's shares on the Nairobi Securities Exchange and through the respective prospectuses, expressly covenanted and made representations to all shareholders and the public that the Bank would comply with the Banking Act (Cap 488) Capital Markets Act (Cap 485A) and the Companies Act (Cap 486). As a result of the above, the Government's participation in the Bank is that of a lender (with commercial benefits), shareholder, or investor with regard to its 22.5% shareholding in the Bank and the preference shares on the balance sheet.

The operations of the National Bank are not funded from the Exchequer, and as such, the audit mandate of the Auditor-General cannot in any way whatsoever be deemed to extend to the Bank.

c) Provisions of the Banking Act, Companies Act and the Capital Markets Act on appointment of External Auditor.

The Bank has a statutory obligation to protect the depositors' funds as stipulated by the Banking Act and also ensure that the affairs of the Bank as a listed public company respect the provisions of the Companies Act and the Capital Markets Act to protect the interests of all its shareholders.

Listed hereunder are other key legislative provisions which the Bank would be in breach of should there be any attempt to extend the Auditor-General's audit mandate to the Bank.

(i) Section 721(1) & (2) of The Companies Act, 2015-Appointment of External Auditor at AGM

Makes it mandatory for every company to appoint an auditor to hold office at each annual general meeting (see Annexure 7).

(ii) Section 24(1) of The Banking Act - Mandatory appointment of Auditor

Makes it mandatory for all licensed banks to appoint an auditor annually duly qualified under the Companies Act. It is the responsibility of the board of directors to ensure that the institution's shareholders appoint a registered public accounting firm annually in accordance with the Banking Act. The nomination and subsequent appointment of a registered public accounting firm by an institution does not take effect unless written approval has been obtained from Central Bank of Kenya as required under Section 24(1) of the Banking Act.

(iii) Sections 6.13 of the Capital Markets Act Code Of Corporate Governance Practices For Issuers Of Securities To The Public, 2015 - Auditor to be ICPA(K) member

The Code provides that shareholders shall appoint independent (external) auditors at each Annual General Meeting in line with company law and further, the auditor of a public listed company shall be a member of the Institute of Certified Public Accountants of Kenya (ICPAK) in good standing and shall comply with the International Auditing Standards.

These laws make it mandatory for the Bank's external auditor to be a Certified Public Accountant licensed under the Accountants Act, 2008. In this regard, we have been informed that the office of the Auditor-General is not a registered member of ICPAK (Refer to the Letter dated 21st July, 2003 by the Institute of Certified Public Accountants Marked *as Annexure 8*). Our respectful view is that the proposed appointment of Auditor General under Section 39 of the Public Audit Act is clearly not compatible with the other laws governing the Bank's operations.

(iv) Sections 26, 31 (2) & 32 (2) (C) of the Banking Act - Duty of Confidentiality

The Bank's Auditor has a duty of confidentiality which is stipulated for in Section 32 (C), of the Banking Act and recourse in the event of breach is to the Central Bank (via Section 26(1) aforesaid) and Section 30 of the Accountants Act 15 of 2008. It is not clear to whom the Bank look shall to in case of breach of confidentiality by Auditor General when (a) his office is not governed by the Accountants Act No 15 of 2008 and (b) there are no obligations for confidentiality under the Public Audit Act No 34 of 2015?

(v) Sections 23,24 & 52A of the Banking Act - Banking Act to prevail in the event of a Conflict

The Bank is obligated to appoint an auditor who is duty-bound vide Section 23 and 24 of the Banking Act to report to Central Bank of Kenya. Given the forgoing obligation, the Bank cannot appoint an auditor who is compelled vide Section 10 of the Public Audit Act to report to Parliament and not to the Central Bank of Kenya, more so in view of the fact that Section 52A of the Banking Act provides that as far as Banks' are

concerned if there is a conflict between the Banking Act and any other Act, the provisions of the Banking Act shall prevail.

(vi) Section 25 of the Banking Act -Change of Auditor to be Notified to the Central Bank

No institution shall remove or change its auditors without the written approval of the Central Bank of Kenya and such a change would be in conflict with this provision bearing in mind we have written approvals for the current auditors in place.

(vii) Section 161 The Companies Act Chapter 486 Laws of Kenya (now Repealed) - Disqualification of Auditor

The section disqualifies a person acting as auditor if he is also an officer of or related party to an officer of a company or a body corporate. In our view, the Auditor-General is effectively a related party to The National Treasury which is the holder of Government shares in the Bank is also an institutional director on the Bank's Board.

Committee Observations

The Committee made the following observations:

1. The National Treasury owns 22% of the shares in National Bank of Kenya while the National Social Security Fund (NSSF) a state corporation owns 48% shares in the Bank. Effectively, the GoK has controlling majority over the Bank with a total shareholding of 70% directly and indirectly through its shareholding in the two entities.
2. NBK through the GoK investment in it is funded from Public funds. The funds being managed by the board of Trustees of NSSF is a public fund created by legislation. The funds are then invested in different investments including the funds invested by National Bank. These funds are a portion of members' contribution whose loss will lead to liability on the part of the GoK.
3. illustrated the Public Finance Management Act, 2012 section 2 "public money" includes—
 - (a) all money that comes into possession of, or is distributed by, a national government entity and money raised by a private body where it is doing so under statutory authority; and
 - (b) money held by national government entities in trust for third parties and any money that can generate liability for the Government.

The Bank has received cash injections from the government in the past in an effort to keep it afloat and this money is part of public funds.

4. Auditor to be ICPAK member - Membership to the Institute of Certified Public Accountants (ICPAK) the licensing body for practicing accountants is on an individual basis and not corporate. The Office of the Auditor- General employs ICPAK members who are qualified accountants with its senior management having practicing certificate.

5. Duty of confidentiality - The Public Audit Act 2015 provides that all staff in the Office of the Auditor-General are expected to maintain confidentiality when conducting their audits. Section 61(1)(e) makes it an offence for an auditor to disclose any audit information in the course of audit thereby guaranteeing confidentiality to the client.
6. Furthermore, the staff working for the Auditor-General are ICPAK members and bound by the professional code of conduct just alike other practicing accountants in private practice. OAG seats in the ICPAK board committee regulating the practice.
7. Prevailing law in auditing of public institutions - The Public Audit Act, 2015 section 70, provides that the Public Audit Act, 2015 shall prevail in case of any inconsistency between the Act and any other legislation relating to the functions and powers of the Auditor-General which includes auditing of National Bank. Therefore, is the anchoring law that binds the Auditor general in his day to day work.
8. Change of Auditor to be notified to the Central Bank of Kenya (CBK) - Section 14(3) the State Corporations Act provides that accounts of every state corporation shall be audited and reported on annually in accordance with the provisions of the Public Audit Act, 2003 now succeeded by the Public Audit Act 2015.
The Central Bank of Kenya and Consolidated Bank of Kenya are audited by the Auditor-General. The CBK which is the regulator has issued guidelines for the appointment of auditors.
9. Relationship between Office of the Auditor-General and National Treasury - The Constitution of Kenya under Article 249(2) provides that the Auditor General is independent in all his functions. It is also reiterated in the Section 10 of the Public Audit Act, 2015 which states that:

- (1) *The Auditor-General shall not be subject to direction or control by any person or authority in carrying out his or her functions under the Constitution or under this Act.*
- (2) *Without prejudice to the generality of subsection (1), the Auditor-General and his or her staff shall perform their functions impartially, without fear, favour or prejudice and shall exercise their powers independently subject to the provisions of the Article 249 (2) of the Constitution, the provision of this Act and any other written law.*

Therefore, the claim that the Auditor General is related to National Treasury is unfounded.

10. Following the clarification of the objections raised by National Bank of Kenya, the Bank indicated willingness to have its accounts audited by the Office of the Auditor General.

Committee Resolutions

The Committee resolved that the Office of the Auditor General should expeditiously write to the National Bank of Kenya with a view to initiating audit of the Bank's accounts.

MIN/PIC/301/2019: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/302/2019: ADJOURNMENT

The meeting was adjourned at eighteen minutes to one O'clock.

Signed

Date..... 25/07/2019

The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

MINUTES OF THE 36TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON TUESDAY 2ND JULY 2019 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10.00 A.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
4. The Hon. Raphael Bitta Sauti Wanjala, MP
5. The Hon. Gladys Wanga, MP
6. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
7. The Hon. Thuku Zachary Kwenya, M.P
8. The Hon. Paul Kahindi Katana, MP
9. The Hon. Mohamed Hire Garane, M.P
10. The Hon. Rashid Kassim Amin, MP
11. The Hon. James Kamau Githua Wamacukuru, M.P
12. The Hon. Justus Kizito Mugali, MP
13. The Hon. Omar Mohamed Maalim Hassan, MP

ABSENT WITH APOLOGY

1. The Hon. John Muchiri Nyaga, M.P
2. The Hon. Mary Wamaua Njoroge, MP
3. The Hon. Purity Wangui Ngirici, MP
4. The Hon. Joash Nyamache Nyamoko, HSC, MP
5. The Hon. Babu Owino Paul Ongili, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Mr. Evans Oandā | - | Senior Clerk Assistant |
| 2. Mr. Mohamed Boru | - | Third Clerk Assistant |
| 3. Ms. Sharon Rotino | - | Research Officer |
| 4. Ms. Marlene Ayiro | - | Legal Counsel |
| 5. Ms. Noelle Chelagat | - | Media Relations Officer |
| 6. Ms. Winfred Atieno | - | Audio Recording Officer |

IN ATTENDANCE

- | | | |
|-----------------------|---|------------------------------------|
| 1. Mr. Jack Otieno | - | Deputy Director, Audit |
| 2. Mr. Joshiah Oyuko | - | Manager, Audit |
| 3. Mr. Peter Lugerah | - | Manager, Audit |
| 4. Ms. Sharon Wangari | - | Manager, Audit |
| 5. Mr. George Ombua | - | Inspectorate of State Corporations |

MIN/PIC/279/2019: PRELIMINARIES

The Chairperson called the meeting to order at five minutes past ten O'clock followed by a word of prayer. The Hon. Rashid Kassim Amin declared his interest as per S.O 90 by stating that he was a former Board member of the National Drought Management Authority.

MIN/PIC/280/2019: EXAMINATION OF AUDITED ACCOUNTS OF NATIONAL DROUGHT MANAGEMENT AUTHORITY

Mr. James Oduor, the Chief Executive Officer of the National Drought Management Authority accompanied by Mr. Hashim Ali (Director, Corporate Services), Mr. Yusuf Bagaja (Finance Manager) and Mr. Kenneth Njuru (Finance and Administration Manager, DRMC Project) appeared before the Committee to adduce evidence on the audited accounts of the Bureau for FY 2013/14 to FY 2017/18.

MIN/PIC/281/2019: PROPERTY, PLANT & EQUIPMENT FY 2016/17

During the financial year 2016/2017 the Authority revalued its plant, property and equipment from Kshs. 637, 151, 088 as at 30 June 2016 to Kshs.361, 849,239. However the revaluation report provided for audit did not contain the certificate of the professionals who were involved in the exercise. In the circumstances, the accuracy and validity of the valuation report could not be confirmed.

Management's Response

The Ministry of Devolution and Planning, State Department for Devolution verified and valued the assets and handed over to the Authority, vide letter Ref: MDONK/ADM/1/82/(44) of 25th Nov 2016 with total value of Kshs 361,849,238 (Annex 1).

The Authority has received the booklet which indicates details of all the assets.

The Authority has not revalued the assets since they were handed over by the Ministry.

Committee Observation

The Committee made the following observations:

1. The State Department for Devolution had verified and valued the assets and handed over them to the Authority on 26th November 2016.
2. The Authority had delayed in providing documentation on the valuation of assets to the Auditor General. The documentation was provided to the Auditors in June 2019 and had not been verified.

Committee Resolution

The Authority was asked to provide all the relevant information to the Auditors during the audit cycle to avoid raising avoidable audit queries that alarm the public.

MIN/PIC/282/2019: Unutilized Balances from Counties

Disclosed at Note 15 to the financial statements are receivables from non-exchange contracts totalling Kshs. 50,711,946. Included in this amount is Kshs. 13,510,403 relating to be unutilized balances from counties. However, there were no confirmations from the respective county offices of the amounts held at the end of the financial year or any documentary evidence in support of the balances. Under the circumstances, the completeness and accuracy of the unutilized balances from the counties amounting to Kshs. 13,510,403 cannot be confirmed.

Management's Response

NDMA county offices are funded from HQ on quarterly basis for their recurrent and development expenditure by way of AIEs.

On accountability of the funds disbursed to the counties, HQ receives reconciled monthly expenditure returns from each county.

The following documents from the counties were availed to the auditors

- Summary of expenditure returns
- Bank reconciliations
- Certificate of Bank balances.

The primary documents are retained at the NDMA county offices.

Therefore, to support the unutilised balances for the year 2016/17, a control ledger for each county and a control ledger summary for all the counties totalling Ksh.13,510,403 are attached (Annex 2). **Committee Observations**

The officer was issued with Imprest totalling Kshs.1,063,436. The amount surrendered on 30 July 2015 was Kshs.1,062,485.20 leaving a balance of Kshs.951.80. The balance of Kshs.951.80 was paid and the matter resolved.

Committee Observation

The Committee made the following observations:

1. The Authority had submitted the relevant supporting documents which were subsequently verified by the Auditor.

Committee Resolution

The Committee made the following resolutions:

1. The Authority should provide documents to the Office of the Auditor General in good time to avoid raising such audit queries.
2. The audit query has been resolved.

MIN/PIC/283/2019: DONOR RELATED FUNDED ACTIVITIES FY 2016/17

(i) Unreconciled donor related expenses

Note 3,4 and 12 of the financial statements reflects the following amounts/balances for donor related funded activities:-

Details/Donor	DCFP & KRDP	UNDP DRR
Opening bank balance	3,829,649	23,076
Receipts during the year	62,000,000	-
Closing bank balance	123,579	(1,953,349)
Expected expenditure	65,706,070	(1,930,273)
Recorded expenditure	(105,187,863)	(9,320,494)
Variance	39,481,793	(11,250,767)

However, the expected expenditure after taking into account the opening bank balances, receipts during the year and the closing balance bank balances differs with the recorded expenditure by Kshs. 11,250,767. The resulting variance has not been reconciled or explained. Consequently, the accuracy of reported donor related funded activities expenses could not be confirmed.

Management's Response

The variance in question relates to the UNDP-DRR Project. The Authority received a total of Kshs 29,967,260 from the UNDP-DRR Project during 2015/2016 financial year. However, this was not fully utilised during the year and the balance of Kshs. 12,187,918 was carried over to the financial year (2016/2017) since the project funds were based on the entire project implementation period.

The Kshs. 12,187,918 is reported as unutilized balances held at counties as confirmed by the attached ledgers.

The following documentation explaining the queried variance is attached.

- a) Analysis of unutilized balances to counties as at the end of the 2015-2016 financial year, which form part of the opening balance for the 2016-2017 financial year.
- b) Ledger and bank statement indicating a total of Kshs.29,967,260 received by the Authority from the UNDP-DRR Project during the 2015/2016 financial year (*Annex 3*).
- c) **ISO Certification**

The expense of KShs.238,840 which had not been factored as part of the budget of 2015/2016 was taken as a pending bill and formed the first charge in the budget for 2016/2017 in accordance with PFM Act, 2012.

Committee Observations

The Committee made the following observation:

1. The Ledger balances and certificate of bank balance on the unspent amount were submitted to and verified by the Auditor.

Committee Resolution

The audit query has been resolved.

(ii) Expenses on Drought Contingencies Fund-Kshs.435,918,831

Disclosed at Note 12 to the financial statements is an amount of Ksh. 435,918,831 in respect of expenses on Drought Contingency Fund (DCF), which is also indicated as a receipt under Note 3. The basis of the requisition for disbursement by the various county offices has not been supported by necessary documentation justifying the extent of the fund required to undertake the given interventions. In addition, the expenditure has been captured on the basis of an expenditure verification report by an audit firm contracted by the management. In the circumstances, the expenses of Kshs. 435,918,831 cannot be confirmed.

Management Response

The Drought Contingency Fund (DCF) is an EU funded project through NDMA and finances resilience and response activities at county level.

The following documentation is mandatory for the Drought Contingency Fund requisition from Counties:

- Latest county drought early warning bulletin;
- Minutes of County Steering Group meeting authorizing the request.
- Rapid food security assessment reports.
- Latest County Drought Contingency plans.
- Drought response plan extracted from County Drought Contingency Plan indicating plan of action

- Duly filled technical justification form highlighting activity budget and objectives, criteria for triggering of activity, criteria for beneficiary selection and implementation modalities.
- Duly filled funds requisition form from county offices based on the approved response plan.

The DCF is managed through the use of a computerized management information system (MIS), thus all disbursement transactions are documented and available on the MIS for review/triangulation. The process of requisition and disbursement of advances to counties is documented in detail in Annex 7.

The DCF expenditure is captured in NDMA financial statements based on actual expenditure incurred which is supported by original expenditure supporting documents.

Attached is a detailed Drought Contingency Fund (DCF) listing of actual expenditure incurred with a total of 922 transactions, totalling to Kshs 435, 913,831 Annex 5. These documents were available at the time of audit.

In addition to the OAG audit, the donor requires that the fund expenditure verification be undertaken by an independent accounting firm as per the provisions of the grant contract.

Committee Observations

The Committee made the following observation:

The Authority had delayed in providing documentation on the Drought Contingency Fund Expenses to the Auditor General.

Committee Resolution

The audit query has been resolved.

(iii) Expenses on Ending Drought Emergencies

Disclosed also in Note 12 to the Financial Statements is an amount of Kshs. 719,161,995 relating to expenses on Ending Drought Emergencies (EDE) which is similarly reported as a receipt on Note 3. The basis of the requisition for disbursements to the various county offices and other procurement activities have not been supported by necessary documentation justifying the extent of the funds required to undertake the given interventions. In addition, the expenditure has been captured on the basis of expenditure verification reports by an audit firm contracted by the management. In the circumstances, the expenses of Kshs. 719,161,995 cannot be confirmed.

Management Response

The Ending Drought Emergencies (EDE) is an EU funded project through NDMA and finances resilience and response activities at county level.

The Ending Drought Emergencies (EDE) project is a successor of Drought Contingency Fund Project (DCFP).

Requisition Process

The EDE project uses the same platform and process as the DCF as outlined below:

- Latest county drought early warning bulletin
- Minutes of County Steering Group meeting authorizing the request.
- Rapid food security assessment reports.
- Latest County Drought Contingency plans.
- Drought response plan extracted from County Drought Contingency Plan indicating plan of action
- Duly filled technical justification form highlighting activity budget and objectives, criteria for triggering of activity, criteria for beneficiary selection and implementation modalities.
- Duly filled funds requisition form from county offices based on the approved response plan.

All disbursement transactions under the EDE are documented and available on the MIS for review/triangulation. The process of requisition and disbursement of advances to counties is documented in detail in Annex 7.

Expenditure

A detailed listing of actual expenditure incurred with a total of 34 transactions, totalling to Kshs 719,161,995 under expenses on Ending Drought Emergencies (EDE) (Annex 6).

The EDE expenditure is captured in NDMA financial statements based on actual expenditure incurred which is supported by original expenditure supporting documents.

Each of the expenditure items is duly and adequately supported through a payment or journal voucher, with the relevant accompanying supporting documents. A sample is provided.

In addition to the OAG audit, the donor requires that the fund and expenditure verification be undertaken by an independent accounting firm as per the provisions of the grant contract.

Committee Observations

The Committee made the following observation:

1. The relevant supporting documents were submitted to and verified by the Auditor.

Committee Resolution

The audit query has been resolved.

(iv) Expenses on Hunger Safety Net Programme

Further, disclosed in Note 12 to the financial statements is an amount of Kshs.1,742,691,022 relating to expenses under the Hunger Safety Net Programme (HSNP-donor AIA), which is also indicated as a receipt in Note 3. The expenditure and the receipts are based on the requisitions made to fund various activities but the accountabilities documentation in support of the expenses have not been provided for the audit verification. In addition, the Hunger Safety Net Programme (GOK Component) expenditure of Kshs Kshs.2,312,26,824 that comprised of payment to various beneficiaries did not have a documented basis on how the beneficiaries paid were identified and the rates used for paying the beneficiaries was not supported either.

In the circumstances the validity of the expense cannot be confirmed.

Management Response

The Hunger Safety Net Programme (HSNP) is a poverty-based programme implemented by NDMA. The programme is jointly funded by GOK and Department For International Development (DFID).

DFID supported five components of the programme, namely:

- a. Regular cash transfers, channeled through FSD. Kshs. 771,399,300
- b. Emergency scale-up cash transfers channeled directly through FSD. Kshs. 609,303,600
- c. Management and Monitoring Component through Development Alternatives Inc. (DAI) contracted directly by DFID. Kshs. 167,282,881
- d. Evaluation Component through Oxford Policy Management (OPM) contracted directly by DFID. Kshs 91,162,473
- e. Rights and Grievances Component through Helpage International contracted directly by DFID. Kshs 103,542,769

DFID funds for cash transfers was managed by FSD which channelled the funds to the Payments Service Provider (PSP) - Equity Bank Kenya Ltd. The PSP paid the beneficiaries via fully fledged bank accounts. However the payrolls and payment instructions were generated by NDMA (annex 8 - summary of all cash transfer payments for FY 2016/17. The payroll files are in a flash disk submitted to the auditors).

Upon successful payments to beneficiaries using DFID funds, FSD would submit payment confirmation letter to NDMA (annex 8)

FSD is a specialised financial agency established by DFID in 2005 with the mandate to execute DFID's strategy on financial inclusion as a way of reducing poverty by providing access to financial services to Kenyans. In 2007, at the inception of HSNP, DFID selected FSD to design and implement a payment solution for the programme

including the hiring of the PSP. (Attached is the MOU between DFID and FSD for implementation of HSNP)

In addition to the cash transfers, DFID gives quarterly summary report on the other three components which are directly contracted by DFID (annex 8). DFID retains all original documents supporting the expenditure and contracts for all the components. The attached letter on the expenditure on those three components for FY 2016/2017. (Annex 8)

Basis for beneficiary identification.

The basis for identification of beneficiaries and rates paid was determined at the inception of HSNP 2 in 2012/2013.

The four target counties (Turkana, Marsabit, Mandera and Wajir) were chosen based on highest and extreme poverty rates registered in KIHBS (Kenya Integrated Household Budget Survey) 2005-2006. Targeting of beneficiaries was a two-pronged approach involving a proxy mean test and community validation. A detailed registration and targeting process document is also attached. (Annex 8)

Payment rates were arrived at on the basis of a business case agreed upon by GoK and the donor. The initial rate in 2013/14 was 4,600 per household for every 2 months with an increase of 15% per year to make up for food price inflation in successive years. For the year under audit, the value was Kshs. 5,400 per household per (Annex 8).

Committee Observations

The Committee made the following observation:

1. The relevant supporting documents were submitted to and verified by the Auditor.

Committee Resolution

The Auditor was asked to provide details on the date when the Authority submitted the relevant documentation to establish if it was done within the time of the audit cycle.

MIN/PIC/284/2019: PENSION SCHEME EXPENSES FY 2016/17

The Authority operates a registered defined contribution Pension Scheme for the employees. Although the scheme is independent with trustees duly elected by members, the management included the financial statement for 2016/2017 expenditure amounting to Kshs.1,075,400 in respect of the scheme under employees compensation and Kshs. 260,000 in respect of general expenses training. The total expenditure of Kshs. 1,335,400, therefore, appears not to be a valid charge on the Authority's Fund.

Management Response

The NDMA pension scheme was established by the sponsor in August 2015. The queried total expenditure of Kshs.1,335,400 was the Authority's (sponsor) support towards operationalisation of the scheme in its first year of operations. This went towards capacity building of the interim trustees to ensure the scheme serves the purpose for which it was established and for posterity.

The NDMA support to the Staff Pension Scheme was based on a circular (Ref EPN 171/07 Vol. P (64)) dated 24th November 2010, by which the Permanent Secretary, National Treasury, advised that the scheme sponsor may meet the set-up costs of a new scheme in its first year of operations.

Attached in Annex 9 is Retirement Benefit Act 1997 on Public Service Retirement Benefits Schemes guidelines and National Treasury circular Ref EPN 171/07 Vol. P (64) dated 24th November 2010.

Committee Observation

The Retirement Benefit Act 1997 on Public Service Retirement Benefits Schemes guidelines and National Treasury circular Ref EPN 171/07 Vol. P (64) dated 24th November 2010 provides that the sponsor of a pension scheme may meet the set-up costs of a new scheme in its first year of operation.

Committee Resolution

The audit query has been resolved.

MIN/PIC/285/2019: UNSUPPORTED EXPENDITURE FY 2016/17

The following expenditure did not have supporting documentation provided for audit verification.

Expense Category	Amount	Kshs.
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Domestic Compensation	4,846,350	
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Donor related funded Activities (GoK)

(i) DCFP (GOK)	8,064,923	
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(ii) UNDP	7,009,634	
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(iii) WFP	872,950	
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Total	20,793,857	
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This made it not possible to confirm the correctness and accuracy of the respective expenditures.

Management Response

As at the time of audit, the documents were kept at the County offices.

The documents in question have since been availed as per the following annexures:

Attached in Annex B10 are;

- Accounting documents from various Counties amounting to Kshs.8,055,923 expenditures relating to DCFP-GOK supported activities. This expenditure constitutes the following:

Reference	Amount
Samburu County	994,050
West Pokot County	1,211,300
Isiolo County	1,211,000
Laikipia County	1,836,900
Kajiado County	1,289,966
Garissa County	1,494,827

Attached as Annex 10(a).

- Accounting documents for Kshs.872,950 relates to WFP activities at Makueni County Annex 10(b).

- Accounting documents for expenditure of Kshs.4,846,350 under Employee costs (travel costs-domestic). This expenditure constitutes the following: Attached is Annex 10(c).

Reference	Amount
Embu County	542,150
Isiolo County	749,400
Meru County	675,000
West Pokot County	612,000
Samburu	603,250
Kilifi County	470,000
Kwale County	60,300
Mercy Kigo	700,000
Hussein Bilala	434,250

- Accounting documents for expenditure of Kshs.7,009,634 under UNDP funded project in Turkana. Expenditure analysis and ledgers is attached as Annex B10(d)

Committee Observation

The Authority had provided the relevant supporting documents on the expenses referenced in the audit query.

Committee Resolution

The audit query has been resolved.

1. Signing of Financial Statements

The Authority has a functional board of management as indicated on pages vii, viii and ix of the annual report. However, contrary to the statement on page 1 regarding board of management responsibilities, the financial statements submitted for audit was signed by the executive officer only. Under the circumstances, it is not possible to establish whether or not the board of management has taken full responsibility for the preparation and presentation of the Authority's financial statements in line with the legal obligation on board.

Management Response

A copy of the financial statements signed by the Director Ms. Emily Mworio and the CEO, as audited by the OAG is attached as Annex 11

Committee Observation

The Authority provided a copy of the financial statements signed by one of the Board Directors.

Committee Resolution

The Office of the Auditor General should provide clarification on the date when the Director Authority signed the financial statement to establish if it was done in a timely manner.

2. Board Committees

The Audit and Risk Committee of the Board constitutes three members. These three members also form part of finance committee which comprises of four members.

In the circumstances, the effectiveness of the audit committee in checking the decision of the finance committee cannot be ascertained.

The NDMA had only five (5) Board members during 2016/17 financial year instead of the (9) as per the NDMA Act, 2016. There were four (4) committees of the Board with each committee having at least 3 members. It was therefore difficult to constitute all the committees without repeating committee membership.

Committee Observation

The NDMA Board had since been fully constituted.

Committee Resolution

The audit query is resolved.

3. National Drought Emergencies Fund

The Authority received an amount of Ksh. 2,000,000,000 from National Drought Emergency Fund (NDEF). However, even though the fund is supposed to be operated by the CEO of the National Drought Management Authority and present financial

statements to the Auditor General for audit at the end of every financial year, no financial statements have been availed for audit and there confirmation of the transfer of funds is not possible. Consequently, the accuracy of the Kshs. 2,000,000,000 receipt from National Drought Emergency Fund could not be ascertained. In addition, the maintenance and operation of the fund has not been in line with the National Drought Management Act, 2016 provision as there were no cashbook and other books of accounts.

Management Response

The amount of Kshs.2,000,000,000 was transferred to the NDEF bank account on 30th June 2017. The funds were therefore captured as a liability in the Authority's financial statements Note No. 18.

The Authority was not able to prepare financial statements because the NDEF has not been operationalized through amendment of the NDMA Act and finalization of the NDEF.

Attached in Annex 12 are;

- Bank statement/Certificate of Balance as at 30th June 2017.
- Dedicated cash book
- Control Ledger
- Bank reconciliation
- Bank balance statement as at 27th June 2019 of Kshs. 2,100,275,015.86

The books of accounts will be populated once the Fund is operationalized.

Committee Observation

The National Drought Emergency Fund had not been operationalized as it was awaiting the amendment of the National Drought Management Authority Act to provide for the mechanism of its administration.

MIN/PIC/287/2019: EXAMINATION OF AUDITED ACCOUNTS OF NATIONAL IRRIGATION BOARD

Mr. Gitonga Mugambi, the General Manager of the National Irrigation Board accompanied by Mr. Raphael Ogengo (Deputy General Manager, Irrigation and Infrastructure Development Services), Eng. Vincent Kabuti (Deputy General Manager, Research Planning and Strategy), Mr. Daniel Atula (Deputy General Manager, Operations and Irrigation Management Services), Ms. Jedidah Narocho (Head of Finance) and Mr. Tirus Kabuthia (Accountant) appeared before the Committee to adduce evidence on the audited accounts of the Board for FY 2012/13 to FY 2017/18.

MIN/PIC/288/2019: PROPERTY PLANT & EQUIPMENT FY 2012/13 to FY 2017/18

The Property, Plant and Equipment balance of Kshs. 4,845,130,713:

- i. Excludes the value of land in seven (7) schemes for which the board does not have ownership documents. Therefore, accuracy of the balance cannot be confirmed.
- ii. Irrigation works and sewerage of Kshs. 3,396,305,865 included in PPE balance.

No justification or rationale for inclusion of this amount because the works are on community land and the Board does not have ownership documents

Management Response

It is true that the property plant and equipment excludes the value of land in the seven Irrigation Schemes. This is because NIB holds in trust the said land through gazette notices. The land includes farmlands which are being cultivated by the Scheme farmers and the land where NIB's offices are located. The land is also omitted from the fixed asset register as this can only be done after the land has been de-gazetted, valued and title deeds obtained.

The figure of Ksh 3,396,305,865 for Irrigation works and sewerage captured in the Financial Statements under Property Plant and Equipment refers to the irrigation water conveyance infrastructure in the seven Irrigation Schemes under NIB. The sewerage system is for the NIB's staff houses and offices in all the Irrigation Schemes.

Committee Observations

The Committee made the following observations:

1. The Board confirmed that approximately 200 acres of its land in Mwea had been grabbed. The Board was pursuing the cancellation of the titles registered for the grabbed land and recovery of the property.
2. The grabbed land is still gazzeted as belonging to the Board.

Committee Resolution

The Board should expedite the recovery process and nullification of title by following up on the matter with the National Lands Commission.

MIN/PIC/289/2019: LONG TERM INVESTMENTS FY 2014/15

- i. NIB shareholding in Mwea Rice Mills and Western Kenya Rice Mills are 55% and 60% respectively which were acquired between 1967 and 1998 respectively.

The actual shareholding according to share certificates is 150,000 shares par value Kshs. 20 totaling to Kshs. 3,000,000 and not 137,500 share totaling Kshs. 2,750,000 as per the Financial statements.

- ii. Mwea Rice Mills Ltd. and Western Kenya Rice Mills Ltd. are registered under the companies act as limited companies but are directly managed by NIB but do not consolidate their financial statements.

Management Response

Mwea Rice Mills Ltd which is owned by NIB and Mwea Rice Growers Multipurpose Cooperative Society has a fully paid up share capital of 250,000 shares with a par value of Ksh.20.00 valued at Ksh.5, 000,000.00. NIB holds 137,500 shares with a par value of Ksh.20.00 valued at Ksh.2, 750,000.00 giving it 55% ownership. Whereas, Mwea Rice Growers Multipurpose Cooperative Society Limited owns 112,500 shares with a par value of Ksh. 20.00 valued at Ksh. 2,250,000.00 giving it 45% ownership . A copy of search from the Department of the Registrar General dated 29th July 2012 confirmed that NIB owns 137,500 shares in Mwea Rice Mills Ltd (*annex I*).

According to the minutes of the 1st meeting of directors held at Lenana Road, on 8th June 1967 under Minute 18/1, it was agreed that the administrative, secretarial and accounting work be performed by NIB staff for the company and that a charge at 3% for these services be made on the total annual revenue. Please refer to annex II.

Committee Observation

The Committee made the following observations:

1. The Authority continues to report independently from the two subsidiaries, Mwea Rice Mills Ltd and Western Kenya Rice Mills Ltd, which are limited companies.

Committee Resolutions

The audit query has been resolved.

MIN/PIC/289/2019: TRADE AND OTHER RECIEVABLES FY 2012/13

Trade and Other Receivables of Kshs. 933,411,176

- i. Receivables from Mwea according to NIB is Kshs. 38,283,440. Payables to NIB according to Mwea is Kshs. 18,691,689. Therefore, an unexplained difference of Kshs. 19,591,751.
- ii. Unsupported amount of Kshs. 271,229,265 in the trade and other receivables balance.
- iii. Staff debtors' balance of Kshs. 15,112,468 differs with the analysis amount of Kshs. 9,239,870 by Kshs. 5,872,599.

No explanation has been provided for the difference.

Management Response

Transactions between National Irrigation Board and Mwea Rice Mills Ltd date back to 1966 when the mills started operations. National Irrigation Board has been reconciling her books with Mwea Rice Mills to establish the correct position with a view of settling the respective debts. However, this has been faced with some challenges such as difficulty in retrieving of some records which arose from a lapse in handing over by retrenched staff in the year 2002. This notwithstanding, the management is working on the reconciliations

The management did not avail the schedules to support the figure of Ksh. 271,229,265 at the time the auditor was reviewing the books of accounts. The schedules are hereby attached.

The amount of Ksh.9, 289,870.00 refers to staff debts. The difference Ksh. 5,872,599 refers to overstated expenses over earlier years where staff surrenders were directly expensed instead of being applied to reduce staff debts.

Committee Observations

The Committee made the following observations:

1. The provisions of the Limitation of Action (Act) prevent the Board from pursuing long outstanding receivables after six years.
2. The reconciliation on outstanding staff debt has been carried out and any outstanding debt has or is being recovered through the payroll.
3. The Authority had submitted schedules to support the amount of Kshs. 221,229,265 under the payables.

Committee Resolution

The National Irrigation Board should seeking approval of the Board for write off of long outstanding payables whose records cannot be traced.

MIN/PIC/290/2019: CASH AND CASH EQUIVALENT FY 2012/13

The cash and cash equivalent of Kshs. 1,993,712,682 include an unsupported amount of Kshs. 539,759,704 without bank reconciliation statements and certificate of bank balances. It is therefore not possible to ascertain the accuracy of the cash and cash equivalents balance.

Management Response

The cash and cash equivalents have been reconciled and the bank statement balances are in agreement with cash book balances. The cash and cash equivalents balance is now supported with bank statements and bank reconciliation statements.

Committee Observation

The bank reconciliation statements and certificate of bank balances were submitted and verified by the Auditor.

Committee Resolution

The audit query has been resolved.

MIN/PIC/291/2019: DEVELOPMENT FUND FY 2012/13

The Development Fund of Kshs. 11,695,220 was set up in 1992 and has been dormant since 2002. The Bank statement or certificate has not been provided for audit review by the Board to confirm if the fund is available.

Management Response

The Board confirms that the figure of Ksh 11,695,220 is a book balance. There was no separate bank account opened for this fund. However, the funds were put together with other operational money and were spent over time. The balance in the books was as a result of not charging the expenses incurred then to the Development fund account, thereby leaving a book balance.

Committee Observation

The NIB had spent the amount set aside as Development Fund and the figure is still in the books of the Board.

Committee Resolution

Management should seek approval from the board of directors for write off in line with the provisions of the provisions of the PFM Act, 2015.

MIN/PIC/292/2019: JAPANESE INTERNATIONAL COOPERATION AGENCY GRANTS FY 2012/13

An analysis of the assets capitalized for the Japanese International Cooperation Agency (JICA) Grants of Kshs. 94,156,125 has not been provided for audit review.

The accuracy of the balance cannot be confirmed.

Management Response

During the year under review, NIB received grants amounting to Ksh. 94,156,125 as disclosed in note 12. The funds were used to pay for consultancy services to Nippon Koei Co. Ltd who has been contracted as a consultant Thiba Dam Construction. A schedule detailing payment to Nippon Koei Co. Ltd which was not availed during audit in support for the same is hereby attached. Please refer to annex IV.

Committee Observation

NIB accumulates all the ongoing projects expenses to work in progress and adjust them to retained earnings on completion of the project. In this regard, all expenses relating to the construction of Thiba dam are accumulated under work in progress and will be journalized to the assets register on completion of the project.

Committee Resolution

The audit query has been resolved.

MIN/PIC/293/2019: TRADE AND OTHER PAYABLES FY 2012/13, FY 2016/17 & FY 2017/18

The Trade and Other Payables balance of of Kshs. 364,750,840:

i. Payables to Mwea according to the Board is Kshs. 5,615,952. On the other hand, receivables on Mwea's books indicates a nil balance against the Board.

- ii. Supporting documents for stock of Kshs. 144,560,929 and provision for bad debts of Kshs. 21,508,816 have not been provided for audit review
- iii. Excludes accumulated bills owed to Water Resources Management Authority of Kshs. 74,780,044 while a debit balance of Kshs. 305,526 has been included and no explanation provided.

Management Response

- i. Transactions between National Irrigation Board and Mwea Rice Mills Ltd date back to 1966 when the mills started operations. National Irrigation Board has been reconciling her books with Mwea Rice Mills Ltd and Western Kenya Rice mills Ltd to establish the correct position with a view of settling the respective debts. However, this has been faced with some challenges such as difficulty in retrieving of some records which arose from a lapse in handing over by retrenched staff in the year 2002. This notwithstanding, the management is working on these reconciliations.
- ii. The amount of stock difference of Ksh. 144,560,929 refers to the difference between the value of physical stock counted as at 30th June 2013 and the ledger balance for the same period. This figure arose due to the fact that stock reconciliation had not been finalized by the time the auditor was reviewing the financial statements.
- iii. The figure of Ksh. 74,780,044 as at the time of audit had not been captured in NIB books since the Authority had not received any invoice from WARMA. The Schedule supporting payables as at 30th June 2013 is hereby attached. Please refer to annex

Current Status

The current status is that NIB is owing to WARMA Kshs 20,981,308.38 after making some payments. However, NIB has no plans of making further payments as there is no obligation for NIB to pay for water abstraction permits on behalf of farmers. Please refer to annex VI.

Committee Observation

The Authority had provided the relevant supporting documents to the Auditor.

Committee Resolution

The Authority should make for provision of doubtful debts when preparing its financial statements to capture debts whose recoverability is not certain.

MIN/PIC/294/2019: LONG TERM LOANS FY 2012/13

The Authority had long term financial obligation of Kshs. 2,573,066,569 reflected in the Government's outstanding loans statement. The same had however not been captured in the financial statements of the Authority.

Management Response

The figure of Ksh. 2,573,066,569 reflected in the Government's outstanding loan statement as at 30 June 2013 is not captured in the books of NIB as a loan. The disbursement was captured as part of development grants for counterpart funding for Natural Resource Management Project.

Committee Observation

The Board provided communication with the National Treasury in which it acknowledged that the amount in question was a loan.

Committee Resolution

NIB with the assistance of its parent Ministry should seek Treasury's approval to treat the amount as a grant.

MIN/PIC/295/2019: OTHER OPERATIONAL INCOME FY 2012/13

Other Operational Income of Kshs. 361,941,801 excludes accountancy and administration fee due from Mwea Rice Mills Ltd. and Western Kenya Rice Mills Ltd. of Kshs. 942,501.

Additionally, bank Interest of Kshs. 267,640,463 has been included for which it is unsupported.

Management Response

The bank interest figure of Ksh. 257,471,747 for which schedules and supporting documents were not provided during the time of audit review has now been attached. *Annex VIII.*

Committee Observation

The revenue was recognized in the books of accounts and the supporting schedules for the bank interest were provided and cleared in the financial year 2013-14.

Committee Resolution

The audit query is resolved.

MIN/PIC/296/2019: GOVERNMENT GRANTS FY 2012/13

Grants received from the Ministry of Water and Irrigation according to schedules provided reflects an amount of Kshs. 7,533,614,433 resulting to an unexplained difference of Kshs. 133,859,980.

Management Response

The government grants received by NIB amounted to Ksh. 7,399,754,453.00 and the same is disclosed in Note 20. The management therefore, reported in the financial statements as per the total grants received from the Parent Ministry (Ministry of Water and Irrigation). *Annex IX.*

Committee Observation

The figures were reconciled and the query was dropped during the audit of the financial year 2013-14.

Committee Resolution

The audit query has been resolved.

MIN/PIC/297/2019: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/298/2019: ADJOURNMENT

The meeting was adjourned at seventeen minutes past one O'clock.

Signed

The Hon. Abdullswamad Sharraf Nassir, MP
(Chairperson)

Date.....

25/07/2019.

MINUTES OF THE 35TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON TUESDAY 25TH JUNE 2019 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10.00 A.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
4. The Hon. Raphael Bitta Sauti Wanjala, MP
5. The Hon. Gladys Wanga, MP
6. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
7. The Hon. Thuku Zachary Kwenya, M.P
8. The Hon. Paul Kahindi Katana, MP
9. The Hon. Mohamed Hire Garane, M.P
10. The Hon. Rashid Kassim Amin, MP
11. The Hon. James Kamau Githua Wamacukuru, M.P
12. The Hon. Joash Nyamache Nyamoko, HSC, MP
13. The Hon. Babu Owino Paul Ongili, MP

ABSENT WITH APOLOGY

1. The Hon. John Muchiri Nyaga, M.P
2. The Hon. Mary Wamaua Njoroge, MP
3. The Hon. Justus Kizito Mugali, MP
4. The Hon. Omar Mohamed Maalim Hassan, MP
5. The Hon. Purity Wangui Ngirici, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 2. Mr. Mohamed Boru | - | Third Clerk Assistant |
| 3. Ms. Sharon Rotino | - | Research Officer |
| 4. Ms. Marlene Ayiro | - | Legal Counsel |
| 5. Ms. Noelle Chelagat | - | Media Relations Officer |
| 6. Ms. Winfred Atieno | - | Audio Recording Officer |

IN ATTENDANCE

- | | | |
|-------------------------|---|----------------|
| 1. Mr. Joshiah Oyuko | - | Manager, Audit |
| 2. Mr. Leonard Chemuren | - | Manager, Audit |

MIN/PIC/267/2019: PRELIMINARIES

The Chairperson called the meeting to order at twenty five minutes past ten O'clock followed by a word of prayer.

MIN/PIC/268/2019: EXAMINATION OF AUDITED ACCOUNTS OF KENYA INVESTMENT AUTHORITY

Dr. Moses Ikiara, the Managing Director of Kenya Investment Authority accompanied by Ms. Olivia Rachier (General Manager, Legal and Corporate Services), Ms. Donna Atieno (General Manager, Finance & Administration), Mr. Guracha Adi (Ag. General Manager, Investor Services), Ms. Purity Kimathi (Senior Accountant) and Ms. Tabitha Njogu (Accountant) appeared before the Committee to adduce evidence on the audited accounts of the Authority for financial years 2014/15 to 2016/17.

MIN/PIC/269/2019: PAYMENT TO A CONSULTING FIRM FY 2014/15 & FY 2015/16

The authority paid a total of Kshs. 6,671,718 being accrued interest and legal fees. The interest was in respect to delay in payment of an invoice of Kshs. 217,152 for a consultancy service for the development of an investment policy framework by a local consultancy firm. The amount was due on or before 8th January 2011 failure to which interest was to be charged at the rate of 3% per month on the outstanding balance according to the signed contract.

There was delay on the part of the Authority in issuing instruction to its lawyers on the next cause of action even after being reminded that the interest was accruing hence total bill escalated to Kshs.10,251,977.

The Authority also failed to heed to the advice from its lawyer that an appeal on the case was bound to fail on 28 June 2013 and a further advice from attorney general office on 11 October 2013 that the Authority should seek to seek an out of court settlement since the chances of getting a favorable judgment was next to nil.

Consequently, due to failure to properly manage the contract, the Authority lost Kshs.10,251,977 excluding undetermined legal fees to its lawyers.

Management's Response

On 21st March, 2017, the Authority wrote to the Inspectorate of State Corporations requesting for their assistance in recovering the funds from the then Managing Director Ms. Susan Kikwai. Subsequent reminders were done on 22nd January, 2017 and 21st March, 2017 on the same.

On 21st April, 2017, the Inspectorate of State Corporations launched a special investigation on the matter and requested for additional information which was provided;

Subsequently, on 24th November, 2017, the Inspectorate of State Corporations advised the Authority that:

- a. The Authority lost funds due to negligence of the former Managing Director, Ms. Susan Kikwai; and
- b. The Board should use appropriate means to recover the funds lost.;

The Authority then wrote to Ms. Kikwai on 27th September, 2018 demanding the total amount lost of KShs.10,562,147.05. Ms. Kikwai through her lawyer responded on 25th October, 2018 denying the claim.

The Authority wrote to the Inspectorate of State Corporations on 20th March, 2019 informing them of the development and seeking their view on handing over the matter to the Ethics and Anti-Corruption Commission (EACC). On 4th April, 2019, the Inspectorate of State Corporations okayed for the matter to be forwarded with a view to recover the funds given that Ms. Kikwai did not admit liability.

On 29th April, 2019, the Authority sent a letter to EACC. The Authority has not received any feedback from EACC on the same.

Committee Observation

The Committee made the following observations:

1. The invoice for the services provided by the consulting company amounted to Kshs. 217,152. However, the Authority ended up paying Kshs. 10,562,147.
2. The variation in amount was caused by a clause in the contract for the services which provides for a simple interest of 3% per day on delayed payments.
3. The contract for the services did not have a witness and was only signed by the CEO, indicating a possible conspiracy to defraud the public.
4. The Authority paid the Kshs. 10,562,147 to avoid auctioning of its property following a court case that was ruled in favour of the consultant.
5. The Inspectorate of State Corporations investigated the matter and recommended for surcharge against the then CEO.

Committee Resolution

The Authority was asked to provide a copy of the Report on the investigation of the matter by the Inspectorate of State Corporations.

The then CEO, Ms. Susan Kikwai to appear before the Committee to respond to the matters raised in the audit query.

MIN/PIC/270/2019: OTHER MATTER - AMOUNT FROM RECIEVABLES TRANSACTION FY 2014/15

The statement of financial position reflect accounts receivables from exchange transactions of Kshs.12,355,183 which includes un-surrender of Kshs.1,143,704 relating to Milan expo.

Management's Response

The officer (Mr. Meshack Washier) was scheduled to travel between 1st to 18th July 2015 but was advanced Imprest to enable him travel. The Imprest warrant Number 6519 and 6527 were prepared on 24th June 2015 and paid out on 29th June 2015. Given the cut off period for the financial year is 30th June, the Imprest remained unsurrendered as at 30 June 2015. The Imprest was surrendered and processed by 31st July 2015.

Committee Observations

The officer was issued with Imprest totalling Kshs.1,063,436. The amount surrendered on 30 July 2015 was Kshs.1,062,485.20 leaving a balance of Kshs.951.80. The balance of Kshs. 951.80 was paid and the matter resolved.

Committee Resolution

The audit query has been resolved.

MIN/PIC/271/2019: OTHER MATTER FY 2015/16

Budgetary Performance - Kenya International Investment Conference

Expenses for the conference were noted to have exceeded the budget without adequate explanations and/or necessary approvals.

Management's Response

a) Kenya International Investment Conference (KIICO)

KenInvest undertook the 2nd Kenya International Investment Conference upon confirmation from the Parent Ministry that they would receive funding under the Tourism Recovering kitty after several meetings held. It was expected that the funds would cater for the cost of hosting the conference at Kenya International Convention Centre. However, the communication of lack of funding was received later in the financial year (June 2016 while conference was held in November 2015) which resulted in a budget deficit. This deficit was because of factors beyond our control. The Authority therefore utilized its reserves to cater for the expense. There is no pending bill on this. In addition, the Authority can restate the Statement of Changes in Net Assets to reflect the same.

b) ISO Certification

The expense of KShs.238,840 which had not been factored as part of the budget of 2015/2016 was taken as a pending bill and formed the first charge in the budget for 2016/2017 in accordance with PFM Act, 2012.

Committee Observations

The Committee made the following observations:

1. The Principal Secretary in the parent Ministry wrote to the Authority committing the government to provide Kshs. 30,000,000 towards expenses for the Conference.
2. The Ministry later wrote to the Authority after the Conference indicating lack of funds to meet the expenses incurred.
3. The Authority had failed to provide documentation to justify the expenditure despite repeated concerns raised by the Auditor.
4. The Board had provided approval to management to undertake the expenditure.

Committee Resolution

The Authority was asked to provide the two letters from the parent Ministry regarding funding for the conference as well as a written copy of the Board approval to incur expenditure.

MIN/PIC/272/2019: POOR BUDGET ABSORPTION FY 2016/17

The Authority spent a total of Kshs.47,527,238 on program costs against an approved budget provision of Kshs.61,118,390 under the expense item resulting in an under-expenditure of Kshs.13,591,152 or 22% under-absorption. Failure by management to adhere to the budget and undertake planned activities have a negative impact on service delivery and achievement of the Authority's mandate.

Management's Response

The main reason for this was that the Authority had anticipated to relocate and to Launch the One Stop Centre after the initial completion date of 20th May, 2017. However, the contractor requested for extension of time due to some unforeseen circumstances. The Authority eventually relocated in August, 2017.

Committee Resolution

The audit query has been resolved.

MIN/PIC/273/2019: EXPIRED CONTRACT FY 2016/17

The revenue from exchange transaction (other income) balance of Kshs.28,118,390 includes an amount of Kshs.489,789 received on 15 July 2016 in accordance with the memorandum of understanding between the UNIDO and the Kenya Investment Authority dated 14 March 2013 for hosting within the Authority an Industrial SPX at its Kenya Railways Headquarters.

No explanation has been provided for the receipt of funds outside the contract period.

Management's Response

There was a delay in the disbursements of funds from UNIDO hence the need to extend the original memorandum of understanding to 2017. The funds received were as per the contract and were used to pay the salary of the SPX engineer.

Committee Resolution

The audit query has been resolved.

MIN/PIC/274/2019: EXAMINATION OF AUDITED ACCOUNTS OF KENYA NATIONAL HIGHWAYS AUTHORITY

Eng. Peter Mundinia, the Director General of the Kenya National Highways Authority accompanied by Mr. James Bowen, (Director, Corporate Services), Ms. Norah Odingo (Corporation Secretary), Eng. Njuguna Gatitu (Deputy Director, Supply Chain Management), Mr. Chanje Kera (Deputy Director, Finance & Accounts), Eng. Okeyo Charles (Deputy Director, Development) appeared before the Committee to adduce evidence on the report of the Auditor General on the financial statements of the Authority for the financial year 2014/15 and 2015/2016.

MIN/PIC/275/2019: REHABILITATION OF WEBUYE-KITALE ROAD LOT 3 FY 2014/15 7 FY 2015/16

As reported in 2013/14, the above contract was awarded on 18th January 2012 to M/s Vil Limited (Formerly Vijay Infrastructure Ltd) at a contract sum of Kshs. 2,505,924,536.66. The works commenced on 1st April 2013 for a contract period of 24 months with a completion date of 31st March 2015. The project is financed by the World Bank and the Government of Kenya at 75% and 25% respectively.

Evidence available indicated that a notice of termination of the contract was issued on 8th May, 2014 due to a contractor's non-performance. However, the contractor obtained a court injunction to stop the employer from directing the contractor to remove equipment from site. By the time the notice to terminate was issued, 53% of the contract period had elapsed and the contractor had only achieved 1% physical progress despite having been paid an advance of Kshs. 205,974,052.89 for mobilization and cash flow support.

A review of the status of the project and as per audit inspection on 24th September 2015, the contractor's equipment was lying idle and no works were going on despite a court ruling on 12th June 2015 that both parties engage in arbitration process. Although Management has explained that the contractor abandoned the site on 31st March 2015 and that the abandonment will be a subject for arbitration, the effect of the result of the arbitration on the project cannot be determined.

Management Response

Management agreed with the audit query. The court ruling on 12th June, 2015 directed the parties involved to go into arbitration. The contractor abandoned the site and had never returned. The abandonment was also a subject of the arbitration.

However, at the request of the contractor, the employer had entered into discussion for amicable termination of the contract. The contract was eventually terminated and the advance payment guarantees recalled in full. The Authority received the full sum advanced to the contractor at its NIC Bank Ltd account no. 1001936677 and 1110001524 on 24th June, 2016, 28th June, 2016 and 29th June, 2016.

The works were awarded to a new contractor whose progress of works is satisfactory and has so far achieved 34% physical progress. The project completion date is end of November 2018.

Committee Observations

The Committee made the following observations:

1. The initial contract for the project awarded to M/S VIL (formerly Vijal Infrastructure Limited) Limited was cancelled due to non-performance by the contractor and the advance guarantees recalled in full. However, the performance bond of 10% was not recalled.
2. The Authority had carried out due diligence on the company and received no objection from the funding entity, World Bank, having met the stringent funding conditions of the Bank.
3. There was a new contractor on site with the project expected to be completed by October 2019.
4. There was an increase in the contract sum from Kshs. 2,500,000,000 to Kshs. 4,000,000,000.
5. Arbitration between the contractor and the Authority was to take place in Hague, Netherlands. The Authority preferred to settle the matter out of court so as to expedite resolution of the dispute. There was pressure from locals for the road to be finalized which partly advised the decision.
6. There was a possibility that the Authority would have received more than the advance guarantee of Kshs. 250,000,000 if the arbitration process had been completed.
7. The Authority had refused to pay Kshs. 122,000,000 claimed by M/S VIL Limited for works done.

Committee Resolution

The Authority was asked to provide a copy of the tender documents for M/S VIL Limited as well as a copy of the contract between the Authority and the company.

MIN/PIC/276/2019: UNSUPPORTED EXPENDITURE FY 2014/15

Included in the expenditure of Kshs. 3,778,139,482 in the statement of receipts and payments is Kshs. 11,015,603 described as miscellaneous payments and explained in Note 8.7 as bank corrections. Although management has explained that these were bank corrections, the letter from the bank dated 5 November, 2015 clearly states that

the interest rate of 8% was for the period November 2013 to July 2014 and not July 2014 to June 2015 which is the period for the financial statements under audit.

In addition, the breakdown of the total of Kshs. 11,015,603 as well as the terms between the Authority and the bank were not availed for verification. In the circumstances, the propriety of the expenditure of Kshs. 11,105,603 cannot be confirmed.

Management Response

The erroneous interest was Kshs. 12,959,532 out of which Kshs. 11,015,603 is the net interest recovered thus a difference of Kshs. 1,943,929 which represents withholding tax paid by the bank directly to KRA.

The corrections made by the bank was occasioned by erroneous usage of 18% interest rate p.a instead of the agreed 8% p.a. The prevailing commercial banks weighted average interts rate on deposists as provided by the Central Bank of Kenya between November 2013 to July 2014 ranged between 6.42% and 6.65%. The letter from the bank dated 5th November 2015 and extract of the commercial banks weighted average interest rate as per the Central Bank of Kenya website are attached.

The interest rate due to KENHA for the period August 2014 to June 2015 was based on prevailing interest rate of 8% hence no adjustments were required.

The correctness of Kshs. 11,015,603 is confirmed by bank reconciliation statements prepared for the period under review with support of bank interest correction's analysis which were shared with the auditor during the audit exercise.

Development partners require Financial Management Reports prepared on a cash basis as opposed to accrual basis where any movements in and out of the account are treated as income and expenses respectively. The reversal of Kshs. 11,015,603 could not be adjusted to accumulated reserves but charged in the year the adjustment was effected.

Committee Observation

The Committee made the following observations:

1. The Authority was erroneously paid interest of Kshs. 11,015,603 on its current account by the bank which was later recovered on the basis of wrong interest rate.
2. The Authority did not object to the recovery of the funds by the bank having acknowledged the use of wrong interest rates for computation of amount to be paid.

Committee Resolutions

The Committee made the following resolutions:

1. The Inspectorate of State Corporations to confirm if the Treasury circular on deposit of surplus funds applies to this amounts deposited in the bank by the Authority.
2. The Authority should provide documentation indicating the terms of engagement it had with the bank.

MIN/PIC/277/2019: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/278/2019: ADJOURNMENT

The meeting was adjourned at seventeen minutes past one O'clock.

Signed

Date..... 23/07/2019

The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

MINUTES OF THE 34TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY 20TH JUNE 2019 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10.00 A.M.

PRESENT

1. The Hon. Abdullswamad Sharif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
4. The Hon. Raphael Bitta Sauti Wanjala, MP
5. The Hon. Gladys Wanga, MP
6. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
7. The Hon. Purity Wangui Ngirici, MP
8. The Hon. Thuku Zachary Kwenya, M.P
9. The Hon. Paul Kahindi Katana, MP
10. The Hon. Mohamed Hire Garane, M.P

ABSENT WITH APOLOGY

1. The Hon. John Muchiri Nyaga, M.P
2. The Hon. Mary Wamaua Njoroge, MP
3. The Hon. Justus Kizito Mugali, MP
4. The Hon. Rashid Kassim Amin, MP
5. The Hon. James Kamau Githua Wamacukuru, M.P
6. The Hon. Joash Nyamache Nyamoko, HSC, MP
7. The Hon. Babu Owino Paul Ongili, MP
8. The Hon. Omar Mohamed Maalim Hassan, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 2. Mr. Mohamed Boru | - | Third Clerk Assistant |
| 3. Mr. Thomas Ogwel | - | Fiscal Analyst |
| 4. Ms. Sharon Rotino | - | Research Officer |
| 5. Ms. Marlene Ayiro | - | Legal Counsel |
| 6. Ms. Noelle Chelagat | - | Media Relations Officer |
| 7. Ms. Winfred Atieno | - | Audio Recording Officer |

IN ATTENDANCE

- | | | |
|------------------------|---|------------------------------------|
| 1. Mr. Charles Kiage | - | Manager, Audit |
| 2. Mr. Lawrence Oigara | - | Manager, Audit |
| 3. Mr. Andrew Njuguna | - | Manager, Audit |
| 4. Ms. Jane Chege | - | Manager, Audit |
| 5. Ms. Joyce Wesonga | - | Inspectorate of State Corporations |

MIN/PIC/258/2019: PRELIMINARIES

The Chairperson called the meeting to order at twenty six minutes past ten O'clock followed by a word of prayer.

MIN/PIC/259/2019: EXAMINATION OF AUDITED ACCOUNTS OF COUNCIL FOR LEGAL EDUCATION

Dr. Jacob Gakeri, the Secretary to the Council for Legal Education accompanied by Mr. Jones Otukey (Asst. Director, Finance, Planning & Administration), Mr. George Wafula (Manager, Examinations), Ms. Purity Kimathi (Senior Accountant) appeared before the Committee to adduce evidence on the audited accounts of the Council for financial years 2015/16 to 2017/18.

The Committee heard that the Auditor-General issued an unqualified Opinion on the Council's financial statements for the financial years 2015/16 and 2016/17.

MIN/PIC/260/2019: OTHER MATTER

1. Operationalization of Tribunal FY 2015/16 & FY 2016/17

It was observed that various institutions and individuals had sued the Council challenging some decisions of the Council. The intent of the Council of Legal Education Act 2012, was that such cases would be initially determined by the Tribunal established under the Act after which a dissatisfied party would seek redress from the High Court. Members and Chairperson of the Tribunal were interviewed and appointed by the Judicial Service Commission vide letters dated 21 May 2013 and 10 June 2014 respectively but the Tribunal has not been operationalized. No reason has been given for failure to operationalize the Tribunal.

Management Response

The Legal Education Act no 27 of 2012 establishes a Legal Education Appeals Tribunal under Section 29 (1) of the Act: "The Tribunal is appointable by the Judicial Service Commission through an open, competitive and transparent process. The Tribunal shall be ad hoc and shall sit at such times and places as it shall appoint".

Council letter Ref CLE/MISC/3 VOL.I (18) dated 25th September 2017 (appendix 2B) to the Attorney General and Copied the Chief Registrar of Judiciary and Auditor-General and Solicitor General on operationalization of Legal Education Appeals Tribunal indicated that the Tribunal had been allocated a budget of Kshs.10.7 Million in 2017/2018 Estimates of Recurrent Expenditure under Judiciary vote. Council requested for the Attorney General's intervention in operationalizing the tribunal as envisaged in Section 29 (1) of the Legal Education Act. The letter also asked the Attorney General to consult with the Salaries and Remuneration Commission in setting up remuneration levels of Chairman and, members of the Tribunal.

Proposed remuneration for the chairman and members of tribunal were communicated to the Council vide letter Ref AG/CON/9/14/2/VOL. I dated 6th November 2017 (*appendix 2C*)

Committee Observation

The Legal Education Appeals Tribunal is now operational and the Judiciary has listed it among the operational Tribunals. The Tribunal operates from Reinsurance Plaza 12th Floor. (*Appendix 2D*)

Committee Resolution

The query had been satisfactorily addressed and is resolved.

2. Terms of Council Members Expiring FY 2016/17

It is noted that out of the ten Council members, the term of 70% of the members expired on 8th February 2017. The Council and the sub-committees of the Council were unable to convene any meetings since February 2017 due to lack of quorum. Further, the appointing authority contravened the Code of Governance for State Corporations provisions on succession planning of the Council for not staggering the tenure of Council Members to ensure a phased transition.

Management Response

Section 4(5) (a) (b) (c) (d) (e) (f) (g) (h) and (i) of the Legal Education Act No. 27 of 2012, provides for the nomination and appointment of Members of Council. Six (6) Council Members of the re-established Council of Legal Education were gazetted on 8th February 2013 for a term of four years which expired on 8th February 2017.

Council of Legal Education wrote to the Attorney General's Office on 16th December 2016 to advise that the term of the Council Members was coming to an end for the Attorney General's Office to take steps to make the necessary appointments for purpose of continuity.

At its meeting held on 25th November 2016, Council recommended that new appointments were necessary for purpose of continuity. It was imperative for Council to continue transacting critical business including approval of Bar Examination.

The Honourable Attorney General gazetted six (6) Members of the Council under Section 4(5) (b) (c) (d) (e) (f) on 20th February 2018 vide Gazette Notice No. 1660. The Chair of Council was gazetted on 18th April 2018 vide Gazette No. 3140. One (1) Member under 4(5) (f) is yet to be gazetted. The newly constituted Council convened as a committee to transact business on 16th February 2018.

Committee Observation

The Council member's terms were staggered in line with the Code of Governance for State Corporations provisions on succession planning.

Relevant Gazette notices and letters of appointment are attached for review (appendix 2E)

Committee Resolution

The query had been addressed and is resolved.

3. Exam related costs on Project and Oral Examination FY 2016/17

The statement of financial performance as at June 2017 reflected examination related costs of Kshs 54,547,803. Out of this balance of Kshs. 7,390,275 represented payments to the Kenya school of law in relation to cost of administering Project and Olral Examinations, which were being administered by the school on behalf of the Council for the first time.

During its Governing Council meeting of 24 March 2016, the council had resolved (minute reference 5.7.2) that existing arrangements with the school should be revised, by having a formal agency agreement between the two entities had been in place. Without a formal agreement between the parties, it was difficult to establish the obligations and responsibilities of each party in relation to administration of project and oral examination.

Management Response

The Council of Legal Education successfully negotiated with the Kenya School of Law and Agency Agreement was signed effectively resolving the matter. (Appendix 2F)

Committee Resolution

The query had been addressed and is resolved.

MIN/PIC/261/2019: CASH AND CASH EQUIVALENT FY 2017/18

Included in cash and cash equivalent balance of Kshs. 389,247,265 as disclosed at note 16 to the financial statements is National Bank of Kenya Revenue Account balance of Kshs. 363,357,727 for which the supporting bank reconciliation statement reflects direct deposits of Kshs. 1,869,512.30 out of which deposits amounting to Kshs. 1,203,511 have been outstanding for more than six months. No explanation has been provided for not clearing these items in time.

In addition, the reconciliation statement for the National Bank of Kenya expenditure account reflects unrepresented cheques totaling to Kshs. 9,528,386 and whose clearance status as at 31st December 2018 had not been disclosed by Management. In the circumstances the validity and accuracy of cash and cash equivalent balance of Kshs. 389,247,265 as at 30th June 2018 could not be confirmed.

Management Response

Revenue Account direct deposits amounting to Kshs. 1,203,511.30 outstanding for more than six months

Council of Legal Education bank reconciliation as at 30th June 2018 has credits in bank not in cashbook amounting to Kshs. 1,869,512.30 of which Kshs. 1,203,511.30 has been outstanding for more than six months. This is occasioned when individuals deposit money in the Council of Legal Education account directly but do not seek the service they have paid for. In such a case Council is not in a position to receipt recognize the funds deposited in bank as revenue because service has not been rendered and the individual has not presented the evidence of payment as per our procedures.

Direct deposits in bank not in cashbook are in most cases related to candidates who deposit examination fee in Council's bank account but do not register for examination and in this case the period is more than six months. It is important to note that Council Conducts the Bar Examination twice in a year. The reconciling items listed in the credits in bank not in cashbook are only cleared when the candidate presents the original deposit slip and registers for examination or seeks the service for which they have paid. Council in consultation with the bank endeavours to clear the direct deposits in time when there is sufficient information to recognize the funds in our books.

Expenditure account unrepresented cheques of Kshs. 9,528,386

The Council of Legal Education bank reconciliation statement as at 30th June 2018 for the revenue account has unrepresented cheques amounting to Kshs. 9,528,386. All the unrepresented cheques cleared by 30th September 2018. Council Attaches bank statements for the expenditure July to September 2018 showing when the cheques cleared and a summary showing clearance status. (appendix 3B)

Committee Observations

The Committee observed that the credits in bank not in cashbook of which Kshs. 1,203,511.30 has been outstanding for more than six months was occasioned when individuals deposit money in the Council of Legal Education account directly but do not seek the service they have paid for. The Council thus is not in a position to receipt recognize the funds deposited in bank as revenue because service has not been rendered.

Committee Resolution

The Council should provide for integration between its IT systems and its bank accounts for real time tracking of payments. Management should also consider issuance of proforma invoices before payment is made to assist in tracking payments.

MIN/PIC/262/2019: OTHER MATTERS FY 2017/18

Budgetary Performance

During the year under review, the Councils actual receipts amounted to Kshs. 445,820,248 while the budgeted receipts amounted to Kshs. 380,700,000 resulting in an over collection of Kshs. 65,120,248 which translates to 117% efficiency in revenue

collection. Further, the Councils actual expenditure for the year (both recurrent and capital excluding depreciation) amounted to Kshs. 294,835,389 against an expenditure budget of kshs. 396,200,000 resulting in an under expenditure of Kshs. 101,364,611 or 74% efficiency. The significant over collection of revenue to the tune of Kshs. 65,120,248 and under expenditure of Kshs. 101,364,611 is not desirable and there is therefore need to review the budget process to ensure that resources are budgeted in a realistic manner.

Management Response

The Council of Legal Education budgeted receipts amounted to Kshs. 380,700,000 against the actual receipts of Kshs. 445,820,248. The increase in budget receipts is from Appropriations in Aid. The increase is due to an increase of number candidates sitting the Bar Examination, number of institutions seeking to be licensed as Legal Education Providers and applications for equation of foreign qualifications in law.

Council expenditure less Depreciation amounted to KSh. 294,835,389 against a budget of 396,200,000. This translated to an absorption rate of 74.4%. The absorption rate was affected by the following factors:

- i) During the financial year the Council of Legal Education did not have a sitting Board until March 2018. The newly appointed board was inducted in April 18th to 20th 2018. This affected the implementation of Council planned activities.
- ii) Council of Legal Education failed to establish a Legal Education Revolving Fund to assist needy students taking the Bar Examination in partnership with Higher Education Loans Board. Management was unable to proceed with this plans as this decision required board approval.

Current Status

The Council of Legal Education has an operational board whose appointment is staggered unlike before where terms of Council members ended on the same date.

The Council of Legal Education Board has approved the setting up of the Legal Education Revolving Fund to support candidates in partnership with Higher Education Loans Board. The requisite Structure is being set up and candidates sitting for the Bar Examination November 2019 will be the first beneficiaries.

Committee Observations

The Committee made the following observations:

1. The lack of a sitting Board in the financial year under review affected the implementation of the Council's activities, partly contributing to the under expenditure.
2. The increase in actual revenue compared to budgeted revenue is attributed to increased uptake and resits of Bar examination by students.
3. There was mass failure in the Bar examination hence a high rate of exam resits.

4. The Council administers the written component of the Bar exams that accounts for 60% of the total marks while the Kenya School of Law administers the Oral and Project component that accounts for 40% of the total.
5. The pass mark for the Bar exam as established by statute is 50%.
6. The Bar exams are moderated by experienced professionals in the legal industry.

Committee Resolution

The Council should review the Bar exam administration process to address the mass failure by students that led to the over collection of revenue.

MIN/PIC/263/2019: EXAMINATION OF AUDITED ACCOUNTS OF NEW KENYA COOPERATIVE CREAMERIES

Mr. Nixon Sigey, the Managing Director of the New Kenya Cooperative Creameries accompanied by Ms. Samuel Ichura (Chief Manager, Finance), Mr. Hassan Gyo (Manager, Finance), Ms. Yvonne Masinde (Ag. Company Secretary) and Mr. Samuel Onyango (Head of ICT) appeared before the Committee to adduce evidence on the audited accounts of the Bureau for FY 2011/12 to FY 2017/18.

MIN/PIC/264/2019: CASH & CASH EQUIVALENT FY 2014/15

i. The cash and cash equivalents balance of Kshs.44,468,465 as at 30 June 2015 excludes Kshs.269,883 being credit in Equity Bank statements and which had not been captured in the cashbook and out of which Kshs.119,803 is for transactions between 25 April 2013 and 12 June 2014 and Kshs.61,402 being credit in the Cooperative Bank statement not recorded in the cashbook and which has not been resolved.

ii. Similarly, the cash and cash equivalent balance as at 30 June 2015 includes an amount of Kshs.723,371 for credit in KCB bank statements not in the cashbook out of which Kshs.100,259 have been outstanding between 3 October 2012 and 18 December 2014 that have not been resolved. Additionally, the balance includes Kshs.24,980 being credit in the Standard Bank statements not in the cash book that has not been adjusted.

iii. The bank overdraft balance of Kshs.759,892,422 includes debit in the bank statement not in the cashbook of Kshs.4,782,595 out of which Kshs.4,306,396 has been outstanding for the period between 8 January 2007 and 31 March 2013. The same bank overdraft balance also excludes an amount of Kshs.1,056,784 relating to credit in the bank statement not in the cashbook out of which Kshs.611,591 has remained outstanding for the period between 9 August 2012 and 3 November 2014 that have not been reconciled or adjusted.

In the circumstances, it has not been possible to confirm the accuracy of cash and cash equivalents balance of Kshs.44,468,465.

Management Response

The amounts were reconciled and documentation provided to the Office of the Auditor General for verification.

Committee Resolution

The audit query has been resolved.

MIN/PIC/264/2019: \ PROCUREMENT OF EXADATA 1/8TH ORACLE ENGINEERING SYSTEM FY 2014/15

The Management on 30 September 2014, entered into a contract with Netronics Communications Ltd for the supply of the Oracle Engineering(Exadata) system at a contract price of US\$2,029,165.83 approximately Kshs.181,163,925 inclusive of VAT based on prevailing exchange rate for that day. The contract indicated that payment was to be made in 12 monthly instalments of US\$169,097.15 and purchase order issued on 2 October 2014 with delivery date expected to be 23 October 2014 with delivery date expected to be 23 October 2014. The equivalent was received by the Company on 30 January 2015 and 18 February 2015 as per the copies of delivery notes from the supplier. However, goods acceptance and inspection report was not availed for audit verification.

Further, review of the above transaction revealed that;

- i. The Company breached the contract by receiving the equivalent and defaulted in payment as per the contract terms agreed between the two parties. Neither the value of the equipment nor the contingent liability has been recognized in the financial statements.
- ii. The supplier later sued the Company and engaged a legal firm that issued a demand note on 4 May 2015 to the management demanding payment for the entire amount and the licenses for the software not yet installed together with the interest accrued as stipulated in the contract. The matter was filed in the High Court on 26 August 2015 by the suppliers' Advocates.
- iii. The Company subsequently contracted a local legal firm to represent it in court for the suit and raised an interim fee note of Kshs.5,927,323 on 29 September 2015 out of which the Company made a partial payment of Kshs.1,000,000 on 26 October 2015. The Company was however hesitant to pay further amount of Kshs.3,211,698 within 5 days as demanded by the law firm in their letter of 3 February 2016 for them to proceed with the case. By the end of audit, no other payment has been made to the advocates and they were yet to proceed.
- iv. The equipment is in the custody of the Company but is yet to be insured hence exposing the Company to risk of loss in the event of an unforeseen occurrence.

In the circumstances, the propriety of Kshs.181,163,925 incurred on the project could not be determined.

Management Response

The Board and Management took decisions to ensure continuity of the business by paying the main raw material suppliers (farmers). This Meant that most vendors were affected who included Netronics Communications Ltd for the supply and delivery of the Exadata system. Once the business was stable we embarked on processing payments to affected vendors leading to the court settlement with Ms Netronics Communications Ltd.

Committee Observation

The Committee made the following observations:

1. The cashflow problems in the financial year 2014/15 were occasioned by drought and low milk production. This affected the Cooperative's ability to meet its obligations in a timely manner.
2. The system has been insured and relevant licenses secured.
3. The Company undertook to procure the system to address challenges in the data management with respect to payment for farmers so as to mitigate against losses. The project had the approval of the Board.

Committee Resolutions

The audit query is resolved.

MIN/PIC/265/2019: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/266/2019: ADJOURNMENT

The meeting was adjourned at ten minutes past one O'clock.

Signed

The Hon. Abdullswamad Sharif Nassir, MP
(Chairperson)

Date..... 23/07/2019

MINUTES OF THE 33RD SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON TUESDAY 18TH JUNE 2019 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10.00 A.M.

PRESENT

1. The Hon. Abdullswamad Sharraf Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
4. The Hon. Raphael Bitta Sauti Wanjala, MP
5. The Hon. James Kamau Githua Wamacukuru, M.P
6. The Hon. Joash Nyamache Nyamoko, HSC, MP
7. The Hon. Purity Wangui Ngirici, MP
8. The Hon. Babu Owino Paul Ongili, MP
9. The Hon. Thuku Zachary Kwenya, M.P
10. The Hon. Omar Mohamed Maalim Hassan, MP
11. The Hon. Paul Kahindi Katana, MP
12. The Hon. Mohamed Hire Garane, M.P
13. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP

ABSENT WITH APOLOGY

1. The Hon. John Muchiri Nyaga, M.P
2. The Hon. Mary Wamaua Njoroge, MP
3. The Hon. Justus Kizito Mugali, MP
4. The Hon. Gladys Wanga, MP
5. The Hon. Rashid Kassim Amin, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 2. Mr. Mohamed Boru | - | Third Clerk Assistant |
| 3. Mr. Thomas Ogwel | - | Fiscal Analyst |
| 4. Ms. Sharon Rotino | - | Research Officer |
| 5. Ms. Marlene Ayiro | - | Legal Counsel |
| 6. Ms. Noelle Chelagat | - | Media Relations Officer |
| 7. Ms. Winfred Atieno | - | Audio Recording Officer |

IN ATTENDANCE

- | | | |
|-----------------------|---|------------------------------------|
| 1. Mr. Jack Otieno | - | Deputy Director, Audit |
| 2. Mr. Joshua Oyuko | - | Manager, Audit |
| 3. Ms. Anne Wachira | - | Manager, Audit |
| 4. Mr. Boniface Ngira | - | Manager, Audit |
| 5. Ms. Maryida Aboka | - | Supervisor, Audit |
| 6. Mr. Osman Mohamed | - | Inspectorate of State Corporations |

MIN/PIC/248/2019: PRELIMINARIES

The Chairperson called the meeting to order at twenty six minutes past ten O'clock followed by a word of prayer.

~~The Committee heard that the Kenya Nuclear Electricity Board had been renamed as Nuclear Power Energy Agency.~~

MIN/PIC/249/2019: EXAMINATION OF AUDITED ACCOUNTS OF NUCLEAR POWER ENERGY AGENCY

Eng. Collins Juma, the Chief Executive Officer of the Nuclear Power Energy Agency accompanied by Mr. Leonard Menya (Director, Finance), Mr. Naftaly Gitonga (Ag. Accountant) and Mr. Edwin Chesire (Liaison Officer) appeared before the Committee to adduce evidence on the audited accounts of the Agency for financial years 2013/14 to 2015/16.

The Committee heard that the Auditor-General issued an unqualified Opinion on the Agency's financial statements for the year ended 30 June 2014.

MIN/PIC/250/2019: INVENTORIES FY 2014/15

The statement of financial position as at 30 June 2015 reflects inventories of Kshs.6,141,076 (2013/14 Kshs.1,520,400) which are described as consumables.

This is contrary to International Public Sector Accounting Standard No. 12 on Inventories which provides for expensing such consumables.

This has the effect of overstating total assets and understating the reported deficit for the year.

Management Response

The Management made a prior year adjustment in the 2015/2016 financial year by transferring Kshs.6,141,076 from inventories to office supplies.

Committee Resolution

The query had been satisfactorily addressed and is resolved.

MIN/PIC/251/2019: OTHER MATTER

1. Financial Performance FY 2014/15

- i. During the year under review, the Board reported a deficit of Kshs.171,684,240 (Year 2013/14 - Surplus of Kshs.101,999,442), decreasing the accumulated surplus to Kshs.10,661,038 (2013/2014 Kshs.183,404,865).
- ii. The Board's financial statements also indicate that the current liabilities exceed its current assets by Kshs.28,096,754 as at 30 June 2015.
- iii. The Board's ability to meet its current obligations as and when they fall due is therefore doubtful.

- iv. Also the Board's ability to carry out its mandate in the long run is dependent on government support.

Management Response

- i. Before the year 2012, Kenya Nuclear Electricity Board (KNEB) [then Nuclear Electricity Project Committee (NEPC)] was operating under the Ministry of Energy and Petroleum with a budget of Kshs.280M.
- ii. During the year under review, the Board had a budget proposal of Kshs.1.6Billion, but was eventually given only Kshs.300Million.
- iii. As a result of the above, the Board reported a deficit and reduced net assets as pointed out in the query.
- iv. In the FY 2015/2016 the funding was increased from 300Million to Kshs.610Million.
- v. The Board was, therefore, able to meet all its obligations and turned the prior year's deficit to a surplus of Kshs.128Million and increased net assets to Kshs.132Million.

Committee Observation

The financial performance part of the query has been addressed by the Board. However, the Board will still depend on Government support to carry out its mandate in the long run.

2. Delayed Remittance of Tax Deductions FY 2014/15 & FY 2015/16

- i. Included in the trade and other payables figure of Kshs.44,675,137 as at 30 June 2015 are withholding taxes amounting to Kshs.5,053,552 which ought to have been remitted to Kenya Revenue Authority (KRA) on or before the 20th day of the month following its deduction as per Income Tax Act.
- ii. Although Management has explained that the tax liability is due to delayed funding from government, the Board is at risk of incurring tax penalties.

Management Response

The withholding tax liability was settled in the FY 2016/2017.

Committee Resolution

The audit query is resolved.

MIN/PIC/253/2019: EXAMINATION OF AUDITED ACCOUNTS OF NATIONAL DROUGHT MANAGEMENT AUTHORITY

Mr. James Oduor, the Chief Executive Officer of the National Drought Management Authority accompanied by Mr. Hashim Ali (Director, Corporate Services), Mr. Yusuf Bagaja (Finance Manager) and Mr. Kenneth Njuru (Finance and Administration Manager, DRMC Project) appeared before the Committee to adduce evidence on the audited accounts of the Bureau for FY 2013/14 to FY 2017/18.

MIN/PIC/254/2019: PROPERTY, PLANT & EQUIPMENT FY 2013/14 to FY 2015/16

The property, plant and equipment balance of Kshs 624,768,358 as at 30th June 2014 (Kshs.637,151,087 as at 30 June 2016) includes assets inherited from the former Arid Lands Resources Management Project under the Ministry of State for Special Programmes totaling Kshs.610,706,325. These assets are not registered under the name of the Authority neither have they been valued. Information available for audit indicate that a Board of Survey committee was appointed on 25 May 2016 to assess the status of the verification on 19 September 2016 and gave the assets an estimated value of Kshs.361,849,239. This situation is indicative of significant impairment on some of the properties.

In the circumstances, it has not been possible to confirm that the carrying values as stated in the financial statements reflect the fair values of the property, plant and equipment as at 30 June, 2016.

Management Response

The National Treasury in a letter dated 4th August 2014 advised the Ministry of Devolution and Planning, State department for Devolution, to initiate an audit and asset verification exercise of ALRMP II assets to facilitate handing over to NDMA.

The Principal Secretary, State Department of Devolution appointed a Board of Survey committee on 25 May 2016 to assess the status of the verification on 19 September 2016 and gave the assets an estimated value of Kshs.361,849,239.

Amounts of historical costs of assets could not be subjected to depreciation since these have to be assessed and valued and officially handed over to the Authority.

Committee Observation

Valuation of assets was carried out in the financial year 2015/16.

Committee Resolutions

The Authority should submit copies of the valuation report to the Committee and to the Office of the Auditor General for verification.

The Committee further resolved to adjourn consideration of the Authority's accounts to a later date.

MIN/PIC/255/2019: CONFIRMATION OF MINUTES

1. Minutes of the 19th sitting held on 2nd April 2019 were confirmed as true record of the proceedings after being proposed by the Hon. Ahmed Abdisalan Ibrahim, MP and seconded by the Hon. Joash Nyamoko, MP.
2. Minutes of the 20th sitting held on 4th April 2019 were confirmed as true record of the proceedings after being proposed by the Hon. Joash Nyamoko, HSC, MP and seconded by the Hon. Ahmed Abdisalan Ibrahim, MP.

3. Minutes of the 21st sitting held on 9th April 2019 were confirmed as true record of the proceedings after being proposed by the Hon. Prof. Mohamud Sheikh, MP and seconded by the Hon. Mohamed Hire, MP.
4. Minutes of the 22nd sitting held on 10th April 2019 were confirmed as true record of the proceedings after being proposed by the Hon. Prof. Mohamud Sheikh, MP and seconded by the Ahmed Abdisalan Ibrahim, MP.
5. Minutes of the 23rd sitting held on 11th April 2019 were confirmed as true record of the proceedings after being proposed by the Hon. Joash Nyamoko, HSC, MP and seconded by the Hon. Prof. Mohamud Sheikh, MP.
6. Minutes of the 24th sitting held on 11th April 2019 were confirmed as true record of the proceedings after being proposed by the Hon. Abdisalan Ahmed, MP and seconded by the Hon. Joash Nyamoko, HSC, MP.
7. Minutes of the 25th sitting held on 23rd April 2019 were confirmed as true record of the proceedings after being proposed by the Hon. Prof. Mohamud Sheikh, MP and seconded by the Hon. Abdisalan Ahmed, MP.
8. Minutes of the 26th sitting held on 25th April 2019 were confirmed as true record of the proceedings after being proposed by the Hon. Abdisalan Ahmed, MP and seconded by the Abdullswamad Sharrif Nassir, MP.

MIN/PIC/256/2019: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/257/2019: ADJOURNMENT

The meeting was adjourned at twenty minutes past twelve O'clock.

Signed

The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

Date.....

23/04/2019

1

MINUTES OF THE 29TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON TUESDAY, 7TH MAY 2019 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10.00 A.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Dr. Chrisantus Wamalwa Wakhungu, MP
4. The Hon. Raphael Bitta Sauti Wanjala, MP
5. The Hon. Purity Wangui Ngirici, MP
6. The Hon. Thuku Zachary Kwenya, M.P
7. The Hon. Gladys Wanga, MP
8. The Hon. Mary Wamaua Njoroge, MP
9. The Hon. Babu Owino Paul Ongili, MP
10. The Hon. Justus Kizito Mugali, MP
11. The Hon. Paul Kahindi Katana, MP
12. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
13. The Hon. Mohamed Hire Garane, M.P.
14. The Hon. Joash Nyamache Nyamoko, MP

ABSENT WITH APOLOGY

1. The Hon. John Muchiri Nyaga, M.P
2. The Hon. Rashid Kassim Amin, MP
3. The Hon. James Kamau Githua Wamacukuru, M.P
4. The Hon. Omar Mohamed Maalim Hassan, M.P

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Mr. Mohamed Boru | - | Clerk Assistant III |
| 2. Ms. Sharon Rotino | - | Research Officer |
| 3. Mr. Thomas Ogwel | - | Fiscal Analyst |
| 4. Ms. Marlene Ayiro | - | Legal Counsel |
| 5. Ms. Noelle Chelagat | - | Media Relations Officer |
| 6. Ms. Winfred Atieno | - | Audio Recording Officer |

IN ATTENDANCE

- | | | |
|----------------------|---|------------------------------------|
| 1. Mr. Boniface Muli | - | Director, Audit |
| 2. Mr. Joshiah Oyuko | - | Manager, Audit |
| 3. Mr. George Ombua | - | Inspectorate of State Corporations |

MIN/PIC/229/2019: PRELIMINARIES

The Chairperson called the meeting to order at twelve minutes past ten O'clock followed by a word of prayer.

MIN/PIC/230/2019: EXAMINATION OF AUDITED ACCOUNTS OF KENYA AIRPORTS AUTHORITY

Mr. Johnny Andersen, the Managing Director of the Kenya Airports Authority accompanied by Mr. Alex Gitari (General Manager, Finance), Ms. Katherine Kisila (Corporation Secretary), Mr. Samson Kimilu (General Manager, Risk Management & Internal Audit), Mr. Patrick Wanjuki (General Manager, Procurement & Logistics), Mr. Patrick Chonde (Finance Manager), Mr. Francis Ngigi (Airport Engineer, JKIA), Ms. Ettah Muango (Legal Counsel) and Mr. Elijah Miano (Communication Officer) appeared before the Committee to adduce evidence on the audited accounts of Kenya Airports Authority for financial year 2015/16.

He informed the Committee as follows:

MIN/PIC/231/2019: NEW GREENFIELD TERMINAL FY 2015/16

As reported in the previous year, the Greenfield Terminal project was awarded to M/S AGEK-CATIC JV at a contract sum of USD 653,782,814.57. This was to be a new building with 8.2 million annual passenger capacity and floor area of 178,000 sqm.

Once completed, it was to have 50 international and 10 domestic check position, 32 contact and 8 remote gates, associated apron with 45 stands and linking taxiway. The complex was to be an environmentally sustainable building and be certified by the World Green Building Council using either LEED or Green Star certification process. The terminal was to be implemented in design and build contract.

Although the letter of notification dated 16 November 2011 was clear that the contract sum of USD 653,782,814.57 was inclusive of all taxes, Management entered into a contract indicating that the contract sum was USD 653,782,814.57 exclusive of 16% VAT in unclear circumstances thereby overstating the contract sum.

It was also noted that the final contract was to be executed only after financial negotiation with an identified financier were concluded. Evidence available indicated that an expenditure of Kshs. 78,020,680 was incurred on the project on 23rd May 2014 and described as contract variation but no further information was availed and it was not clear how a contract that had not commenced could have a variation.

Further, as at the time of audit, there was no evidence that the Authority had identified a specific financier and negotiations on financing concluded. In the circumstances, it was not possible to confirm the timelines for the implementation of the project which was expected to be among the Vision 2030 projects.

It was also noted that Price WaterHouse Coopers was contracted to provide technical advisory service for borrowing at a contract sum of Kshs. 29,777,268 and the contract later terminated in unclear circumstances after incurring Kshs. 19,356,693.80 which amounts to a nugatory expenditure.

A review of the project further revealed that as at 30 June 2016, the contractor had been paid a total of Kshs. 4,310,901,805.77 while Kshs. 129,913,713 (USD 1,292,513)

had been paid to the consultant but there was no evidence of work done.

Management Response

A) Evaluation and Award

- 1) The KAA Board of Directors had during the 175th Meeting held on 9th March 2011 approved the JKIA Master Plan subject to proposed modifications in line with the members' observations and directed management to immediately commence the process of implementation of the Greenfield Terminal (GFT) Project.
- 2) Request for proposals were advertised in the print media on 22nd and 23rd June 2011. 120 bidders purchased the tender document. Only 5 firms submitted proposals by the submission deadline of 17th November 2011.
- 3) The 5 bidders who submitted their proposals were:-
 - i) Anhui Construction Engineering Group Co. Ltd (ACEG) in JV with China National Aero-Technology International Engineering Corporation (CATIC) (China)
 - ii) Beijing Construction Engineering Group Co. Ltd & Sinohydro Corporation Ltd Joint Venture (JV)
 - iii) Larsen & Toubro Ltd (India)
 - iv) Citibank (Submitted Financial Proposal Only)
 - v) SIFIKILE
- 4) Technical and Financial Proposals were submitted in different envelopes.
- 5) Of the 5 bids, 4 were subjected to technical evaluation as Citibank had only submitted the financial proposal only.
- 6) Only 2 proposals were successful after preliminary technical evaluation - ACEG+CATIC and Larsen & Turbo. Larsen & Turbo scored 62.74% in technical evaluation while CATIC scored 85.96%.
- 7) According to the evaluation criteria, the qualifying score for further consideration was 70%. Therefore the bid by Larsen & Turbo was not further evaluated.
- 8) Only one bid by ACEG+CATIC was financially evaluated. The corrected bid was Ksh. 64,745,354,315 against a pre-bid estimate of Ksh. 68,305,021,899.
- 9) The bid document required the bidders to propose financiers who will independently engage/negotiate KAA directly and negotiate the financing terms of the project. The tender documents had provided the minimum terms for the financing.
- 10) ACEG+CATIC provided 2 letters of interest/intent to finance the project from

China Development Bank (CDB) and China Exim Bank.

- 11) On the 14th November 2011, the PS in the Office of the Prime Minister wrote to the PS, Ministry of Transport pointing out that *“the project as currently structured does require mobilization of massive resources with approval from various arms of the government.... and that therefore recommend the ongoing procurement process to stop immediately and that you commence a mechanism of seeking Cabinet approval of the same by way of a Cabinet Memorandum.”* The letter was copied to the Head of Public Service, The PS Ministry of Finance and the Managing Director KAA.
- 12) On 21st November 2011, KAA responded to the letter from the Office of the Prime Minister seeking permission to continue with the evaluation of tenders whose submission deadline was 17th November 2011 and subsequently paid a courtesy call on the Prime Minister who granted KAA the permission to continue with the evaluation of tenders.
- 13) The evaluation was completed and a report recommending award at Ksh. 64,745,354,315 inclusive of all taxes submitted to the Tender Committee. At its 175th meeting held on 15th December 2011, the Tender Committee adjudicated and approved the award with the following recommendations;
 - i) *Provision of cost estimate should be competitive in comparison with similar projects in other countries.*
 - ii) *Final contract to be executed ONLY after financial negotiations with the financier is concluded.*
 - iii) *The award price be in US Dollar*
 - iv) *Handling of all issues during negotiation of specific terms such as warranties on equipment and other associated terms.*
- 14) ACEG+CATIC JV was notified of the award at USD 653,782,815 inclusive of all taxes on 16th December 2011. The JV was required to make arrangements with their proposed financiers to directly negotiate with KAA not earlier than 14 days from the date of the letter and indicated that the contract shall be signed after successful negotiations and signing of a loan agreement with the financiers and submission of a performance guarantee. *Nevertheless a contract was subsequently signed without any financing agreement or budget and before the submission of a performance guarantee.*
- 15) Through a letter dated 19th December 2011, ACEG+CATIC accepted the offer inclusive of all taxes and indicated that they will make arrangements with their proposed financier for commencement of negotiations with the Authority.
- 16) Notable on this letter is that it was on CATIC letter head.

B) Events after the Award

- 1) On 10th January 2012, the PS, Ministry of Transport wrote to KAA Managing Director stating that following consultation with the Minister, KAA is directed to prepare a cabinet brief on the progress of implementation of the GFT for presentation to Cabinet in line with the Prime Minister's request on 14th November 2011. He further advised KAA that the outcome of the bidding process did not produce acceptable minimum of technical and financial proposals.
- 2) On 11th January 2012, China Development Bank wrote to KAA submitting a term sheet entitled *"Indicative terms and conditions, USD 546,000,000 term Loan Facility for KAA. The Term Sheet stated that the term sheet was indicative only and did not constitute an offer to arrange or finance the facility."* The proposed loan would require a Government Guarantee. KAA had prepared financing models which showed that it was in a position to guarantee the loan from Receivables.
- 3) Following KAA GFT financing model, the Minister of Finance gazetted Legal Notice No. 28 on 13th April 2012 revising Airport Passenger Service Charge (APSC) from USD 20 to USD 40 for international departing passengers and Ksh. 300 to Ksh. 500 for Domestic passengers.
- 4) The revised charge would be used to finance the GFT. Part of the APSC has been used to pay the Ksh. 4.3B.
- 5) As at Thursday, 22 April 2016, the GFT Account had an equivalent balance of Ksh.1.8B as shown in the table below;

Bank	Currency	A/C No.	Balance Ksh/USD	Equivalent In Ksh @101
Equity	KES		15,366,494	15,366,494
Equity	USD		1,183,000	119,483,000
Term Deposits	USD	Various	16,455,528	1,662,008,328
Total				1,796,857,822

3. On 20th January 2012, upon receiving complaints the Ethics and Anti-Corruption Commission (EACC) commenced investigations. On 15th February 2012, the EACC wrote to KAA clearing the tender process and allowing the project to proceed.
4. On 8th February 2012, the Managing Director responded to the PS, Transport

letter explaining the evaluation process and indicating that no bidder had appealed the process. He further explained that the bidders were not required to finance the project.

5. On 10th February 2012, the Permanent Secretary wrote to KAA Managing Director reiterating that considering the magnitude of the financial resources expected to be expended, the Minister for Transport had directed KAA not to commit the Authority on any contractual arrangement until all the matters raised by the Ministry of Transport and the Prime Minister's office had been addressed.
6. On 14th February 2012, the KAA Managing Director wrote to the Attorney General seeking opinion on the matters raised by the PS, Transport on 10th January 2012.
7. On 21st February 2012, the KAA Board of Directors held a meeting and resolved to annul the procurement process and start afresh. One (1) member dissented on grounds that it was preferable to await advisory from the Attorney General, that management presented a detailed brief to enable members to make a comprehensive decision and that no proper reasons had been provided for the proposed exit.
8. The Attorney General's opinion was provided on 22nd February 2012 in which the Attorney General indicated that the Public Procurement and Disposal Act (PPDA) (2005) did not provide a minimum number of financial and technical proposals and bidders were not required to provide financing. *The Attorney General advised that the letter of award and acceptance by the contractor had given rise to a binding legal relationship and signing of a contract is an act of formalizing the contract. Termination of the procurement process will be contrary to the provisions of the proposals clause 3.27.3.*
9. On 6th March 2012, the PS Office of the PM wrote to KAA Managing Director advising that the matter had been referred to the Cabinet Committee on Infrastructure.
10. On 16 April 2012, the PS Office of the PM wrote to the Attorney General seeking advisory on the implications of terminating the procurement process. The Attorney General in a letter dated 20th March 2012 reiterated his opinion of 22nd February 2012 and *that the rights of the successful bidder have already crystallized and that a legal relationship exists between the parties, the successful bidder is entitled to certain rights under the contract such as damages and specific performance and that EACC investigations did not reveal any irregularities.*
11. On 22nd May 2012, the KAA Board of Directors met and reaffirmed its earlier decision to annul the contract.

12. On 14th June 2012, the Permanent Secretary Transport wrote to Director General, Public Procurement Oversight Authority (PPOA) requesting him to carry out investigations into the procurement process of the project.
13. On 26th July 2012, the KAA Board held a special meeting and passed a resolution directing the Managing Director to cancel the award. On the same date the Managing Director wrote to the Attorney General requesting legal direction on the cancellation of the award.
14. On 27th July 2012, the Acting Head of Public Service, wrote a letter to the Attorney General regarding the resolution of the KAA Board stating that, the Board of Directors had directed the Managing Director to terminate award of a vision 2030 project while the matter was still with the Cabinet and a Cabinet Committee had been directed to resolve the outstanding issues and that the BOD should give time to the Cabinet.
15. On 27th July 2012, the Tender Committee held an urgent meeting on direction of the Board of Directors to cancel the tender and observed the implementation of the project was untenable and recommended termination of the tender. *This decision was not communicated to the CATIC and other bidders and PPOA as per the PPDA (2005).*
16. On 31st July 2012, the Managing Director wrote to the Tender Committee advising that he was still awaiting directions of the cabinet. The matter came up for debate in parliament on 16th August 2012.
17. On 31st July 2012, CATIC appealed the 27th July 2012 Tender Committee decision to terminate the award to the Public Procurement Advisory and Review Board (PPARB) (No. 39/2012). The decision to terminate the award had not been communicated to them.
18. The applicant had submitted documentation to support its case which had not been properly obtained. The applicant had sworn an affidavit indicating the documents were slipped under their door by an unknown person. In its ruling the PPARB blamed KAA for the leakage of the documents due to infighting within the organization and blamed KAA for its failure to safeguard its own documents. Nevertheless the documents were admitted as they did not affect public interest.
19. On 23rd August 2012, the KAA Board met and resolved to send the Managing Director on forced leave, a decision which was later reversed.
20. On 22nd August 2012, KAA released a press statement on its concerns which included;
 - i) Conclusion of the evaluation process despite the Prime Minister's letter of 14th November 2011 recommending suspension of the procurement process and need to brief the cabinet.

- ii) Notification of award without the knowledge of the Board of Directors.
- iii) Awarding the contract at USD. 653.78M which was above the Board of Director's approved and envisaged cost of USD. 500M.
- iv) Failure to finalize the financing agreement.

Committee Observations

The Committee made the following observations:

1. The KAA Board of Directors had during the 175th Meeting held on 9th March 2011 approved the JKIA Master Plan subject and directed management to immediately commence the process of implementation of the Greenfield Terminal (GFT) Project.
2. Request for proposals were advertised in the print media on 22nd and 23rd June 2011.
3. Only 2 proposals were successful after preliminary technical evaluation - ACEG+CATIC and Larsen & Turbo. Larsen & Turbo scored 62.74% in technical evaluation while CATIC scored 85.96%.
4. Only one bid by ACEG+CATIC was financially evaluated. The corrected bid was Ksh. 64,745,354,315 against a pre-bid estimate of Ksh. 68,305,021,899.
5. The bid document required the bidders to propose financiers who will independently engage/negotiate KAA directly and negotiate the financing terms of the project. The tender documents had provided the minimum terms for the financing.
6. The letter of notification dated 16 November 2011 was clear that the contract sum of USD 653,782,814.57 was inclusive of all taxes but Management entered into a contract indicating that the contract sum was USD 653,782,814.57 exclusive of 16% VAT in unclear circumstances thereby overstating the contract sum.
7. Price WaterHouse Coopers was contracted to provide technical advisory service for borrowing at a contract sum of Kshs. 29,777,268 and the contract later terminated in unclear circumstances after incurring Kshs. 19,356,693.80.
8. On the 14th November 2011, the PS in the Office of the Prime Minister wrote to the PS, Ministry of Transport pointing out that "the project as currently structured does require mobilization of massive resources with approval from various arms of the government.... and that therefore recommend the ongoing procurement process to stop immediately and that you commence a mechanism of seeking Cabinet approval of the same by way of a Cabinet Memorandum." The letter was copied to the Head of Public Service, The PS Ministry of Finance and the Managing Director KAA.
9. ACEG+CATIC JV was notified of the award at USD 653,782,815 inclusive of all taxes on 16th December 2011 and a contract was subsequently signed without any financing agreement or budget and before the submission of a performance

guarantee as per the terms of the offer letter.

10. On 10th January 2012, the PS, Ministry of Transport wrote to KAA Managing Director stating that following consultation with the Minister, KAA is directed to prepare a cabinet brief on the progress of implementation of the GFT for presentation to Cabinet in line with the Prime Minister's request on 14th November 2011. He further advised KAA that the outcome of the bidding process did not produce acceptable minimum of technical and financial proposals.
11. Following KAA GFT financing model, the Minister of Finance gazetted Legal Notice No. 28 on 13th April 2012 revising Airport Passenger Service Charge (APSC) from USD 20 to USD 40 for international departing passengers and Ksh. 300 to Ksh. 500 for Domestic passengers.
12. On 10th February 2012, the Permanent Secretary wrote to KAA Managing Director reiterating that considering the magnitude of the financial resources expected to be expended, the Minister for Transport had directed KAA not to commit the Authority on any contractual arrangement until all the matters raised by the Ministry of Transport and the Prime Minister's office had been addressed
13. On 21st February 2012, the KAA Board of Directors held a meeting and resolved to annul the procurement process and start afresh. The Attorney General advised that the letter of award and acceptance by the contractor had given rise to a binding legal relationship and signing of a contract is an act of formalizing the contract. Termination of the procurement process will be contrary to the provisions of the proposals clause 3.27.3.
14. On 22nd May 2012, the KAA Board of Directors met and reaffirmed its earlier decision to annul the contract.
15. On 26th July 2012, the KAA Board held a special meeting and passed a resolution directing the Managing Director to cancel the award.
16. On 14th June 2012, the Permanent Secretary Transport wrote to Director General, Public Procurement Oversight Authority (PPOA) requesting him to carry out investigations into the procurement process of the project.
17. On 27th July 2012, the Acting Head of Public Service, wrote a letter to the Attorney General regarding the resolution of the KAA Board stating that, the Board of Directors had directed the Managing Director to terminate award of a vision 2030 project while the matter was still with the Cabinet and a Cabinet Committee had been directed to resolve the outstanding issues and that the BOD should give time to the Cabinet.
18. On 27th July 2012, the Tender Committee held an urgent meeting on direction of the Board of Directors to cancel the tender and observed the implementation of the project was untenable and recommended termination of the tender. This decision was not communicated to the CATIC and other bidders and PPOA as per the PPDA (2005).

19. The successful bidder, CATIC has not sued the Authority on the cancellation of the award for the Greenfield Terminal project. The Authority was in negotiations with CATIC to seek an amicable solution to the matter.
20. An expenditure of Kshs, 78,020,680 was incurred on the project on 23rd May 2014 and described as contract variation but no further information was availed and it was not clear how a contract that had not commenced could have a variation.
21. As at 30 June 2016, the contractor had been paid a total of Kshs. 4,310,901,805.77 while Kshs. 129,913,713 (USD 1,292,513) had been paid to the consultant but there was no evidence of work done.

Committee Resolution

The Committee resolved to seek evidence from the Public Procurement Regulatory Authority on the outcome of its investigations into the procurement process for the Greenfield Terminal project.

MIN/PIC/232/2019: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/233/2019: ADJOURNMENT

The meeting was adjourned at twenty four minutes past one O'clock.

Signed

The Hon. Abdullswamad Sharraf Nassir, MP
(Chairperson)

Date..... 23/07/2019

MINUTES OF THE 28TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY 2ND MAY 2019 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 9.30 A.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
4. The Hon. Joash Nyamache Nyamoko, MP
5. The Hon. Gladys Wanga, MP
6. The Hon. Thuku Zachary Kwenya, M.P
7. The Hon. Mohamed Hire Garane, M.P.
8. The Hon. Mary Wamaua Njoroge, MP
9. The Hon. Omar Mohamed Maalim Hassan, MP
10. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
11. The Hon. Justus Kizito Mugali, MP
12. The Hon. Babu Owino Paul Ongili, MP
13. The Hon. Paul Kahindi Katana, MP

ABSENT WITH APOLOGY

1. The Hon. Raphael Bitta Sauti Wanjala, MP
2. The Hon. John Muchiri Nyaga, M.P
3. The Hon. Rashid Kassim Amin, MP
4. The Hon. Purity Wangui Ngirici, MP
5. The Hon. James Kamau Githua Wamacukuru, M.P

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 2. Mr. Mohamed Boru | - | Third Clerk Assistant |
| 3. Ms. Sharon Rotino | - | Research Officer |
| 4. Ms. Marlene Ayiro | - | Legal Counsel |
| 5. Mr. Thomas Ogwel | - | Fiscal Analyst |
| 6. Ms. Noelle Chelagat | - | Media Relations Officer |
| 7. Ms. Winfred Atieno | - | Audio Recording Officer |

IN ATTENDANCE

- | | | |
|------------------------|---|------------------------------------|
| 1. Ms. Tabitha Waweru | - | Director, Audit |
| 2. Mr. Francis Gichure | - | Deputy Director, Audit |
| 3. Mr. Rowland Muriuki | - | Manager, Audit |
| 4. Ms. Jane Chege | - | Manager, Audit |
| 5. Mr. Dominic Katiku | - | Inspectorate of State Corporations |

MIN/PIC/2019/221: PRELIMINARIES

The Chairperson called the meeting to order at thirty minutes past ten O'clock followed by a word of prayer.

MIN/PIC/2019/222: EXAMINATION OF AUDITED ACCOUNTS OF CENTRAL BANK OF KENYA

Dr. Patrick Njoroge, the Governor of the Central Bank of Kenya, accompanied by Mr. Moses Ng'otho (Ag. Director, Finance) and Mr. Wallace Kantai (Head of Communication) appeared before the Committee to adduce evidence on the audited accounts of Central Bank of Kenya for the financial year 2011/12 to financial year 2017/18.

The Committee heard that Management had prepared responses for financial years 2015/16 to 2017/18 and had not covered previous outstanding financial years from 2011/12 to 2014/15.

The Committee resolved to adjourn the sitting with the Bank to allow for preparation of response that covers all outstanding financial years.

MIN/PIC/2019/223: EXAMINATION OF AUDITED ACCOUNTS OF KENYATTA NATIONAL HOSPITAL

Dr. Evanson Kamuri, the Ag. Chief Executive Officer of the Kenyatta National Hospital accompanied by Mr. Carylus Odiango (Director, Corporate Services), Dr. Julius Ogato (Ag. Director, Clinical Services), Mr. Michael Kihuga (Deputy Director, Finance), Mr. Elphas Choge (Deputy Director, Human Resources) Mr. Zablon Gichaba (Chief Accountant) and Mr. John Kamau (Chief Accountant) appeared before the Committee to adduce evidence on the audited accounts of Kenyatta National Hospital for the financial year 2013/14 to financial year 2016/17.

MIN/PIC/2019/224: INVENTORIES FY 2012/13 to FY 2013/14

As similarly reported in 2011/2012, the inventory balance of Kshs.278,456,000 as at 30 June 2013 excludes deficits and surpluses amounting to Kshs.13,045 and kshs.60,732 respectively. Although a Board of enquiry to investigate the cause of deficit, surpluses and obsolescence had been established, the results of the investigation have not been made available for audit review and the adjustment had not been effected in the inventories balance of Kshs.278,455,439 as at 30 June 2013.

Consequently, and as in the previous year, the validity and accuracy of the inventories balance of Kshs.278,456,000 as at 30 June 2013 could not be ascertained.

Management Response

Instances where surplus stock were noted during the stock take, the respective bin cards(S3) were ruled with the actual stock count and the same formed part of the inventory balance reported in FY 2012/13. The stock figure of Kshs.278,455,439 included surpluses of Kshs.60,732 as and therefore the inventory balance in the financial statements was fairly stated. No adjustments were required.

The report of Board of Enquiry (BoE) was availed for audit verification and the recommendations have since been implemented. Surpluses noted by the auditor were as a result of poor maintenance of stock records. The records were corrected to reflect the confirmed stock figures.

The cases where deficits were noted, appropriate disciplinary action (including surcharge) was taken on the culpable officers.

Committee Observations

The Committee made the following observations:

1. Reconciliations were done and the matter was resolved.
2. The Hospital had automated its stock management process for better accounting and to avoid repetition of the audit query.

Committee Resolutions

The Committee resolved that the audit query had been resolved.

MIN/PIC/2019/225: TRADE AND OTHER RECEIVABLES FY 2012/13 to FY 2016/17

As reported in 2011/2012, the trade and other receivables balance of Kshs. 1,623,919,000 as at 30 June 2013 includes receivables from institutional debtors, individual debtors, Ministry of Health (WB) and temporary imprest amounting to ksh168,908,395, Kshs.2,041,978,997, Kshs.2,467,265 and Kshs.1,140,686 respectively which have been outstanding for a considerably long period of time. Similarly, the balance of Kshs.1,623,919,000 includes Kshs.487, 956,316, kshs.2,339,380,Kshs.132,324 and Kshs.26,210,154.30 all totaling Kshs.516,639,174.70 For NHIF, RD cheque, Rojeans café and rent respectively which have been outstanding for more than one year. Although a provision for bad and doubtful debts of kshs.2,872,602,000 has been made for individual debtors (main hospital) and Kshs.144,568,000 for other receivables from the Ministry of Health, the recovery in full of these debts is doubtful.

Management Response

Institutional debtors

This relates to debts owed by institutions which have formalized credit facility with the Hospital but fail to settle medical bills within the stipulated credit period. The Hospital has been making follow-up for the payments through demand letters and suspension of accounts where the institutions are unresponsive. (appendix M).

Individual debtors - Ksh.2,041,978,997

The hospital renders services to all patients referred for specialized healthcare without discrimination. Some of the patients who were attended are indigents and upon clinical discharge are unable to settle their medical bills. These patients are released from the hospital on unsecured credit based on a commitment to settle their bills in the future in line with the credit policy. Efforts to collect the due receivables from this category of patients

have been unsuccessful. Most demand letters sent to the debtors' last recorded address demanding settlement of debts have been returned to hospital.

Also included in the impairment allowance are bills relating to unclaimed bodies that are disposed off by the Hospital as per Public Health Act.

In addition, the management has sought Ministry of Health reimbursement of bills incurred by indigents but with no positive consideration (appendix N1).

The impairment allowance for accounts receivable has been provided for in line with International Public Sector Accounting Standards. The process of having the impaired debts written off shall be initiated in line with the Public Finance management Act Regulations.

Ministry of Health (WB) - Kshs.2,467,265

The debt relates to amount owed by the Ministry of Health for training where a number of KNH staff were trained both locally and abroad between 1996 and 1998 under World Bank Project that was being administered by the Ministry. The Hospital settled this obligation with the understanding that the Ministry was to reimburse the hospital from the World Bank Grant. This debt has remained outstanding to date.

Temporary Imprest

The long outstanding imprest is owed by former Hospital employees who left service due to death; dismissal; retirement or resignation before fully accounting for imprests issued to them in the course of their duty. These officers are yet to clear with the hospital and therefore their final dues (other than pension) have not been released. Since recoverability of the debts is doubtful provision has been made in line with International Public Sector Accounting Standards.

NHIF Debt

Over the years, NHIF claims have increased in volume because of the wide range of services covered by the Fund as well as the transfer of free maternity program to the Fund. However, the rate at which NHIF has been paying claims does not match the rate the Hospital submit claims.

The management has been consistent in continuously following up on payment of outstanding claims as well as engaging the Fund to improve on settlement of claims within the credit period as per existing contract (appendix H).

Return to drawer (RD) cheques

This relates to personal cheques that were received in the year 2004 and prior years for patients medical bills. These cheques were drawn by well-wishers who were helping patients to meet their medical bills obligations but were unfortunately dishonoured upon presentation to the bank. Efforts to have the drawers replace the cheques have not been fruitful.

Currently, the hospital no longer accepts personal cheques as a mode of payment to avoid recurrence of the same. The long outstanding debts whose recoverability is doubtful have

been properly provided for in the financial statements as impaired in line with International Public Sector Accounting Standards (IPSAS).

Rojeans café - Kshs.132,324

This debt relates to rent, water and electricity bills in respect of a Mr. James M. Mathenge of P.O Box 32429 Nairobi, T/A Rojeans Café for the period between July 1988 and June 1992. The lease of the café was terminated in 1992 for non-payment of bills. Efforts to recover the debt confirmed that the tenant had passed on. A provision for doubtful debt has been made for this debt in line with International Public Sector accounting standards.

Rent - Kshs.26,210,154.30

The debt relates to rent that was owed by registrar doctors whose payroll was devolved with the introduction of devolved Government system. The county governments had delayed in remitting deductions to the Hospital as at the time of audit. However, the Hospital has since received the rent owed.

- i. The balance of Kshs.1,623,919,000 also includes amounts of Kshs.487,956,316 due from National Hospital Insurance Fund (NHIF). However the financial statement of NHIF as at 30 June 2013 showed an amount of kshs.120, 552,483 was owing to the hospital. The resultant difference of Kshs.367,403,833 in the financial statement had not been reconciled or explained as at 30 June 2013.

Management Response

The variance in the balances reported by KNH and NHIF is due to the difference in the accounting of claims made by both parties. KNH recognizes the debt after claims are raised upon discharge of patients. On the other hand, NHIF recognizes the debt as payable at the end stage when claims have been fully authenticated and ready for payment.

The Hospital has been engaging NHIF on reconciliation of the balances reported by the two institutions on an annual basis. Subsequently, items noted as causes of differences are followed for resolution (appendix J).

Committee Observations

The Committee made the following observations:

1. The hospital has a number of long outstanding debts whose recoverability is doubtful. These include debts owed to the Hospital by the Ministry of Health for the Doctors Training Programme, Return to drawer (RD) cheques which were dishonoured and Rojeans café.
2. The Hospital is also owed Kshs. 1,300,000,000 by NHIF as part of services offered under the National Hospital Insurance Fund. There is however a discrepancy in the outstanding amount as NHIF claims the amount to be Kshs. 56,022,916. The Hospital attributed the difference to a lag in NHIF's claim mechanism which takes time to reflect the updated debt status. A Committee had been formed between the two institutions to resolve the matter.

Committee Resolutions

The Committee made the following resolutions:

1. Kenyatta National Hospital should introduce a surcharge mechanism whereby institutions that delay in clearing their debts with the hospital also pay interest on the amount owed.
 2. In instances where provision has been made regarding outstanding debts whose recoverability is doubtful, the Hospital should conclude with write off to resolve the audit queries.
-
- ii. The balance of Ksh.1,623,919,000 also includes prepayments totaling ksh.31,733,575 relating to supply contracts for three firms in the amounts of ksh.15,792,611, Kshs. 2,213,309 and 13,727,655. As similarly observed in the previous year, the first Prepayment is in dispute while the second one is under investigation. The third pre-payment relates to micro filming project at the hospital which had not been completed as at 30 June 2013.

Management Response

High Voltage Communications Limited - Kshs.15,792,611

The amount was an advance payment made in the May 2001 for the supply, delivery and installation of submersible pumping equipment into helipad borehole and deflourination plants for boreholes at helipad and laundry. A dispute arose in the performance of the contract necessitating the parties to refer the matter to arbitration. An arbitral award was made in favour of the Hospital on 26/11/2012 to the tune of Kshs.14,876,645 but realization of the award was fruitless since the Registrar of Companies confirmed that the firm's file was missing from their electronic data base. In the absence of the Company's file and records at the Registry, the Management is unable to pursue any legal recourse for recovery of the advanced sums.

Glotech Medical Kenya Limited - Kshs.13,727,655

The amount was advance payment made the year 2003 for the supply of nuclear medicine materials. The supplier failed to perform and the Hospital demanded refund of the amount. It has been established through the Registrar of Companies that the firm is not registered, therefore, it is not possible to institute legal action against a non-existing entity.

Microtec Office Supplies - Kshs.2,213,309

The Company was awarded the tender for delivery and installation of microfilm equipment and to microfilm inactive medical records at a contract sum of Kshs.3,688,849.72 in May 1999. The supplier delivered and installed the requisite microfilm equipment and embarked on the exercise of microfilming inactive files. The supplier was paid an advance payment of 60% of the contract price but only performed 34% of the work.

The Hospital is unable to follow up on the recovery of the amounts advanced since section 4(1) of the Limitation of Actions Act, Cap 22 provides that actions founded on contract may not be brought after the end of six (6) years from the date on which the cause of action accrued.

Surcharge of then Chief Executive Officer for the loss

The Management will be seeking direction from the Board of Management on recovery of the loss totaling to KES.31,733,575.90 from the then Chief Executive Officer.

Committee Observations

The Committee made the following observations:

1. The audit query on the matter of High Voltage Communications Limited, Glotex Medical Kenya Limited and Microtec Office Supplies was handled in the 19th Report of the Public Investments Committee.
2. The matter is under investigations by the Ethics and Anti-corruption Commission as per the Committee's recommendation.
3. The Committee's recommendation for the surcharge of the then Chief Executive Officer, Dr. Meshack Onguti for the loss totalling to KES.31,733,575.90 has not been implemented.
4. The Management and Board of the Hospital had not done enough to follow up on the loss of public funds.

Committee Resolutions

The Committee made the following resolutions:

1. The Hospital should follow up with the Ethics and Anti-Corruption Commission on the status of investigations into the matter.
 2. The Hospital's Board and Management should follow up on the Committee's recommendation to surcharge the then Chief Executive Officer, Dr. Meshack Onguti for the loss of public funds.
- iii. The balance of Kshs.1,623,919,000 similarly includes an amount of Kshs.96,519,385 in respect of letters of credit issued by the hospital to foreign based firms for supply of various goods and services. As in the previous year, the goods and services have not been recognized and accounted for in these financial statements.

Management Response

The letters of credit relate to consumables received in the hospital but were not expensed due to lack of requisite documentation occasioned by poor storage standards which were in place between the year 1999 to 2004. In FY 2007/08, Letter of credits amounted to 282 Million. The Hospital managed to trace documentation relating to supplies totalling to 186 million and subsequently made the relevant adjustments in the Hospital books.

However, efforts to trace requisite documentation relating to the balance of 96 million have not been fruitful to date. The Hospital is in the process of seeking appropriate authorization to expense the same on basis of the available information and adjust KNH books accordingly.

Committee Observation

The Letter of credits amounted to 282 Million. The Hospital managed to trace documentation relating to supplies totalling to 186 million and made the relevant adjustments in the Hospital books. A balance of Kshs. 96 Million is outstanding.

Committee Resolutions

The Committee made the following resolutions:

1. The Auditors should verify documentation for the supplies worth Kshs. 182 Million.
2. The Hospital should provide an update on the recovery of the documentation for the remaining balance of Kshs. 96 Million.

MIN/PIC/2019/226: PROPERTY, PLANT AND EQUIPMENT

The property, plant and equipment balance of Kshs.11,685,532,000 as at 30 June 2013 includes 4 parcels of land value at Kshs.50,600,000 which have been excised and allocated to other parties. Further, the property, plant and equipment balance of Kshs.11,685,532,000 also includes three 3 parcels of land valued at Kshs.329,000,000 whose ownership is contested between Kenyatta national hospital, Kenya Medical Training College and National Quality Control Laboratory.

Consequently, it has not been possible to ascertain the ownership status of the parcels of land in dispute, and the balance of Kshs.11,685,532,000 as at 30 June 2013 is fairly stated.

Management Response

Excised and allocated land -Valued at KES.50,600,000

The parcels of land in question are:

No	Title No.	Area Ha	Reserved/ Intended Use	Current Owner
1	LR No.209/11460	0.3164	KNH	Isaac Gathungu Wanjohi
2	LR No.209/12767	0.2260	KNH	Chai Developers
3	LR No.209/12822	0.1221	KNH	Grace Njoki Gakiria
4	LR No.209/13319	0.0217	KNH	Stanley Lagat

The Management has written several letters to National Land Commission (NLC) to revoke the title deeds for the illegally/irregularly allocated land to private entities. Vide letter dated 27th January 2016 (appendix D1), the Hospital requested the Commission to place caveats on the four (4) titles and to investigate the authenticity of the titles with a view to revocation of the same.

The NLC responded vide letter dated 4th March 2016 (appendix D2), indicating that they had directed the responsible directorate to take the necessary action. The Hospital has been following up with NLC vide letters dated 11th May 2016 and 7th June 2016 respectively

(appendix D3) KNH sent a further reminder to NLC vide letter dated 28th February 2017 (appendix D4) and has not received any response to date. Vide letter dated 6th April 2017, the Management sought the intervention of the Chief of Staff and Head of Public Service. The Management is awaiting a response (appendix D5).

Implementation of PIC Recommendation to Surcharge then Chief Executive Officer for any loss incurred

There has been no loss incurred in respect to the four (4) parcels of land irregularly allocated- LR.No.209/12822; LR.No.209/13319; LR.No.209/12767; and LR.No.209/11460. The Hospital took upon itself since the matter came to its attention in the year 2005 to pursue the placement of caveats on the said parcels of land with the relevant authorities so as to have the titles revoked. This process commenced in 2006 and has been ongoing to date (appendix D6).

In February 2012, the Ministry of Lands confirmed that caveats had been placed on LR.No.209/12767 on 26th January 2007 and LR.No.209/12822 on 28th February 2000 (appendix D7).

A civil suit No.599 of 2014 was filed by Chai Developers Limited against NQCL seeking orders to withdraw the caveat placed on LR.No.209/12767. From the Court file, we established that the parties had entered into a consent order to withdraw the caveat. The Hospital requested NLC to place a caveat on LR.No.209/12767, revoke the title and investigate the authenticity of the said title.

In respect to LR.No.209/13319, the Ministry of Land indicated that the file could not be traced and thus a caveat could not be placed. However, pursuant to Gazette Notice No.9340 dated 18th December 2015, the Government issued a notice of its intention to acquire parcels of land for Kenya Urban Roads Authority (KURA) for the construction of the Hospital-Mbagathi Link Road. LR.No.209/13319 that was irregularly allocated was a subject of the aforesaid gazette notice. To this end, KNH launched its claim for compensation with NLC for the said parcel of land among others. In response, NLC indicated that it had received a memo from the Director of Valuation and Taxation indicating that LR.No.209/13319 was registered to one Sammy Lagat. Upon investigations, NLC conducted an inquiry in which the Hospital made its presentation and the Commission concluded that LR.No.209/13319 falls outside KNH land and upheld the title by Sammy Lagat (appendix D8.)

Three (3) parcels of land - Valued at KES.329,000,000

The parcels of land in question are:

- LR No.209/14269 - 0.14 Ha
- LR No.209/12767 - 0.531 Ha
- LR No.209/12822 - 3.8 Ha

Vide ministerial circular No.16/2005 issued by the Permanent Secretary, Ministry of Lands and Housing on repossession of irregularly/illegally allocated public land the four (4) institutions

located in the KNH complex - KNH, KMTC, UON-CHS and NQCL formed an ad-hoc committee to carry out a joint exercise to implement the directives of the circular.

The Committee established that the three (3) parcels belonged to the following institution (appendix D9):

- LR No.209/14269 - KMTC
- LR No.209/12767 - KMTC
- LR No.209/12822 - NQCL

The three (3) parcels of land do not belong to the Hospital and are erroneously reflected in the KNH books. The appropriate adjustments will be made in the financial statement of FY 2018/2019.

1.35 Hectares-National Quality Control Laboratory (NQCL).

1.35Ha belonging to NQCL was initially included as part of the Hospital land under title LR No.25138. By virtue of a resolution of the KNH Board of Management (appendix D10), the Hospital accepted to cede 1.35Ha belonging to NQCL and the process of excision is ongoing.

Adjustment was made in KNH books and in financial statements for the period ending June 30, 2018 (appendix D11) to de-recognize the proportion of parcel of land LR No. 209/25138 measuring 1.35Ha that is owned by NQCL. In addition, a disclosure note was included in the financial statements.

Jointly owned land by KNH, KMTC & UON - Valued at KES.220,000,000

Title deed LR/No.209/13978 measuring 2.544 hectares is jointly owned by Kenyatta National Hospital Management Board, Kenya Medical Training College and the Council of University of Nairobi. The purpose of the land is for recreation.

Adjustment was made in KNH books in FY 2015/16 to recognize only a third proportion of this parcel of land. Further, a disclosure note has been included in the financial statements.

Committee Observations

1. The four excised and allocated pieces of land valued at KES.50,600,000 have an ownership dispute between the Hospital on one hand and Isaac Gathungu Wanjohi, Chai Developers, Grace Njoki Gakiria and Stanley Lagat respectively. Of these four, the dispute with Mr. Lang'at was resolved when the National Land Commission concluded that LR.No.209/13319 falls outside KNH land.
2. The National Lands Commission had failed to respond to the Hospital's request to place caveats on the disputed pieces of land (LR No.209/11460, LR No.209/12767 and LR No.209/12822). This prompted the Management to seek the intervention of the Chief of Staff and Head of Public Service.
3. The three (3) parcels of land (LR No.209/14269 - 0.14 Ha, LR No.209/12767 - 0.531 Ha and LR No.209/12822 - 3.8 Ha) that are subject of the audit query do not belong to

the Hospital. Adjustments will be made in the financial statement of FY 2018/2019 to reflect this:

4. KNH Board of Management had accepted to cede 1.35Ha belonging to National Quality Control Laboratory (NQCL) and the process of excision is ongoing.
5. The land jointly owned land by KNH, KMTC & UON is meant for use as a recreation centre. Adjustment was made in KNH books in FY 2015/16 to recognize only a third proportion of this parcel of land.

Committee Resolution

The Committee made the following resolutions:

1. The Hospital should follow up with the relevant authorities to resolve the cases of land dispute and secure title deeds for the properties vested under its management.
2. The audit queries regarding the three pieces of land (LR No.209/14269 - 0.14 Ha, LR No.209/12767 - 0.531 Ha and LR No.209/12822 - 3.8 Ha), the land ceded to NQCL and the jointly owned recreation park has been resolved.

MIN/PIC/2019/227: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/2019/228: ADJOURNMENT

The meeting was adjourned at thirty eight minutes past twelve O'clock.

Signed

Date.....

The Hon. Abdullswamad Sharraf Nassir, MP
(Chairperson)

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MINUTES OF THE 27TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY 30TH APRIL 2019 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10.00 A.M.

PRESENT

1. The Hon. Abdullswamad Sharraf Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
4. The Hon. Raphael Bitta Sauti Wanjala, MP
5. The Hon. Joash Nyamache Nyamoko, MP
6. The Hon. Gladys Wanga, MP
7. The Hon. Thuku Zachary Kwenya, M.P
8. The Hon. Babu Owino Paul Ongili, MP
9. The Hon. Paul Kahindi Katana, MP
10. The Hon. Mohamed Hire Garane, M.P.
11. The Hon. Rashid Kassim Amin, MP
12. The Hon. James Kamau Githua Wamacukuru, M.P
13. The Hon. Mary Wamaua Njoroge, MP
14. The Hon. Omar Mohamed Maalim Hassan, MP
15. The Hon. Justus Kizito Mugali, MP

ABSENT WITH APOLOGY

1. Hon. Purity Wangui Ngirici, MP
2. The Hon. John Muchiri Nyaga, M.P
3. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 2. Mr. Mohamed Boru | - | Third Clerk Assistant |
| 3. Ms. Sharon Rotino | - | Research Officer |
| 4. Ms. Marlene Ayiro | - | Legal Counsel |
| 5. Mr. Thomas Ogwel | - | Fiscal Analyst |
| 6. Ms. Noelle Chelagat | - | Media Relations Officer |
| 7. Ms. Winfred Atieno | - | Audio Recording Officer |

IN ATTENDANCE

- | | | |
|---------------------------|---|------------------------------------|
| 1. Mr. Richard Nyachio | - | Director, Audit |
| 2. Mr. Jack Joseph Otieno | - | Deputy Director, Audit |
| 3. Mr. Patrick Kimani | - | Manager, Audit |
| 4. Mr. Joshiah Oyuko | - | Manager, Audit |
| 5. Ms. Jackline Omune | - | Manager, Audit |
| 6. Mr. Stephen Mbatia | - | Inspectorate of State Corporations |
| 7. Mr. Leonard Chemuren | - | Inspectorate of State Corporations |

MIN/PIC/2019/205: PRELIMINARIES

The Chairperson called the meeting to order at forty minutes past ten O'clock followed by a word of prayer.

MIN/PIC/2019/206: EXAMINATION OF AUDITED ACCOUNTS OF STATE CORPORATIONS APPEAL TRIBUNAL

Mr. Tom Odede, the Secretary to the State Corporations Appeals Tribunal accompanied by ~~Mr. Collins Okello (Legal Clerk) and Ms. Naomi Mwai (Accountant)~~ appeared before the Committee to adduce evidence on the audited accounts of the Tribunal for FY 2013/14 to FY 2016/17.

MIN/PIC/2019/207: EXAMINATION OF AUDITED ACCOUNTS OF STATE CORPORATIONS APPEAL TRIBUNAL FY 2013/14

The Committee heard that the Tribunal received unqualified audit reports for the financial year 2013/14.

MIN/PIC/2019/208: SALARY ADVANCE AND WRITEOFF FY 2014/15 to FY 2017/18

Note 13 to the financial statements shows that the staff advances of Kshs.4,479,440 were written off during the year having been outstanding for several years without any recoveries. However, the approval for the write off by the Cabinet Secretary of the National Treasury as pursuant to Section 69 of the Public Finance Management Act, 2012 was not availed for audit. Therefore the write off of Kshs. 4,479,440 is irregular and do not conform to the provisions of the Public Finance Management Act No. 18 of 2012.

Management Response

The Auditor General in the report for the financial year 2014/15 raised the issue of the recovery of the Salary Advance paid to the Tribunal's staff in the year 2012.

This issue of the salary advance arose from the decision of the Board of the Tribunal to pay the staff salary arrears following the regularisation of the appointments of the staff by the Public Service Commission (PSC) vide its letter dated 20th June 2012 which was effected from the dates of employment of the staff.

The decision of the Board was brought to attention the then incoming Tribunal Secretary by the outgoing Secretary at the 124th Tribunal Board meeting held on 17th July 2012. *(Copies attached)*

The salary arrears were effected by computing the difference between salaries already paid and the proposed salaries as per the PSC letter excluding all the gratuity previously paid based on the approved staff establishment which had already been factored in the budget since the year 2010.

However, the incoming Secretary subsequently objected to the payment of the salary arrears to the staff stating that it was based on an improper interpretation and implementation of the PSC letter. This occasioned the recovery of the said sums of money already paid to the staff, which were now effectively treated as salary advances.

The recovery was done for a period of three (3) months but the same was stopped by the new Secretary following consultation with the Chairperson on the basis that the decision of the recovery was not justified by the circumstances under which the payment was approved subject to approval by the Board.

The Board has not been able to sit and reconsider its decision to recover the salary advance since it has not been functional owing to quorum hitches occasioned by the expiry of the terms of the two members of the Board representing the Institute of Certified Public Accountants (ICPAK) and the Law Society of Kenya (LSK) in the year 2014 and 2015 respectively followed by the expiry of the term of the Chairperson in 2018.

Based on the foregoing state of affairs of the Tribunal, the issue of recovery of the salary advances has continued to appear in the subsequent reports of the Auditor General from the financial year 2014/15.

Subsequently, the Chairman and the Secretary at a meeting held on the 30th September, 2016 resolved to treat the issue of the recovery of the salary advance as a provision for bad debts and recommended that the matter to be placed before the full Board for approval of write off as there was no justifiable basis for the recovery since the payment had been made in good faith by the previous board.

On 21st June 2018, the Secretary wrote a letter to the Cabinet Secretary for the National Treasury and Planning explaining the circumstances for the payment of the salary advances and seeking approval for write off under section 69 of the Public Finance Management Act, No. 18 of 2012. (Copy attached for ease of reference)

However, the Tribunal has not received any communication from the Cabinet Secretary.

The Secretary wrote a reminder letter to the Cabinet Secretary dated the 15th March 2019 and is waiting for a response.

The issue therefore remains unresolved in the financial statements prepared by the Auditor General.

Committee Observations

The Committee made the following observations:

1. The Tribunal does not have a functional board. The Board has not been able to sit and reconsider its decision to recover the salary advance since it has not been functional owing to quorum hitches.

2. The terms of the two members of the Board representing the Institute of Certified Public Accountants (ICPAK) and the Law Society of Kenya (LSK) expired in the year 2014 and 2015 respectively followed by the expiry of the term of the Chairperson in 2018.
3. The Chairman and the Secretary held a meeting on the 30th September, 2016 and resolved to treat the issue of the recovery of the salary advance as a provision for bad debts and recommended that the matter to be placed before the full Board for approval of write off as there was no justifiable basis for the recovery.
4. The Secretary wrote a letter to the Cabinet Secretary for the National Treasury and Planning explaining the circumstances for the payment of the salary advances and seeking approval for write off under section 69 of the Public Finance Management Act, No. 18 of 2012.

Committee Resolutions

The Committee made the following resolutions:

1. The Board of the Tribunal should be fully constituted to enable the entity to carry out its functions.
2. The National Treasury should approve the write off of the amount to resolve the audit query.

MIN/PIC/2019/209: OTHER MATTER - APPROPRIATION OF TRIBUNAL BUDGET BY JUDICIARY FY 2016/17 to FY 2017/18

The Tribunal underwent a categorisation transition where its functions were transferred from the National Treasury to Judiciary. The Government grants to the Tribunal were made through the Judiciary and whereas the Tribunal had received grants totalling to Kshs. 54, 709,040 in the preceding year 2015/16 which formed the basis for the 2016/17 budget, only Kshs.16,490,000 (31%) was disbursed to the Tribunal's bank account through the Judiciary. It was further explained by Management that a total of Kshs.4,238,127 was paid on behalf of the Tribunal by the Judiciary. This amount is not part of the amount disbursed to the Tribunal bank account. However, the amount was not supported by payment vouchers and other supporting documents.

Management Response

Under the State Corporations Act, the National Treasury is designated as the parent ministry responsible for the Tribunal.

The National Treasury vide a letter Ref No. RES 1071/15/1/01/A (54) dated 10th May 2016 transferred the Tribunal together with its budgetary allocation of Kshs.54 million to the Judiciary.

The decision is premised on the interpretation of Article 169 of the Constitution 2010 which designates Tribunals as part of the Judiciary.

The letter by the National Treasury indicated that the Tribunal was effectively transferred to the Judiciary together with a budget of Kshs. 54 Million. However, the disbursements received by the Tribunal from the Judiciary for financial year 2015/16 was only Kshs.16,490,000 which was effected in May 2016.

Further, the Judiciary made direct payments on behalf of the Tribunal during the 1st to 3rd quarter payments to the tune of Kshs. 4,238,127. These payments were supported by payment vouchers which were submitted to the Auditor General. This issue has since been solved.

In the FY 2017/18, the Tribunal encountered budgetary reduction from the Judiciary as it has not handled any cases in the past Four (4) financial years owing to the following reasons:

- a. lack of a functional Board;
- b. absence of new cases from the office of the Inspector General of Corporations, and;
- c. the invisibility of the Tribunal.

The Judiciary allocates budgetary funds and other resources to the Tribunals on the basis of the parameters governing the mainstream judicial activities including caseload.

The Tribunal has conducted sensitisation activities for the State Corporations, in collaboration with other stakeholders including the Inspector General of Corporations during the current financial year, and anticipates an increase in the case load which should justify further allocation of budgetary allocation to the Tribunal.

Committee Observations

The Committee made the following observations:

1. The National Treasury is designated as the parent ministry responsible for the Tribunal as per the State Corporations Act.
2. Treasury transferred the Tribunal together with its budgetary allocation of Kshs.54 million to the Judiciary in May 2016 based on the interpretation of Article 169 of the Constitution 2010 which designates Tribunals as part of the Judiciary.
3. The Tribunal encountered budgetary reduction from the Judiciary in FY 2017/18 due to its limited mandate.

MIN/PIC/2019/210: OTHER MATTERS FY 2017/18

a. Effect of Executive Order No. 1 Of 2018

The administration of the Tribunal has been vested with the Judiciary, However, during the year under review, the President of the Republic of Kenya issued an Executive Order No. 1 of 2018 effectively transferring the oversight of the State

Corporation Appeals Tribunal from the Judiciary to the National Treasury. This Executive Order therefore reversed the previous categorisation where the Tribunal was placed under the Judiciary.

Management Response

As indicated above, the National Treasury vide a letter dated 10th May 2016 transferred the Tribunal to the Judiciary based on the interpretation of Article 169 of the Constitution 2010 which designates Tribunals as part of the Judiciary.

This decision was undertaken by way of an administrative order by the National Treasury.

It is, however, instructive to note that not all ministries have transferred the Tribunals under their dockets to the Judiciary. This has been occasioned by the debate as to whether the Tribunals ought to be domiciled in the Judiciary or should remain under the respective ministries but under the supervision of the Judiciary.

The argument for retention of the Tribunals in the Executive branch of the Government is predicated on the history of the evolution of the Tribunal.

The Tribunals, mostly created by statute, are designed to provide expeditious avenues for resolution of administrative disputes arising from ministerial decisions.

Further, the Judiciary is considered unsuitable for resolution of such disputes owing to legal technicalities, high cost of litigation and time consideration.

This is a matter which requires a legislative framework and the same is due for consideration by the public and other by the stakeholders under the Tribunals Bill, 2019 which is currently before the Office of the Attorney General.

b. Lack of a functional Board

During the year under review the State Corporation Appeals Tribunal operated without a functional board. This is negating on the provisions of section 22 of the State Corporations Act that establishes the Tribunal.

Management Response

The Tribunal is established under section 22 of the State Corporations Act Cap 446 as a body comprising of a Chairperson appointed by the President and two other members nominated by the Law Society of Kenya (LSK) and the Institute of Certified Public Accountants of Kenya (ICPAK).

The terms of two members representing the ICPAK and LSK in the year 2014 and 2015 respectively. This was followed by the expiry of the Tenure of the Chairperson in February 2018.

The Secretary has duly notified the appointing authorities of the vacancies in the Board of the Tribunals. *(Copies of the letters enclosed)*

The Secretary has further sought the intervention of the Attorney General as regards the vacancies. The Attorney General has duly obliged and written to the Appointing authorities underscoring the need to fill the vacancies so as to facilitate the better governance of State Corporations. (*Copies of the letters by the Attorney General enclosed*)

Committee Observations

The Committee made the following observations:

1. Under the State Corporations Act, the mandate of the Tribunal is restricted to hearing appeals emanating from the decision of the Inspector General (Corporations) in respect of surcharge.
2. There is a need to expand the mandate of the Tribunal through legislative amendment so as to address other matters concerning the State Corporations such as arbitration of disputes between state corporations and third parties.
3. The Tribunal currently lacks a Board which has not only impaired its capacity to hear any cases but has also contributed to budgetary reduction from the Judiciary.
4. There is a general uncertainty as to the status of the Tribunal following the issuance of the Executive Order No.1 of 2018 by the Presidency which effectively re-assigned the Tribunal to the National Treasury from the Judiciary during the current financial Year.

Committee Resolution

The Committee resolved to recommend for the winding up of the Tribunal with its functions to be transferred to the Inspectorate of State Corporations. The challenges facing the Tribunal including limited mandate, lack of original mandate, lack of a functional Board and limited funding calls into question the relevance of the Tribunal.

MIN/PIC/2019/211: EXAMINATION OF AUDITED ACCOUNTS OF COMMUNICATION AUTHORITY OF KENYA

Mr. John Wangusi, the Director General of the Communication Authority of Kenya accompanied by Mr. Joseph Kirianga (Director, Finance and Accounting), Ms. Mercy Wanjau (Director, Legal Services), Mr. Christopher Wambua (Director, Consumer and Public Affairs), Mr. Dominic Ooko (Ag. Deputy Director of Finance), Ms. Jane Rotich (Ag. Deputy Director, Procurement) and Ms. Emma Otieno (Manager, Corporate Planning) appeared before the Committee to adduce evidence on the audited accounts of the Authority for FY 2013/14 to FY 2016/17.

MIN/PIC/2019/212: DISPUTED CONTRACT PAYMENTS FY 2013/14

As previously reported, on 29 November 2002 the authority awarded the tender for supply and installation of demountable office partitions to a firm at a contract sum of Kshs. 45,195,200. The Authority also awarded the tender for supply and installation of

carpets and vertical window blinds on a sub-contract agreement with the first firm at a tender sum of Kshs. 12,619,846, resulting to a total contract sum of Kshs. 57,865,046. Although the project was supposed to be completed on 14 July 2003, it was completed one year later on 23 June 2004. The payments to the contractor were based on work done as per the project quantity surveyor's, the Architect's valuations and the Architects certificates. After the final payment of Kshs. 1,286,319.45 in September 2005 the contractor raised a dispute claiming Kshs. 1,277,961.90 being interest on delayed settlement of interim certificate No.6. The management has explained that the delay had been occasioned by a dispute over the material used by the contractor, which the project manager noted differed from those specified in the bill of quantities.

Further, on 5 December 2006 the contractor wrote to the authority (commission) claiming Kshs. 51,378,300.40 in respect of purported losses and expenses incurred on the project due to delay of 45 days.

The authority disputed the claim and the contractor subsequently lodged an arbitration claim before an arbitrator. Consequently, the arbitrator ruled that the authority was to pay Kshs. 47,284,879.45 for the claims and costs of arbitration of Kshs. 2,783,370 all totaling Kshs. 50,068,249.45, failure to which the amount shall attract simple interest at a rate of 18% per annum until payment is made in full. On 5 March 2015 the board approved release of Kshs. 51,860,882.75 held in the Escrow account and undertook to pay other outstanding sums of money amounting to Kshs. 18,103,040 all totaling Kshs. 69,963,922.75. A review of the matter in February 2018 revealed unchanged position. In the circumstances, it has not been possible to confirm that Kshs. 69,963,922.75 is a proper charge to public resources.

Management Response

The payment was done pursuant to an arbitration award dated 31st January 2014 in the Matter of the Arbitration Act, 1995 and In the Matter of an Arbitration between M/s Swarn Singh (Kenya) Limited and M/s Communications Commission of Kenya pursuant to the Agreement and Conditions of Contract for Building Works between the CCK and the Claimant dated 13th March 2003. The arbitral award is attached as *Annex 1*

The Communications Authority of Kenya as the successor of the Communications Commission of Kenya sought to set aside the Arbitral Award through High Court in Miscellaneous Civil Cause No. 73 of 2014 which application was dismissed on 4th December 2014. Attached as *Annex 2*

This meant that the Arbitral Award had a force in law just as a court judgment would. Non-payment would amount to contempt and therefore The Communications Authority of Kenya was therefore obliged to comply with and settle the Arbitral Award. As such, the Kshs. 69,963,922.75 paid to settle duly issued arbitral award was therefore a proper charge to public funds.

The Authority requested the Ethics and Anti-Corruption Commission to investigate the entire contract in issue to establish if there was any impropriety. The Ethics and Anti-Corruption Commission (EACC) commenced the investigations into the matter on 16th September 2015. Letter from the EACC dated 16th September 2015 confirming investigations attached as *Annex 3*

Committee Observations

The Committee made the following observations:

1. The response by the Authority was not well prepared and lacked relevant details such as page numbering.
2. The Authority had resolved to invite the EACC to investigate the matter having been dissatisfied with the outcome of the arbitration. Management felt that the matter needed to be investigated due to suspicion of illegal actions.
3. The arbitration was carried out by a Mr. Samuel Gituku. The Authority was not clear on how the arbitrator was chosen. The Authority paid the arbitration fees of Kshs. 2,783,370.

Committee Resolutions

The Committee made the following resolution:

1. The Authority should provide a chronology on the matter including a copy the contract, the process of choosing the arbitrator, the legal fees paid so far and the total amount spent on this matter.
2. The Board Chairman should appear before the Committee to explain why they resolved to pay the arbitration award instead of challenging it in court.
3. The Ethics and Anti-Corruption Commission should provide an update on the status of the investigations on the matter.

MIN/PIC/2019/213: UNSUPPORTED BOARD SITTING ALLOWANCES FY 2013/14 to FY 2016/17

As previously reported in 2013/14, examination of Board of Directors' records revealed that sitting allowances totaling Kshs. 11,594,000 in 2013/14 (Kshs. 27,530,000-2014/2015) was paid to various Board of Directors in that year, out of which sitting allowances totaling Kshs. 6,942,000 was not supported by notices of the meeting, agenda for the meeting and the respective Board minutes. Although the management has explained that the Board of Directors are invited to participate in official events where no minutes are taken such as stakeholders consultation forums, performance contract negotiation and signing, meeting with staff management and Ministry officials, official events such as shows and staff parties, no evidence of such invitation was availed for audit review.

In the circumstances, it has not been possible to confirm that the unsupported sitting allowance totaling Kshs. 6,942,000 was a proper charge to public funds.

Management Response

The Presidential Circular of Ref. No. OP/CAB.9/21/2A/LII/43 dated 23rd November 2004 Paragraph (c) A taxable sitting allowance of up to maximum of Kshs. 20,000 per sitting may be paid to Chairmen and Directors. 'In addition, sitting allowance may be payable when on official duty in and outside the Country.' The circular is attached as *Annex 4*

The board was officially invited to participate in the official events. The invitations are attached as *Annex 5*

Committee Observation

The Committee observed that sitting allowances totaling Kshs. 6,942,000 was not supported by notices of the meeting, agenda for the meeting and the respective Board minutes.

Committee Resolution

The Committee asked the Authority to provide documentation to justify the payment of the allowances including invitation letters, Minutes and attendance register for the meetings.

MIN/PIC/2019/214: EXAMINATION OF AUDITED ACCOUNTS OF BOMAS OF KENYA FY 2013/14 to FY 2016/17

Mr. Quresh Ahmed, the General Manager, Bomas of Kenya accompanied by Mr. Felix Korir (Internal Auditor), Mrs. Margaret Byama (Alternate Director), Ms. Evelyn Luswet (Marketing Manager), Mr. Nixon Mugilwa (Finance Officer), Mr. Jimmy Okidiangi (Human Resource Officer), Ms. Asha Juma (ICT Officer) and Mr. Moses Wamugunda (Accountant) appeared before the Committee to adduce evidence on the audited accounts of Bomas of Kenya for FY 2013/14 to FY 2016/17.

MIN/PIC/2019/215: DELINKING FROM TOURISM FINANCE CORPORATION FY 2013/14 to FY 2016/17

The Company is fully (100%) owned by Tourism Finance Corporation (formerly Kenya Tourist Development Corporation).

The issue of premise on which a subsidiary Company fully owned indebtedness to its parent Company was addressed in the 8th Parliamentary Public Investments Committee (PIC). Report, where it was resolved that the two institution delink in order for them to be separate entities. Further, the Permanent Secretary Ministry of Tourism and Wildlife letter Ref No MWTS 23/3. (22) Of 10th September 1996 and Ministry of Finance letter Ref. No. CONF. 71/53/01 of 3rd September 1996 also endorsed the separation.

As a result of failure to implementation the PIC recommendation the Company continue to face legal challenges in meeting its obligations to the Tourism Finance Corporation since it's not a separate entity.

Management Response

It is true, the Bomas of Kenya limited is fully owned subsidiary of Tourism Finance Corporation (formally Kenya Tourist Development Corporation). The 19th report of the Parliamentary Public Investment Committee on the audited Financial Statements of state corporations recommended Bomas of Kenya should be delinked from Tourist Finance Corporation (formally Kenya Tourist Development Corporation) as recommended in previous Public Investment Committee reports.

The Board in pursuance of the recommendations of the 19th report of Public Investment Committee has written several correspondence with intention of delinking Bomas of Kenya from Tourist Finance Corporation (Appendix i).

Current Status

The Ministry of Tourism and Wildlife requested the Bomas of Kenya to pay off all the outstanding loan arrears totalling Kshs8,175,759 as at 15th September 2014 owed to Tourism Finance Corporation (formally Kenya Tourist Development Corporation) upon which Tourism Finance Corporation should surrender the title deed to Bomas of Kenya without delay. (Appendix ii) Letter of 13th Oct. 2014 .

On 18th November 2014, Bomas of Kenya paid off the outstanding loan and Tourism Finance Corporation confirmed the settlement of the loan. (Appendix iii).

Payment acknowledgement letter dated 25th November 2014 (Appendix IV).

Bomas of Kenya requested for discharge and surrender of the Title deed L.R No.12066/1-2 by Tourism finance Corporation through the parent Ministry;

(Appendix v) Letter of 21st May 2015.

(Appendix vi) Letter of 24th August 2015.

(Appendix vii) Letter of 15th June 2016.

The Bomas of Kenya through the Ministry of Tourism and Wildlife requested discharge of charge over Bomas of Kenya Title deed. (Appendix viii).

The Ministry of Tourism and wildlife wrote to Tourism Finance Corporation to discharge the Title deed and release of the title deed. (Appendix ix).

On 28th September 2017 Tourism Finance Corporation handed over the Title deed but the Ministry of Tourism and Wild life retained the title .(Appendix x).

On 14th February 2018 (Appendix xi) Bomas of Kenya requested the Ministry to hand over the tile deed (Appendix xii).

Letter of 13th June 2018, 12th September 2018 and 7th February 2019 (Appendix xiii and xiv).

On 27th February 2019, the Ministry of Tourism and Wildlife confirmed that the Bomas of Kenya Title deed was handed over to the Ministry by Tourism Finance Corporation on 27th September 2017 and is under custody of Ministry of Tourism and wildlife

(Appendix xv). The title deed should be under custody of Bomas of Kenya who are the Legal owners.

The Bomas of Kenya has written to the parent Ministry requesting for delinking Bomas of Kenya and Tourism Finance Corporation as recommended by Public Investment Committee of the National Assembly in its 19th report. (Appendix xvi) extract;

Letter of 6th August 2015 (Appendix xvii).

Letter of 15th June 2016 (Appendix xviii).

Letter of 14th December 2016 (Appendix xix).

Letter of 8th March 2017 (Appendix xx).

Letter from Tourism Finance Corporation of 21st July 2016.

The matter of delinking has not been resolved to date and Tourism Finance Corporation will be merged with Industrial Commercial Development Corporation (ICDC) and IDP Capital limited to create Development Bank of Kenya (Appendix xxi). Letter of 21st June 2018.

Management expects the issue of delinking of Bomas of Kenya and Tourism Finance Corporation to be concluded before the merger.

Committee Observations

The Committee made the following observations:

1. Bomas of Kenya paid off all the outstanding loan arrears totalling Kshs8,175,759 owed to Tourism Finance Corporation (formally Kenya Tourist Development Corporation) upon which Tourism Finance Corporation was to surrender the title deed to Bomas of Kenya.
2. The Ministry of Tourism and Wildlife confirmed that the Bomas of Kenya Title deed was handed over by Tourism Finance Corporation on 27th September 2017 and is under custody of Ministry of Tourism and wildlife.

Committee Resolutions

The Committee made the following resolutions:

1. The Ministry of Tourism and Wildlife should expeditiously hand over the title deed to Bomas of Kenya to complete the delinking from Tourism Finance Corporation.
2. The Auditors should confirm whether Bomas of Kenya accounts have been included in the financials of the Tourism Finance Corporation.

MIN/PIC/2019/216: TRADE AND OTHER RECEIVABLES FY 2013/14 to FY 2016/17

The trade and other receivable balance of Kshs.15,137,670 as at 30th June, 2014 is net of Kshs.5,844,308 which has been outstanding for over 10 years and which is fully provided for. However, in spite of the Parliamentary Investments Committee

recommendation to have the Board approval to regularise the bad and the doubtful debts, no efforts have been made to have the matter resolved.

Consequently, it has not been possible to confirm the accuracy of the trade and other receivable balance of Kshs.15,137,670 as at 30th June 2014.

Management Response

The Company had trade and other receivable of Kshs,15,137,670, which includes amount of Kshs.5,844,308 due from trade debtors.

The Management has made full provision for the long outstanding debts in the financial statement. (Appendix xxiii).

Current Status

Bad and doubtful debt write off approval was granted by the Board of Directors in the 172 Board Meeting held on 27th January 2011. However, the organization was advised that the approval must be given by the Ministry in charge of Treasury before any write off is done. The Organisation on its part has made a full provision for these bad and doubtful debts on its financial statements. (Appendix xxiv). Extract of the Board Minutes of 172.

Committee Resolution

The Committee resolved that Bomas of Kenya should follow up with the National Treasury for write off of the amount.

MIN/PIC/2019/217: VALUATION OF ASSETS

The last valuation of assets was conducted in 1996. With a time lapse of over eighteen (18) years the value of assets must have changed drastically yet the Company has not taken this into cognizance in order to revalue its assets. Further, International Accounting Standard No.16 stipulates that property plant and equipment should be revalued after every five years.

As a result it has not been possible to ascertain that property , plant and equipment balance of Kshs,1,211,106,796 is fairly stated in the Financial Statements as at 30th June, 2014.

Management Responses

It is true the last valuation of Assets was conducted in 1996. The Board has been making budgetary provisions over the years for the Valuation of Assets. The only hindrance has been lack of title deed L.R No. 12066 for the valuation to be carried out. The title deed is currently in the custody of the Ministry of Tourism and Wildlife after being surrendered by Tourism Finance Corporation. (Appendix xxvi).

Current status

The Bomas of Kenya has written to the Ministry of Land and Physical Planning to conduct a Survey and Valuation of the Property. (Appendix xxvii).

Further to the letter of 15th June 2016, National Land Commission compulsorily acquired 0.8055 hectares in August 2013 for the rehabilitation and upgrading of Langata Road, KWS Gate - Bomas section. Bomas of Kenya through letter dated 12th September 2018 requested Ministry of Land and Physical Planning:

(a). Resurvey Property -LR No 12066.

(b). Conduct valuation of the resurveyed land and property. (*Appendix xxvii*)

~~(Appendix-xxviii)-Response is still awaited.~~

Committee Observations

The Committee made the following observations:

1. The lack of title deed for the Bomas of Kenya land L.R No. 12066 has hindered the completion of the valuation exercise. The title is being held by the Ministry of Tourism and Wildlife.
2. Bomas of Kenya had lost approximately 2 acres to the expansion of Langata road.
3. The agency has written to the Ministry of Lands to conduct a survey and valuation so as to cut down on costs. No response has been received from the Ministry.

MIN/PIC/2019/218: UNPAID COMPENSATION FOR COMPANY LAND ACQUISITION FY 2015/16 to FY 2016/17

The Kenya Urban Roads Authority Compulsory acquired 0.8055 hectare (2 acres) on LR No.12066 vide Gazette notice number 11155 of 8th August 2013 for the purpose of rehabilitation and upgrading of Langata Road (KWS gate of Bomas of Kenya section). The company was to get Kshs.85 million as fair compensation based on valuation done by a local valuation company. However, a review of available records indicate that to date this compensation is yet to be paid.

Consequently, the awarded compensation crystallization remain in doubt given the time lapse.

Management Response

It is true the Kenya Urban Road Authority and National Land Commission compulsorily acquired 0.8055 hectares (2 acres) on L.R No. 12066 vide Gazette Notice No. 11155 of 8th August 2013 for the purpose of rehabilitation and upgrading of Langata Road (KWS Gate of Bomas of Kenya section).

The Kenya Urban Road Authority vide letter Ref. KURA/SUR/14/2 Vol.3 (56) dated 7th February 2013 under took to compensate upon valuation and awards. (*Appendix xxxi*).

The compulsorily acquired land of 0.8055 hectares (2 acres) was valued for Kshs 85 Millions. The report of the valuation is on (*Appendix xxxii*).

The Kenya Urban Road Authority and National Land Commission have not compensated the compulsorily acquired land to date.

The Bomas of Kenya instructed a company Lawyer M/S Shapley Barret and company Associate to pursue compensation of the compulsorily acquired land through the legal channel. The Bomas of Kenya has sued the National Land Commission and Attorney General vide civil case No. 81 of 2018 for compensation (Appendix xxxiii).

Current Status

The Bomas of Kenya, Ministry of Land and Physical Planning, National Land Commission, Kenya Urban Road Authority and Attorney General Office met on 19th November 2018 at the National Land Commission Office and discussed the issue of compensation but the Parties did not agree. The matter was then referred to the respective Principal Secretaries (Ministry of Land and Planning and Ministry of Transport and Infrastructure and Ministry of Tourism and Wildlife on the way forward.

All the parties agreed that we allow consultations to be completed and the court made an order that the matter be mentioned on 9th May 2019 for purposes of reporting on the progress or recording of a settlement if any. (Appendix xxxiv).

Committee Observations

The Committee made the following observations:

1. The Kenya Urban Road Authority and National Land Commission have not compensated Bomas of Kenya for the compulsorily acquired land to date.
2. The Bomas of Kenya has sued the National Land Commission and Attorney General vide civil case No. 81 of 2018 for compensation
3. All the parties agreed to consultations and the court made an order that the matter be mentioned on 9th May 2019 for purposes of reporting on the progress or recording of a settlement, if any.

Committee Resolution

The Committee resolved that Bomas of Kenya should allow for negotiations to resolve the matter so as to avoid costly litigation between government agencies.

MIN/PIC/2019/219: ANY OTHER BUSINESS

No other business arose.

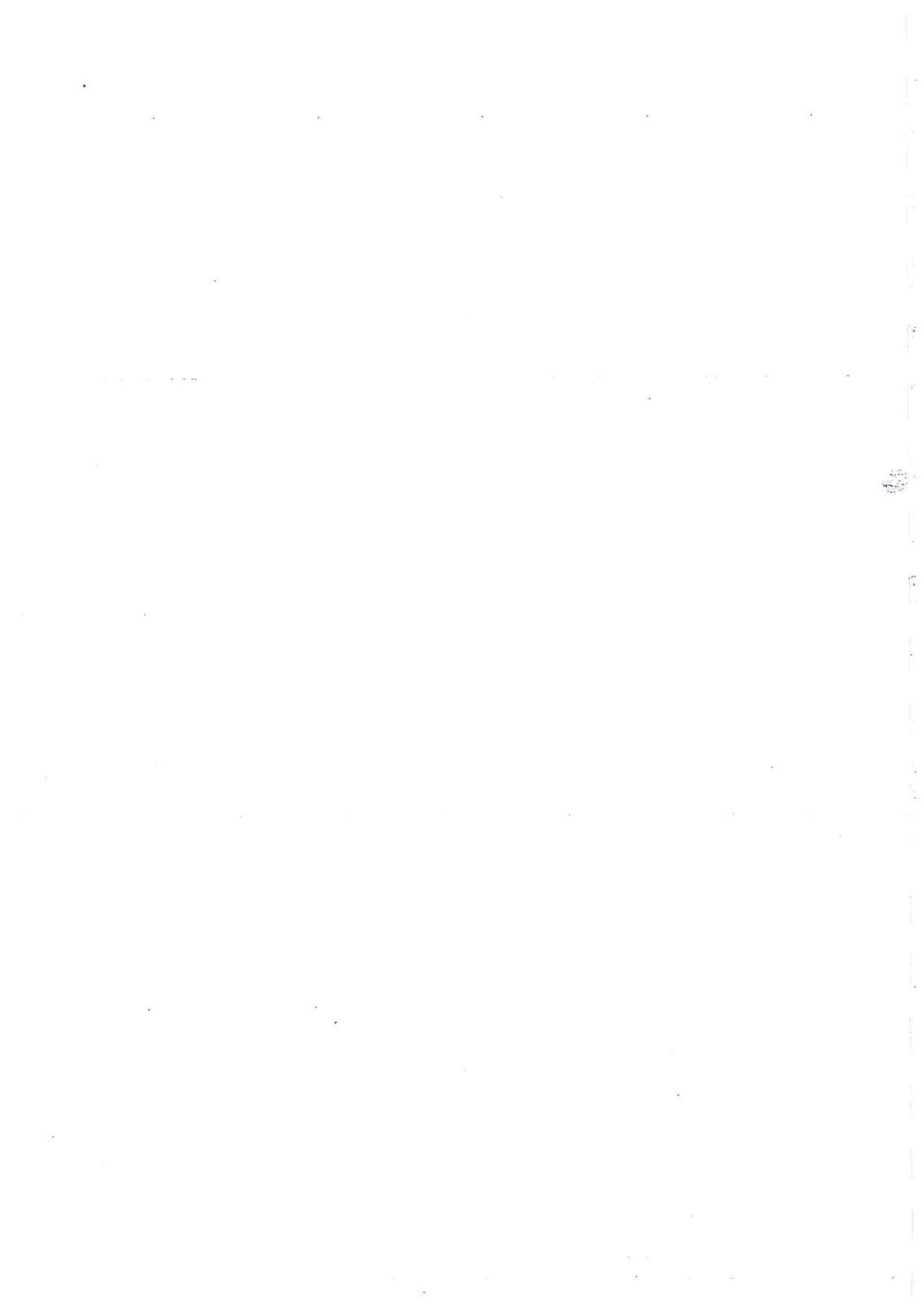
MIN/PIC/2019/220: ADJOURNMENT

The meeting was adjourned at forty four minutes past one O'clock.

Signed

The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

Date..... 23/07/2019



MINUTES OF THE 26TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY 25TH APRIL 2019 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10.00 A.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
4. The Hon. Raphael Bitta Sauti Wanjala, MP
5. The Hon. Purity Wangui Ngirici, MP
6. The Hon. Gladys Wanga, MP
7. The Hon. Thuku Zachary Kwenya, M.P
8. The Hon. John Muchiri Nyaga, M.P
9. The Hon. James Kamau Githua Wamacukuru, M.P
10. The Hon. Omar Mohamed Maalim Hassan, MP
11. The Hon. Babu Owino Paul Ongili, MP
12. The Hon. Paul Kahindi Katana, MP

ABSENT WITH APOLOGY

1. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
2. The Hon. Mary Wamaua Njoroge, MP
3. The Hon. Rashid Kassim Amin, MP
4. The Hon. Justus Kizito Mugali, MP
5. The Hon. Joash Nyamache Nyamoko, MP
6. The Hon. Mohamed Hire Garane, M.P.

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 2. Mr. Mohamed Boru | - | Third Clerk Assistant |
| 3. Ms. Sharon Rotino | - | Research Officer |
| 4. Ms. Marlene Ayiro | - | Legal Counsel |
| 5. Ms. Noelle Chelagat | - | Media Relations Officer |
| 6. Ms. Winfred Atieno | - | Audio Recording Officer |

IN ATTENDANCE

- | | | |
|-----------------------|---|------------------------------------|
| 1. Ms. Jane Kariuki | - | Deputy Director, Audit |
| 2. Ms. Anne Karanja | - | Manager, Audit |
| 3. Mr. Joshiah Oyuko | - | Manager, Audit |
| 4. Ms. Mary Ng'anga | - | Manager, Audit |
| 5. Mr. James Sitienei | - | Inspectorate of State Corporations |
| 6. Mr. David Gichuhi | - | Inspectorate of State Corporations |

MIN/PIC/2019/195: PRELIMINARIES

The Chairperson called the meeting to order at eight minutes past ten O'clock followed by a word of prayer.

MIN/PIC/2019/196: EXAMINATION OF AUDITED ACCOUNTS OF KENYA NATIONAL COMMISSION FOR UNESCO

Dr. Evangeline Njoka, the Secretary General of the Kenya National Commission for UNESCO accompanied by Mr. David Otiato (Deputy Secretary General), Dr. Taro Arero (Director, Natural Sciences), Ms. Mary Kang'ethe (Director, Education Programme), Dr. Julius Mwahunga (Deputy Director, Culture), Ms. Catherine Nyakobo (Chief Accountant) and Mr. David Looremata (Manager, Human Resources) appeared before the Committee to adduce evidence on the audited accounts of the Commission for FY 2014/15 to FY 2017/18.

MIN/PIC/2019/197: EXAMINATION OF AUDITED ACCOUNTS OF KENYA NATIONAL COMMISSION FOR UNESCO FY 2014/15 to FY 2016/17

The Committee heard that the Commission received unqualified audited accounts for financial year 2014/15 to financial year 2017/18.

The Commission was commended for prudent financial management.

MIN/PIC/2019/198: EXAMINATION OF AUDITED ACCOUNTS OF KENYA LITERATURE BUREAU

Mr. Victor Lomaria, the Managing Director of the Kenya Literature Bureau accompanied by Mr. Francis Mutunga (Finance Manager) appeared before the Committee to adduce evidence on the audited accounts of the Bureau for FY 2014/15 to FY 2017/18.

The Committee heard that the Commission received unqualified audited accounts for financial year 2010/11 to financial year 2016/17.

MIN/PIC/2019/199: EMPHASIS OF MATTER - CONTINGENT LIABILITIES FY 2016/17 to FY 2017/18

As disclosed in note 24 (i) a contingent liability exists from a demand notice issued by the National Social Security Fund (NSSF) for penalties and interest on contributions arrears dating back to 1993 amounting to Kshs. 27,650,838 which is still in dispute. The Bureau has explained that, they have engaged the Fund in fruitful discussions which are at advanced stage for waiver of the said penalty and interest, and that NSSF have agreed to halt any further demand notice and accumulation of the amounts.

Further, as disclosed in note 24 (ii) a contingent liability also exists from a demand notice based on tax audit conducted by Kenya Revenue Authority for the years 2007 to 2010 amounting to Kshs. 125,560,306 being principal amount for which a waiver for

penalties and interest was approved by the Ministry of Finance in April 2013. The Bureau has also explained that, discussions are ongoing with Kenya Revenue Authority with a view of having the liabilities waived. However, should such negotiations between the two parties fail to materialize, the Bureau will suffer financial loss to the tune of over Kshs. 125,560,306.

Management Response

The Management renewed discussions with NSSF Management and agreed to form a technical Negotiating Committee for the pending penalties and interest. The two parties held a meeting on 7th February 2019 and agreed on a proposal to clear the outstanding amount through monthly instalments of Kshs. 500,000 over a period of 55 months. The parties agreed that after the final payment of the outstanding amount no other monies will be demanded from KLB. The Bureau made a payment of Kshs. 2.5 Million to NSSF in March 2019 and a further Kshs. 641,000 in April 2019. This brings the amount so far paid to Kshs. 3.141 Million as per the signed agreement. KLB made a provision for the payment in the Budget for 2018/2019. *Appendix 1 - Minutes of the Meeting between KLB and NSSF held on 7th February 2019 and signed agreement with NSSF*

KLB and KRA Management have also held various meetings in 2018 and 2019 with the objective of resolving the outstanding matter and KRA agreed to halt the issuance of further demand notice on the matter. The then Ministry of Finance had recommended the abandonment of Principal Tax and waiver of penalties and interest. The waiver of penalties and interest was approved by KRA and effected. The abandonment of principal tax had not been fully acted upon by KRA and which is the subject of discussion for consideration.

From the discussions already held, the outcome is expected to be favourable to the Bureau, given that the KRA Management is positively considering the abandonment of principal tax. KLB is hopeful that the matter will be resolved in 2018/2019. *Appendix 2 - Minutes of the Meeting between KLB and KRA held in September 2018 and other correspondence.*

Committee Observation

The Committee made the following observations:

1. The Bureau had entered into agreement with the two agencies, NSSF and KRA on how to settle the outstanding amounts owed to the two institutions.
2. KLB is following up on the exemption to pay Kshs. 125,000,000 principal tax for 2007-2010 as recommended by the Ministry of Finance.
3. The Bureau does not receive funding from the Exchequer. It has an average turnover of Kshs. 4,900,000,000 per annum and net profit of Kshs. 680,000,000 in the FY 2017/18. It is operational in a number of countries in the region.

Committee Resolution

The Committee resolved to recommend for the waiver of the principal tax amount as recommended by the Ministry of Finance.

MIN/PIC/2019/200: EXAMINATION OF AUDITED ACCOUNTS OF NATIONAL HOUSING CORPORATION FY 2012/13 to FY 2016/17

Mr. Andrew Saisi, the Managing Director of the National Housing Corporation, accompanied by Ms. Nancy Ochego (Ag. General Manager, Finance), Mr. John Agutu (Ag. General Manager, Estates), Mr. Robert Ambuku (Ag. General Manager, Technical) and Mr. William Keitany (Ag. Corporation Secretary) appeared before the Committee to adduce evidence on the audited accounts of the Corporation for the financial year 2013/14 to financial year 2016/17.

He briefed the Committee as follows:

MIN/PIC/2019/201: AVOIDABLE EXPENDITURE FY 2012/13 to FY 2014/15

The Corporation advertised for expression of interest (EOI) on 13th December 2012 for purchase of prime land in Nairobi. Nineteen(19) bidders responded and after evaluation, the Management settled on a parcel of land LR No.209/19715, measuring 10 acres, located in Imara Daima at an offer of price of Kshs.800,000,00.

However M/s Diamond Trust Bank informed the Corporation that the land identified for purchase was under charge with the Bank for a loan of Kshs.340,000,000 advanced to an investment Company which at that time, had outstanding balance of Kshs.42,499,772.18. The Corporation was also informed that a live high voltage power line passes through the land and that the actual size of the land is 9.87 acres, not 10 acres as indicated by the seller. In addition, a Company of Advocates had issued a caveat emptor on the land on the grounds that whereas the seller had purchased the land from another company, its title was imperfect because initial seller's purported grant was fraudulently acquired.

The Corporation on 25th April 2013, instructed the Ministry of Lands to carry out a valuation on the land. The Ministry gave the land a value of Kshs.730,000,000 and was paid a fee of Kshs.920,000 vide bankers cheque No.027831 dated 7th June 2013. This particular expenditure has been included in the consolidated statement of comprehensive statement of comprehensive income figure of Kshs.10,245,250 in respect to consultancy General under other operating Expenses.

Although the Management stated the valuation process was a critical matter that formed the basis to negotiation, the Corporation ended up spending 920,000 that could have been avoided had the Corporation exercised due diligence.

Management Response

During the negotiations on the purchase of Prime Land held on 26th June 2013 at NHC Headquarters between NHC and M/s Bangal, the seller of the land, it was agreed as follows: -

- I. That the sale and transfer of the property would be subject to discharge of the charge registered against the title. This therefore meant that the outstanding balance of the loans was to be paid off by the seller as a condition to the sale agreement.
- II. A further condition to the sale was that M/s Bangal was to take full responsibility of re-routing the power line at their own cost.
- III. The negotiation report confirmed that the acreage of the land was 9.87 acres.
- IV. The search carried out indicated that the land was owned by M/s Bangal Trading Company.

Current Status:

The Corporation did not purchase the prime land as intended because the vendor did not meet the agreed conditions such as re-routing of the high voltage power line at their cost, among other conditions precedent. The Kshs. 920,000 referred to in the audit observation is the valuation fee paid to the Ministry of Lands for valuation of work done on the land to facilitate price negotiations. The valuation of the land which was done by the Ministry of Lands was critical as it formed the basis for negotiation on the price of the Land.

The valuation figure of Kshs. 920,000 paid was a saving to the Corporation. This is in comparison to the standard market rate of Kshs. 1,845,000 that NHC would have incurred.

Committee Observation

The Committee made the following observations:

1. That no contract had been signed on the purchase of the land.
2. The Corporation did not purchase the prime land as intended because the vendor did not meet the agreed conditions.

Committee Resolution

The Corporation was asked to provide a list of all the bidders who responded to the Expression of Interest dated 13 December 2012.

MIN/PIC/2019/202: STALLED PROJECTS FY 2012/13 to FY 2014/15

1.1 Proposed Changamwe Infill Phase II - FY 2012/13 to FY 2013/14

The contract for the Changamwe Infill Phase II was awarded to M/s Dickways at a contract price of Kshs. 189,698,208 for a contract period of 52 weeks commencing on 14th August 2012 to be completed on 11th September 2013. However, in September 2012, the National Environment Management Authority (NEMA) stopped the project citing failure by the Corporation to carry out and submit an Environmental Impact Assessment Report.

The Corporation paid NEMA Kshs.96,362.30 to obtain a license for the assessment and engaged M/s Mazingira and Engineering Consultants to carry out and submit the assessment at a fee of Kshs.174,000. The consultant advised that assessment required wider public consultation and an in-depth analysis both of which would take a long time.

Since then, the project has remained suspended. As at the time of suspension the contractor had been paid a total of Kshs.38,367,434. The expenditure included in the figure of Kshs.911,914,296 Housing Schemes in progress in the consolidated statement of financial position.

No explanation has been provided for incurring expenditure before obtaining impact Assessment Certificate from NEMA. The Corporation therefore, did not obtain value for money for payments so far made towards the project.

Management Response

The contract for the Changamwe Infill Phase II was awarded to M/s Dickways at a contract price of Kshs. 189,698,208 for a contract period of 52 weeks commencing on 14th August 2012 to be completed on 11th September 2013. On 11th September, 2012, on instigation by existing tenants, NEMA issued a stop order and requested for submission of an EIA report. The Corporation submitted the report on 12th October 2012 and the construction works continued. However, on 8th November 2012, the same tenants went to the High Court and procured temporary injunction against further construction pending determination of a case H.C.C NO. 5 OF 2012.

The contractor was paid a total of Kshs. 38,387,434 for value of work done against certificate number (01). The EIA consultant, M/s Mazingira and Engineering Consultants were engaged twice; the first engagement required preparation of a project report at a fee of Kshs. 174,000 and second assignment was to carry out a full EIA study at a fee of Kshs. 232,000. Management wishes to clarify that the requirement to carry out a full study was communicated by NEMA owing to emerging issues from the residents; otherwise in normal developments a project report would have been sufficient.

Whereas the NEMA license was obtained on 28th January 2014 and the construction approved, the court injunction issued on 8th November 2012 was still in place as the case was fixed for hearing on 7th August 2014.

As at 30th June 2013, the amount of money paid to NEMA was Kshs. 96,362 which 0.05% statutory fees, while M/s Mazingira had been paid Kshs. 174,000 for first engagement. Together with money paid to the contractor, this brings total expenditure to Kshs. 38,657,796.

Delays in completion of this project have been occasioned by factors beyond the Corporation. Court injunction brought up by the residents is the principal reason for the delays.

Current Status:

The court case was determined in favor of the Corporation and therefore the contractor was instructed to commence the works. The project is currently ongoing.

Committee Observations

The Committee made the following observations:

1. The Corporation had failed to carry out the requisite due diligence, including Environmental Impact Assessment and public participation, before commencing the project. This would have avoided the dispute with residents which led to litigation and cancellation of the project.
2. The first contract for construction of 48 houses at a cost of Kshs. 189,698,208 was cancelled due to the dispute. The contractor sued the Corporation and after arbitration, NHC paid the contractor Kshs. 45,000,000 inclusive of an initial claim of Kshs. 30,000,000 for work done.
3. A second contractor took over the project in September 2017 with an expanded scope of 84 houses at a contract sum of Kshs. 384,000,000.

Committee Resolutions

The Committee made the following resolutions:

1. The Corporation should provide additional documentation including the letter terminating the first contract, the outcome of the arbitration with the first contractor, the breakdown of all the legal fees spent on the matter and a copy of the new contract.
2. The Committee further resolved to carry out an inspection visit to the site of the project.

1.2 Proposed Nyeri Housing Scheme - FY 2012/13 to FY 2013/14

In May 2010 the Corporation awarded a contract to M/s Westcon Contractors for construction of 45 housing units under the Nyeri Mortgage Housing Scheme Phase II at a contract sum of Kshs.112,530,500 commencing on 14th May 2010 to be completed in 13th June 2011.

However, after several extensions, the firm was unable to complete the project and the Corporation subsequently terminated the contract on 30th March 2012. As at the time of termination, the contractor had been paid a total of Kshs.57,932,759.90.

The contract was awarded to another contractor, M/s Island Home Developers at a contract sum of Kshs.61,345,345,731.70 commencing on 22nd October 2012 to be completed on 5th June 2013. Consequently the total contract cost rose to Kshs.119,279,491.80; Kshs.5,598,991.60 higher than the original cost of Kshs.112,990,500. As 30th June 2013, the contractor had been paid a total of Kshs.14,979,441 vide payment voucher number 1315 (cheque No.019955) and 2086 (cheque No.020714) for Kshs.5,702,115,20 and Kshs.9,277,327.80 respectively ,

charged under Housing Scheme in progress figure of Kshs.911,974,296 in the Consolidated Statement Financial Position. As at the date the contract had not been completed although the completion period had elapsed.

Management Response

The Project was awarded to M/s Westcon Contractors and the works commenced on 14th May 2010 and was scheduled for completion on 13th June 2011. For some reason, the M/s Westcon Co. Ltd. was not able to perform and progress the works diligently thus by 30th March 2012, the progress was 50% against 150% of expired contract time. The contractor's production deteriorated every passing month despite default warnings and notices as provided for in the contract. Furthermore, the contractor totally failed to maintain a valid performance bond and hence falling into fundamental breach of contract. The contract was eventually terminated on 30th March 2012 as an action of the last resort.

The project was re-tendered. A second contractor, M/s Island Home Developers was awarded the contract and commenced work on 22nd October 2012. However, the performance of the second contractor also became erratic. Nevertheless, every effort was made to explore alternative ways and means to progress the project to completion.

The construction period lapse of two years resulted in an escalation of costs owing to inflation.

Current Status:

The project has since been completed as per the attached copy of certificate of completion. (Appendix I)

Committee Observation

The Committee made the following observations:

1. The contract sum for the project exceeded the original sum due to non-performance by contractors.
2. The Corporation's response was vague and lacking in details such as amounts paid for the different contracts.

Committee Resolution

1. The Committee resolved to adjourn the meeting to allow the Corporation to provide a more-detailed set of responses to the queries raised by the Auditor General, including relevant supporting documents.

MIN/PIC/2019/203: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/2019/204: ADJOURNMENT

The meeting was adjourned at thirty sixteen minutes past one O'clock.

Signed

The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

Date.....18/08/2019.

MINUTES OF THE 25TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY 23RD APRIL 2019 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10.00 A.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
4. The Hon. Joash Nyamache Nyamoko, MP
5. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
6. The Hon. Omar Mohamed Maalim Hassan, MP
7. The Hon. Gladys Wanga, MP
8. The Hon. Thuku Zachary Kwenya, M.P
9. The Hon. Babu Owino Paul Ongili, MP
10. The Hon. Paul Kahindi Katana, MP

ABSENT WITH APOLOGY

1. The Hon. Raphael Bitta Sauti Wanjala, MP
2. The Hon. Purity Wangui Ngirici, MP
3. The Hon. John Muchiri Nyaga, M.P
4. The Hon. Mohamed Hire Garane, M.P.
5. The Hon. Rashid Kassim Amin, MP
6. The Hon. James Kamau Githua Wamacukuru, M.P
7. The Hon. Mary Wamaia Njoroge, MP
8. The Hon. Justus Kizito Mugali, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 2. Mr. Mohamed Boru | - | Third Clerk Assistant |
| 3. Ms. Sharon Rotino | - | Research Officer |
| 4. Ms. Marlene Ayiro | - | Legal Counsel |
| 5. Ms. Noelle Chelagat | - | Media Relations Officer |
| 6. Ms. Winfred Atieno | - | Audio Recording Officer |

IN ATTENDANCE

- | | | |
|-------------------------|---|------------------------------------|
| 1. Mr. Richard Bichanga | - | Director, Audit |
| 2. Mr. Josiah Oyuko | - | Manager, Audit |
| 3. Mr. John Wangila | - | Manager, Audit |
| 4. Ms. Jane Chege | - | Manager, Audit |
| 5. Mr. J.K Mkubitu | - | Manager, Audit |
| 6. Mr. Peter Ruteere | - | Inspectorate of State Corporations |

MIN/PIC/2019/184: PRELIMINARIES

The Chairperson called the meeting to order at forty minutes past ten O'clock followed by a word of prayer.

MIN/PIC/2019/185: EXAMINATION OF AUDITED ACCOUNTS OF KENYA NATIONAL ASSURANCE

Mrs. Tabitha Mwaniki, the Company Secretary of the Kenya National Assurance Company (2001) Limited accompanied by Ms. Zipporah Chebotibin (Head of Accounts) appeared before the Committee to adduce evidence on the audited accounts of the Kenya National Assurance for FY 2014/15 to FY 2016/17.

MIN/PIC/2019/186: GOING CONCERN FY 2014/15 to FY 2016/17

The Committee heard that Note 5 of the financial statements indicate the Company is expected to be closed by 30 June 2015 (30 June 2017 for FY 2016/17). The financial statements have been prepared on a basis other than that of a going concern which includes, where appropriate, restating of the company's assets to net realizable value.

Management Response

The Company is in the process of winding up. The process is being handed in Court with a view to completing the winding up process.

The delay in concluding the winding up is attributed to delay in conclusion of the court cases. The Company expects to be wound up once the cases are concluded.

Committee Resolution

The Company should provide a status update of the court cases.

MIN/PIC/2019/187: EXAMINATION OF AUDITED ACCOUNTS OF THE NEW KENYA COOPERATIVE CREAMERIES FY 2010/11 to FY 2016/17

Mr. Nixon Sigey, the Managing Director of New Kenya Cooperative Creameries accompanied by Mr. Samuel Ichura (Chief Finance Manager) and Mr. Hassan Guyo (Finance Manager) appeared before the Committee to adduce evidence on the audited accounts of New KCC for the financial year 2010/11 to financial year 2016/17.

MIN/PIC/2019/188: NON-CURRENT ASSETS FY 2010/11

(i) As previously reported, the property, plant and equipment balance of Kshs.3,658,999,487 as at 30 June 2011 includes an amount of Kshs.799,531,979 representing the value of fifty one(51) parcels of land and buildings whose title documents were not availed for audit verification.

(ii). The property, plant and equipment figure of Kshs.3,658,999,487 also excludes twenty three (23) parcels of land and buildings which have not been valued. Out of

the above number, fifteen (15) located in Nairobi and one (1) in Nakuru are under dispute over ownership.

(iii). Five (5) title deeds for property valued at Kshs.852,911,828, are charged and held in a local commercial bank as collateral for outstanding obligation.

(iv). Further, the property, plant and equipment balance of Kshs.3,658,999,487 also includes assorted assets with a value of Kshs.29,790,657 which according to available information are based on classification by location but have not however been analyzed to indicate their existence, nature and values.

(v). Ownership documents for forty one (41) motor vehicles of unknown value are held by a law firm as security over a dispute relating to legal fees.

In the circumstances, and in the absence of title deeds, log books and other related records, it has not been possible to confirm the ownership status of the respective assets and that the property, plant and equipment balance of Kshs.3,658,999,487 is fairly stated as at 30 June 2011.

Management Response

These are disputed properties and also properties vested into NKCC ownership via a Court vesting order and without registered title documents. New KCC Limited took over the legal cases of the disputed properties from the defunct KCC and pursuing the same through litigation by our Advocates.

Applications for title re-issuance and registration have also been made by our Advocates for all properties with missing title or properties evidenced by copies of allotment letters. The management is regularly updated on the status as per Appendix 1

Management availed a listing of NKCC properties with titles as per Appendix 2.

Committee Observation

The Committee observed that the Cooperative was engaged in litigation over disputed properties and properties vested to it when it took over assets of the defunct Kenya Cooperative Creameries.

Committee Resolution

The Cooperative was asked to provide a status of the court cases and legal costs incurred.

MIN/PIC/2019/189: TRADE AND OTHER RECEIVABLES

As previously reported and included in the trade receivables and prepayments balance of Kshs.985,286,568 as at 30 June 2011 are trade debts totaling Kshs.561,905,428 out of which an amount of Kshs.4,948,922 was owed by a firm in respect of goods and services supplied by the Company as at 30 June 2011. Although the firm was expected to provide the company with a bank guarantee against goods supplied, no

such guarantee was made available for audit verification. Instead, the firm disputed the debt, whereupon the matter was referred to an arbitration process on 16 March 2007. However, and according to information available, this matter had not been resolved as at 30 June 2011.

(ii). The trade receivables and prepayments balance of Kshs.985,286,568 also includes staff debts amounting to Kshs.27,427,657 out of which an amount of Kshs.10,667,840 is owed by employees who have since left the Company. Although and as similarly reported in 2009/2010 legal action has been taken against the employees, the outcome of such action has not been communicated.

(iii). The trade receivables and prepayment balance of Kshs.985,286,568 includes refer to drawer cheques amounting to Kshs.15,952,643 some of which have been outstanding for over one year. Although the management has explained that the cheques have been referred to the debt collector for action, it has not however been clarified why these cheques had not been replaced by 30 June 2011.

In the circumstances, it has not been possible to confirm the recoverability of debtors totaling Kshs.31,569,405 and that the trade receivables and prepayments balance of Kshs.985,286,568 is fairly stated as at 30 June 2011.

Management Response

It is true included in trade debts of Kshs. 561,905,428, was an amount of Kshs. 4,948,922 owed by Aleria Enterprises Limited which had been referred to an arbitrator for resolution. The Secretariat for International Chamber of Commerce (ICC) wrote to notify withdrawal of the case. In view the communication from International Chamber of Commerce, NKCC's legal department wrote to J.M Njenga & Co. Advocates with view to finding out what were reasons for withdrawal and pursue for appeal.

In the process of the company pursuing this debt, the company was informed of the death of the customer. In view of that update, the Management through Board made a decision to write off the debt. **Appendix 4**

Committee Observation

The Committee made the following observation:

1. The debt owed by Aleria Enterprises Limited was written off by the Board as the Director of the company had passed away. The death certificate of the Director was provided to New KCC.

Committee Resolution

The Committee made the following resolution:

1. The audit query relating to the debt owed by Aleria Enterprises is resolved.
2. Management should provide explanation for the other two audit queries relating to an amount of Kshs.10,667,840 owed by employees who have since

left the Company and the drawer cheques amounting to Kshs.15,952,643 which have been outstanding for over one year

MIN/PIC/2019/190: INVENTORIES FY 2010/11

The inventories balance of Kshs.1,737,193,759 includes material price/stock valuation variance and price variance engineering and tetra pak stores figures of Kshs.65,076,727 and Kshs.31,999,725 respectively. Although the management has indicated that the variance relates to material price variance between actual and standard cost prices, no evidence was availed to support the management's assertions.

Consequently, it has not been possible to confirm the validity and accuracy of the inventories balance of Kshs.1,737,193,759 as at 30 June 2011.

Management Response

Management resolved the outstanding price variances as the prices variances relating to stock balances at the year ended (30th June 2011) were utilized and absorbed as the material were consumed in the year 2011/2012.

Committee Resolution

The audit query has been resolved.

MIN/PIC/2019/191: CASH AND CASH EQUIVALENTS FY 2010/11

Excluded from the cash and cash equivalents balance of Kshs.67,103,124 as at 30 June 2011 are debits in the bank not in cash book amounting to Kshs.62,368,687 and credits in bank statement not in cash book amounting to Kshs.61,746,103. Although the management has explained that the banks have now provided the schedules which they have used to reconcile the records and passed entries in the cash books in 2011/2012 financial year, no evidence was availed to support such assertion.

(ii). Further, the cash count balance of Kshs.2,387,633 resulting to unexplained/ unresolved difference of Kshs.1,749,497.

In the circumstances, it has not been possible to confirm validity and accuracy of the cash and cash equivalents balance of Kshs.67,103,124 as at 30 June 2011.

Management Response

The related debits were posted after supporting documents were received in the subsequent year 2011/2012. As at 30th June, 2012 the balances in the cashbook was equal to the bank statements.

Committee Observation

The relevant documentation was provided by Management and verified by the Auditors.

Committee Resolution

The audit query is resolved.

MIN/PIC/2019/192: EXAMINATION OF AUDITED ACCOUNTS OF KENYA INSTITUTE OF CURRICULUM DEVELOPMENT

Dr. Julius Jwan, the Chief Executive Officer of the Kenya Institute of Curriculum Development accompanied by Mr. Emmanuel Mulwa (Deputy Director, Human Resource Management) appeared before the Committee to adduce evidence on the audited accounts of the Institute for FY 2013/14 to FY 2016/17.

The Committee heard that the Kenya National Assurance received unqualified audit reports for the financial year 2013/14 through to financial year 2016/17.

MIN/PIC/2019/193: OTHER MATTER - DIVERSITY IN EMPLOYMENT OF STAFF FY 2016/17

Chapter seven of the National Cohesion and Integration Act, 2008 states that all public establishments shall seek to represent the diversity of the people of Kenya in employment of staff. Further, the Act requires that no public establishment shall have more than one third of its staff from the same ethnic community. However, a review of the Institute's staff data revealed that one ethnic community accounted for 48% of senior management and 38% of the other staff as was the case in the previous year. The Institute was therefore in breach of the law.

Management Response

The over-representation of one community arises from recruitment processes that go back over the years. The Institute has since been seeking to redress this through recent recruitment exercises. The Institute anticipates that the staff establishment will balance out in future financial years.

Committee Resolution

Management should redress the over-representation of one community by practicing positive discrimination in future recruitment exercises.

MIN/PIC/2019/194: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/2019/195: ADJOURNMENT

The meeting was adjourned at thirty three minutes past one O'clock.

Signed

The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

Date..... 18/06/2019

MINUTES OF THE 24TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY 11TH APRIL 2019 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 3.00 P.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
4. The Hon. Joash Nyamache Nyamoko, MP
5. The Hon. Babu Owino Paul Ongili, MP
6. The Hon. Thuku Zachary Kwenya, M.P

ABSENT WITH APOLOGY

1. The Hon. Raphael Bitta Sauti Wanjala, MP
2. The Hon. Purity Wangui Ngerici, MP
3. The Hon. Gladys Wanga, MP
4. The Hon. John Muchiri Nyaga, M.P
5. The Hon. Mohamed Hire Garane, M.P.
6. The Hon. Rashid Kassim Amin, MP
7. The Hon. James Kamau Githua Wamacukuru, M.P
8. The Hon. Mary Wamaua Njoroge, MP
9. The Hon. Omar Mohamed Maalim Hassan, MP
10. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
11. The Hon. Justus Kizito Mugali, MP
12. The Hon. Paul Kahindi Katana, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 2. Mr. Mohamed Boru | - | Third Clerk Assistant |
| 3. Ms. Sharon Rotino | - | Research Officer |
| 4. Ms. Marlene Ayiro | - | Legal Counsel |
| 5. Mr. Thomas Ogwel | - | Fiscal Analyst |
| 6. Ms. Noelle Chelagat | - | Media Relations Officer |
| 7. Ms. Winfred Atieno | - | Audio Recording Officer |

IN ATTENDANCE

- | | | |
|------------------------|---|------------------------------------|
| 1. Mr. Stephen Karani | - | Director, Audit |
| 2. Mr. Fredrick Kimani | - | Manager, Audit |
| 3. Mr. Joshiah Oyuko | - | Manager, Audit |
| 4. Mr. George Ombua | - | Inspectorate of State Corporations |

MIN/PIC/2019/179:

PRELIMINARIES

The Chairperson called the meeting to order at fourteen minutes past three O'clock followed by a word of prayer.

MIN/PIC/2019/180: EXAMINATION OF AUDITED ACCOUNTS OF KENYA NATIONAL SHIPPING LINE

Mr. Joseph Juma, the Ag. Managing Director of Kenya National Shipping Line accompanied by Mr. Julius Seger (Alternate Director), Ms. Rollyn Chebosi (Accountant), Mr. Gerald Kamau (Cost Controller) and Mr. Kiriminy Brainson (Finance Officer) appeared before the Committee to adduce evidence on the audited accounts of Kenya National Shipping Line for the financial year 2013/14 to financial year 2016/17.

MIN/PIC/2019/181: GOING CONCERN FY 2013/14

The statement of comprehensive income for the year ended 30 June 2014 indicate that the Company recorded a loss of Kshs. 22,532,597 (2013 - Kshs.33,929,046) resulting to accumulated deficits of Kshs. 262,106,953 as at 30 June 2014 (2013-Kshs.239,574,356).

Income from operations reduced to Kshs.11,676,100 compared to Kshs.84,296,412 during the financial period 2012/2013.

The current liabilities of Kshs.85,300,430 exceeded the current assets of Kshs.18,323,803 resulting to a negative working capital of Kshs.66,976,627.

The financial statements have been prepared on a going concern basis on the assumption that the entity will continue getting financial support from its creditors and related parties.

Management Response

The parent Ministry, Directors and Management are pursuing a number of strategies under Blue Economy to ensure the company returns to profitable trading. The measures include:

- i. Restructuring of the company
- ii. Partnering with service provider seeking service providers to ensure it offers global shipping services.
- iii. Resolving shareholding structure
- iv. Implementing Strategic Plan (2016-2021) which has been prepared.

Committee Observations

The Committee made the following observations:

1. The Shipping Line's main service provider, the Mediterranean Shipping Company had withdrawn its services due to high debts owed by KNSL.
2. KNSL was looking to re-engage the Mediterranean Shipping Company to resume services failure to which it would seek a new service provider.
3. The Shipping Line's strategic plan for 2016-21 had not implemented.
4. The Shipping Line had been proposed to take over the management of Terminal 2 at the Port of Mombasa yet it was facing financial challenges.

Committee Resolutions

The Committee resolved that the Shipping Line should provide the model of operation for the proposed restructuring of the company as well as the Memorandum of Understanding between the Mediterranean Shipping Company and KNSL.

MIN/PIC/2019/182: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/2019/183: ADJOURNMENT

The meeting was adjourned at twenty minutes past four O'clock.

Signed

Date.....

The Hon. Abdullswamad Sharraf Nassir, MP

(Chairperson)

18/06/2019

MINUTES OF THE 23RD SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY 11TH APRIL 2019 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10.00 A.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
4. The Hon. Raphael Bitta Sauti Wanjala, MP
5. The Hon. Joash Nyamache Nyamoko, MP
6. The Hon. Thuku Zachary Kwenya, M.P
7. The Hon. John Muchiri Nyaga, M.P
8. The Hon. Rashid Kassim Amin, MP
9. The Hon. Mary Wamaua Njoroge, MP
10. The Hon. Omar Mohamed Maalim Hassan, MP
11. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
12. The Hon. Babu Owino Paul Ongili, MP
13. The Hon. Purity Wangui Ngirici, MP

ABSENT WITH APOLOGY

1. The Hon. Paul Kahindi Katana, MP
2. The Hon. Justus Kizito Mugali, MP
3. The Hon. James Kamau Githua Wamacukuru, M.P
4. The Hon. Mohamed Hire Garane, M.P.
5. The Hon. Gladys Wanga, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 2. Mr. Mohamed Boru | - | Third Clerk Assistant |
| 3. Ms. Sharon Rotino | - | Research Officer |
| 4. Ms. Marlene Ayiro | - | Legal Counsel |
| 5. Mr. Thomas Ogwel | - | Fiscal Analyst |
| 6. Ms. Noelle Chelagat | - | Media Relations Officer |
| 7. Ms. Winfred Atieno | - | Audio Recording Officer |

IN ATTENDANCE

- | | | |
|------------------------|---|------------------------------------|
| 1. Mr. Joshiah Oyuko | - | Manager, Audit |
| 2. Mr. Lawrence Oigara | - | Manager, Audit |
| 3. Mr. Joseph Irungu | - | Manager, Audit |
| 4. Mr. Benard Muriuki | - | Supervisor, Audit |
| 5. Mr. Peter Mwangi | - | Inspectorate of State Corporations |

MIN/PIC/2019/169: PRELIMINARIES

The Chairperson called the meeting to order at eight minutes past ten O'clock followed by a word of prayer.

MIN/PIC/2019/170: EXAMINATION OF AUDITED ACCOUNTS OF KENYA MEDICAL TRAINING COLLEGE

Prof. Michael Kiptoo, the Chief Executive Officer of the Kenya Medical Training College, accompanied by Dr. Miriam Muthuka (Corporation Secretary), Mr. John Anyuva, Mr. Jones Mwanga (Ag. Finance Manager) and Mr. John Isaac Obiye (Human Resource Manager) appeared before the Committee to adduce evidence on the audited accounts of the College for FY 2012/13 to FY 2016/17.

MIN/PIC/2019/171: TRADE AND OTHER RECEIVABLES FY 2012/14 to FY 2016/17

- i. As similarly reported in the previous year, the trade and other receivables balance of KSHS. 333,353,234 as at 30 June 2013 includes brought forward amounts of Kshs. 21,831,115 and Kshs 19,812,181 due from Kenyatta National Hospital and the Ministry of Medical Services respectively. According to information available, the Board has recommended to write off the amount. However, approval in this respect has not been obtained from the parent Ministry as at 30 June 2013.
- ii. Further, the trade and other receivables balance of Kshs. 333,353,234 also includes an amount of Kshs. 55,481,840 in respect of accumulated rent arrears due from the University of Nairobi for 96 rooms occupied by the University's medical students. Records available show the rent has been accumulated at the rate of Kshs 2,803,200 per annum over the last 19 years. However, a lease agreement between the college and University was not produced for audit verification, consequent upon which it was not been possible to establish the basis upon which the arrears have accumulated to stand at Kshs. 55,481,840 as at 30 June 2013.
- iii. As similarly noted in 2011/2012, the receivable amounts of Kshs. 17,960,991 (2011/2012 - Kshs. 14,145, 599) in respect of fees arrears from both Government sponsored and local/foreign students remained outstanding for more than one year. The general provision of Ksh.21,681,781 made in the financial statements appears inadequate .

In the circumstances, it has not been possible to confirm that the trade and other receivables balance of Kshs. 333,353,234.00 as at June 2013 is fairly stated.

Management Response:

The College concurs that included in the non-exchange transaction receivable is an amount Kshs 19,812,180 relating to Ministry of Medical services that has been outstanding for a long period. The ministry of health receivable was as a result of a

grant which was not remitted to KMTC as 30th June 1996. The college has been following up on this grant from the parent Ministry (Annex 1-1/5).

The debt for Kenyatta National hospital relates to staff trained in KMTC between 1996 and 2001. The two institutions under the ministry of health shared in contribution delivery of health care to the nation. The management of both institutions are negotiating on how to settle this long standing debt (Annex 2-2/4).

The College also concurs that included in the exchange transaction receivables is an amount of Kshs.59,050,240 being rent arrears accumulated for about 20 years. The college has issued a demand letter for the clearance of outstanding amount and vacation notice to the University of Nairobi to enable KMTC students occupy the hostels (Annex 3-3/8).

The fee balances are current (95%) i.e., not more than a year. The general provision of Kshs.21,681,781 for bad debts (excluding the long standing ones in (i) above which actually need to be written off) is considered by the management to be adequate. However, the College is reviewing this based on the auditor issues raised.

Committee Observations

The Committee made the following observations:

1. The Board of Kenyatta National Hospital has recommended write off for the amounts of Kshs. 21,831,115 and Kshs 19,812,181 due from Kenyatta National Hospital and the Ministry of Medical Services respectively. However, approval in this respect has not been obtained from the parent Ministry.
2. The audit query on accumulated rent arrears by the University of Nairobi had been considered in the 19th Report of the Public Investments Committee. The Committee recommended for speedy resolution of the matter and seizure of the property in question. These recommendations have not been implemented.
3. The College had issued an eviction notice to University of Nairobi through a letter dated 11th July 2018 but the University has not responded nor vacated the property.
4. The College has been invoicing the University every year but the University has not made any payment since last paying Kshs. 2,070,000 in the financial year 2012/13.

Committee Resolutions

The Committee resolved to hold a meeting with all the relevant stakeholders including the respective parent Ministries to the two institutions with a view to getting a way forward on the matter.

MIN/PIC/2019/172: PROPERTY, PLANT AND EQUIPMENT FY 2012/13 to FY 2016/17

The property, plant and equipment balance of Kshs. 5,129,941,375.00 as at June 2013 includes 22 parcels of land at Headquarters and the constituent Colleges valued at

Kshs. 502,485,000 and whose title documents were not available for audit verification.

Consequently, it has not been possible to confirm the ownership status of the 22 parcels of land and that the property, plant and equipment balance of Kshs. 5,129,941,375 as at 30 June 2013 is fairly stated.

Management Response

The process of obtaining title deed has been on going and the current status is as indicated below (Annex 4-4/15).

1. Nairobi Campus and Headquarters-	Title available (Annex 4)
2. Part of the South Hill Mess- upper hill	Title available (Annex 4/1)
3. Kisii Campus	Title available (Annex 4/2)
4. Nyeri Campus	Title available (Annex 4/3)
5. Thika Campus	Title available (Annex 4/4)
6. Machakos Campus	Title available (Annex 4/5)
7. Bomet Campus	Titles available (Annex 4/6)
8. Bondo (Masita) campus	Title available (Annex 4/7)
9. Port Reitz Campus	Title available (Annex 4/8)
10. Kakamega Campus	Title available (Annex 4/9)
11. Rachuonyo Campus	Title available (Annex 4/10)
12. Chwele Campus	Title available (Annex 4/11)
13. Mwingi Campus	Title available (Annex 4/12)
14. Meru Nyaki/Thuura/4128 and 1580	Title available (Annex 3)
15. Rera	Title available (Annex 4/14)
16. Iten	Title available (Annex 4/15)

COLLEGE	PROGRESS
Nairobi MTC	<p>The National Land Commission invited KMTC among other public institutions to make representations on land whose ownership is on contention. KMTC presented evidence regarding ownership of L.R209/14272 and L.R.209/14277</p> <p>On 7th July 2014 -National Land Commission published a public notice in the Daily nation revoking the titles of LR 209/14277 and held by Cabin Crew Investment Ltd. and LR 209/14272 held by Robert Mutiso Lelli.</p> <p>Soon after on 17th July 2014, the two title holder's i.e. Cabin Crew Ltd and Mr. Lelli took the matter to court with a view to quashing the decision of the National Land Commission to revoke their titles. The hearing of the case has been concluded a waiting judgment which is due within the month of April 2019</p>

Karen college	<p>L.R NO.1160/1039 - KAREN BLIXEN COLLEGE</p> <p>Subdivision survey was approved as F/R NO.520/10, Comps No. 60901 and three sealed deed plan No's 3391-45 issued Surrender document was prepared by national Land Commission and forwarded to KMTC. The surrender was signed by The National Museums of Kenya who directly forwarded the lease to the National Land Commission vide letter Ref.No.NMK/MSM/ADM1/4 dated 6th November 2014.</p> <p>The national land commission has not been able to issue titles saying the surrender documents has been misplaced in their offices.</p>
Maanza MTC	<p>This land was originally reserved for Kenya Medical Training College. However it was sub divided into 102 sub plots. Of these sub plots the county council reserved one for KMTC. The Management raised a complaint with the Municipal council and the council cancelled all the allotment letters and gave the College authority to carry out a survey. The survey was done on the land and beacons certificate issued. The size the land is now 31actres. The College has since fenced the whole parcel. The process of title deed is ongoing.</p>
Nakuru MTC	<p>Nakuru Municipality Block 12/253.</p> <p>KMTC prepared a subdivision scheme plan which was forwarded to the cabinet secretary national treasury for signing and sealing.</p> <p>The National Treasury forwarded the plan to the National Land Commission for their comments. Management awaits action by the National Lands Commission.</p>
Mombasa MTC	<p>A part development plan (PDP) No. 12/2/CT/2009/3 dated 2nd June 2009 has been prepared by the director of physical planning. It was advertised in the Kenya gazette of 15th January 2010 as required by the law. The PDP has been approved by the Minister for Lands and the letter of allotments has been issued. The national land Commission has issued a letter allowing KMTC to carryout survey work. Survey work has been done and forwarded to survey of Kenya to process deed plans.</p>
Homa bay	<p>There are two parcels of land in Homa Bay.</p> <p>One site covering the tuition block has its PDP prepared and is being circulated by the Director of physical planning and it has been approved. Process of securing deed plan is going at the survey of Kenya</p> <p>The other covers the area of staff houses. PDP no HMB/162/01 dated 11th September 2008 was prepared and approved. A letter of allotment ref. No. 209163/VII/134 dated 10th November2009 was issued by the Commissioner of lands. The title deed is being prepared. A ground survey</p>

	<p>was carried out and approved by the Director of survey as FR NO. 514/59. The survey plans was forwarded to the Director of survey and RIM has been issued. The process is on going</p>
Garissa MTC	<p>KMTC visited the district Physical Planning Office and identified part of development plan No.326/94/27 dated 18th October 1994 for MTC land to have been prepared and approved by the Minister of lands.</p> <p>KMTC has purchased survey data for Garissa Block 4/42-60, 70, Block 3/475-483 and 207-216 and the survey works have been concluded and the process of title is on going</p>
Embu MTC	<p>Embu Municipality /897</p> <p>KMTC carried out the ground survey for the area fenced by the college and which falls on a surveyed plot registered as F/R No. 174/147, Comps No.21128 and parcel no.897.</p> <p>Management has done a search on parcel no.897 and found out that the plot belonged to the Church Commissioners of Kenya who surrendered the title to the Government of Kenya in 2003.</p> <p>KMTC has applied to the National Land Commission to issue allotment letter and is awaiting the letter from the National Land Commission.</p>
Meru MTC	<p>KMTC visited the school and the county physical planning office and discovered that part development plan no. MRU/167/11/01 was prepared, circulated, published and forwarded to ministry of Lands, Housing and Urban Development on 14th June 2012 for consideration and approval.</p> <p>Management managed to get the PDP approved by the Ministry of Lands and has since carried out the ground survey.</p> <p>The National Land Commission has issued a letter of allotment. On parcel Nos. Nyaki/Thuura/4128 and 1580 the title has been issued</p>
Kisumu MTC	<p>Sub division has been done and the PDP No N9/98/51 prepared. However the new bypass road has been designed to pass through the college land. This required that the existing sub division has to be reviewed to provide for the road. The road design has been concluded. The Management is negotiating with the county government of Kisumu to conclude the subdivision boundaries</p>
Muranga MTC	<p>KMTC has managed to get copies of approved part development plan No.C27/010/3 separating the hospital and Kenya Medical Training college. Management also carried out survey for the area fenced by the</p>

	<p>college.</p> <p>KMTC has applied to the National Land Commission for the allocation of the plot to Kenya Medical Training College.</p>
Siaya MTC	A PDP No. 321/2012/06 - Siaya Municipality was prepared and circulated to the stake holders for comments on 21 st November 2012. Management carried out the survey of the land and fenced it. The process is no going.
Lodwar MTC	PDP No LWA.341.06.11 has been prepared and published in the local dailies. The preparation of the allotment letter is ongoing.
Webuye MTC	The discussion between the hospital and college management on demarcation has not been concluded. This dispute has taken so long however the matter has been resolve. The survey is being carried out to process the tile
Loitikitok MTC	KMTC visited the site and had a discussion with the stake holders. It was agreed that the principal and the Hospital Superintendent do a letter to the Kajiado Land Management Board requesting for the preparation of a part development plan separating the Hospital and KMTC. Preparation of PDP is on going
Kitui MTC	The demarcation of land between the Hospital, MTC, and other Government institutions has been agreed. The preparation of part development plan has been completed. The PDP was forwarded to the Chairman National land Commission on for approval
Kabarnet MTC	KMTC land falls within approved part development plan No.R.B.328.05.01 dated 14 th July 2007 approved as plan no. 102 by the Minister of Lands. Part of the land on this plan falls on the land allocated in letter of Allotment Ref. No.222986. A letter has been made to the National Land Commission applying for the allocation of the plots on approved plan to Kenya Medical Training College. The National Land Commission has through the County land management Board has since concluded that the land belongs to the private developer. The Management is currently pursuing the review of the PDP and have it approved.

Kilifi MTC	Allotment letter No 191081as per PDP plan No 134/KLF/14/97 has been issued but the hospital was contesting the land given to the College slowing down the process. However, KMTC since agreed with hospital and the PDP has been prepared and forwarded to the National Land Commission for approval.
Eldoret MTC	<p>The College managed to get the subdivision approval from the National Land Commission and carried out the survey which was approved by the Director of Surveys as F/R No. 550/16 and Comps No. 644404.</p> <p>The Director of survey has amended the registry index map which is in our possession. MTRH is yet to surrender the original title to allow for the two tiles be issued. The Management is in discussion with the Moi referral hospital to resolve the matter</p>
Kapkatet MTC	The Part Development Plan No. R1027/2011/1 for existing Kapkatet Hospital and proposed site for Kapkatet MTC has been done and forwarded to Director of Physical Planning. PDP has not been approved
Msambweni	Part of the larger land belonging to both KMTC and Hospital irregularly allocated to a private developer. The matter is being investigated by the county government among others within that area. Survey for the whole parcel will be carried out after the conclusion of the investigation.
Kwale MTC	Survey has been carried out and allotment letter issued in the name of KMTC. The College has forwarded tile document to the lands office for action. The process is on going
Mathare MTC	Management carried out a topographical survey of the plot. There is dispute between the hospital and KMTC on demarcation. The Management is negotiating with the Management of Mathare Hospital to resolve the dispute.
Bondo Campus	The parcel of land where the Campus sits belongs to county Government. This includes various institution like hospital, schools, and the county commissioner office. The need to subdivide the land has been communicated to the county government and the process is on going
Bungoma	The parcel of land where the campus sits includes the hospital and it's under hospital name. The county physical planner office is working on the subdivision PDP to allow for the process of allotment letter and title.

Busia Campus	Land co-owned with the hospital. In the process of getting the mother title then subdivide.
Chuka Campus	PDP available. Allotment letter is being processed
Gatundu	PDP has been prepared. The allotment letter is being processed.
Isiolo Campus	PDP available. Title deed process is ongoing
Kapenguria	The county Government has allocated land to the campus. The process of preparing PDP is on gong
Karuri Campus	The PDP has been prepared. The process of acquiring allotment letter is on going
Kitale	The PDP for subdivision has been prepared.
Kuria Campus	The PDP has been prepared and advertisement is already done
Lake Victoria	The land is co-owned with the hospital. Looking for mother title deed to facilitate separation.

Lamu Campus	The county Government has allocated land to the campus. Subdivision is being carried out.
Lugari Campus	There was initial dispute of land demarcation but this has since been resolved. The subdivision of the parcel is on going
Makindu	The PDP has been prepared and advertised.
Makueni	The boundary demarcation has been done, the PDP has been prepared circulated and forwarded to the national commission for approval.
Migori Campus	The PDP has been prepared circulated and advertised. The process of acquiring tile is on going
Molo Campus	KMTC Molo is working with Molo Sub-County Hospital management through the Nakuru County Health Department and the County Attorney to process the title deed for the College.
Mosoriot	The PDP has been prepared circulated and advertised. The process of acquiring tile is on going

Nyahururu	The PDP has been prepared circulated and advertised. The process of acquiring tile is on going
Nyamache	The process of separating the land from the hospital and acquiring a title deed is on going
Nyamira	Follow up is ongoing to get PDP from the land county offices The PDP has been prepared circulated and advertised. The process of acquiring tile is on going
Nyandarua	The PDP has been prepared circulated and advertised. The process of acquiring tile is on going
Othaya	The land is co-owned with the hospital. College land is 5 acres and the hospital is following up to get the mother title to facilitate subdivision.
Tana River	Allotment letter is available and title process is ongoing

Ugenya	The PDP has been prepared circulated and advertised. The process of acquiring title is on going
Vihiga Campus	The county Government has since allocated land to the campus and the process of acquiring title is on going
Voi Campus	The county Government has since allocated land to the campus and the process of acquiring title is on going
Wajir Campus	The process of separating the land from the hospital and acquiring a title deed is on going

To fast track the acquisition of ownership documents for KMTC parcels of land, the Management appointed five firms distributed regionally. They have laid the ground work and visited the campuses.

Committee Observations

The Committee made the following observations:

1. The College has acquired titles for various properties while working on acquisition of titles for the rest of the properties. A total of 16 title deeds had been acquired so far.
2. The Main Campus L.R.209/14272 and the South Hill Mess L.R.209/14277 situated in Nairobi are the subject of a court case to determine the ownership status. The National Land Commission had revoked the titles for the two pieces of land held by Cabin Crew Investment Ltd. and Mr. Robert Mutiso Lelli.

Committee Resolutions

The Committee made the following resolutions:

1. The College should provide the current status of the court case on the ownership of the two disputed pieces of land.

2. The College should fast track acquisition of titles for the rest of the property it holds.

MIN/PIC/2019/173: CASH AND CASH EQUIVALENTS FY 2012/13 to FY 2013/14

The College Bank reconciliation statement as at 30 June 2013 include receipts in the cash book not recorded in the bank statement of Kshs. 3,589,460 and Kshs. 264,500 for the Central Collection and Nairobi Campus expenditure accounts respectively which have remained outstanding for over one year. The management has not explained why the receipts were not subsequently banked.

In the circumstances, it has not been possible to confirm that the cash and cash equivalents balance of Kshs. 87,037,574 as at 30 June 2013 is fairly stated.

Management Response

It is true the above items were reconciling at the close of the financial year. However, the nature and extent of the reconciling amounts was established and cleared. The issue has not recurred in the subsequent years.

Committee Observation

The relevant documentation was provided by Management and verified by the Auditors.

Committee Resolution

The audit query is resolved.

MIN/PIC/2019/174: OTHER MATTER - OPENING OF NEW CONSTITUENT COLLEGES FY 2013/14

The college opened eight (8) new constituent colleges during the 2013/2014 financial year contrary to Part 4.0 of the expansion and policy guidelines Section1 and 3 which states that there should be an approved concept paper and proposal in line with Kenya Medical Training College Strategic Plan and source of financing identified to develop needed infrastructure. The colleges include: Makueni, Vihiga, Chwele, Kapenguria, Migori, Bomet, Kitale and Nyandarua. These new constituent colleges were not budgeted for during the year and the total expenditure of Kshs.104.870,204 incurred on them was not included in the annual estimates for 2013/2014 contrary to Section 12 of the State Corporations Act. Cap 446 which states that no corporation shall without the prior approval in writing of the Minister and The Treasury incur any expenditure for which provisions has not been made in an annual estimates.

No response has been provided for failure to comply with the Expansion Policy and the State Corporations Act. Cap 446. My opinion is not qualified in respect to this matter.

Management Response

The College concurs that they opened eight (8) new constituent campuses during the year 2013/2014 without fully adhering to the college's expansion policy guidelines. It

is true the eight (8) new colleges were not in the initial budget and since their creation was necessitated by pressing training needs.

Nevertheless, the Auditor's observations have been noted and the same has been brought to the attention of the Board of Management. Consequently, any new campus is opened in strict compliance with the expansion policy and after identifying source of financing to develop needed infrastructure. Annex 7/1

Committee Observation

The Committee observed that the College acquired the necessary approvals from the National Treasury and the parent Ministry before opening the new colleges.

Committee Resolution

Management should comply with internal policy on expansion of campuses and secure the relevant approvals before opening any future campuses.

**MIN/PIC/2019/175: REVENUE FROM EXCHANGE TRANSACTIONS -
FRAUDULENT RECEIPTS FY 2016/17**

Included in the statement of financial performance for the year ended 30 June 2017 is tuition, boarding and application charges of Kshs. 2,962,923,630 which includes fraudulent receipts for the period totaling Kshs. 3,363,260 caused by the students falsifying deposit slips in the payment of fees. As at the closure of the financial year there was no evidence that the same had been recovered.

Consequently, accuracy of the tuition, boarding and application fees of Kshs.2,962,923,630 included in statement of financial performance for the year ended 30 June 2017 could not be confirmed.

Management Response

The amount of Kshs. 3,363, 260 is composed of Kshs. 1,396,600 from various campuses were as a result of students presenting fictitious bank slips. The balance of kshs 1,966,000 accounts for cheques received on 30thjune 2017. Management confirms that the students with fees in default have paid the full school fees and disciplinary action taken against them after reporting back from attachment in clinical sites. The un credited cheques were subsequently banked on July 2017(Annex6)

The management has implemented an ERP system with full integration with banks which has a real-time access with immediate update of student accounts.

Committee Resolution

The audit query has been resolved.

**MIN/PIC/2019/176: EXAMINATION OF AUDITED ACCOUNTS OF NATIONAL
CAMPAIGN AGAINST DRUG ABUSE (NACADA) FY 2013/14
to FY 2016/17**

Mr. Victor Okioma, the Chief Executive Officer of the National Campaign Against Drug Abuse accompanied by Dr. Patrick Obura (Director, Finance) and Mr. Samuel Makini (Manager, Finance) appeared before the Committee to adduce evidence on the audited accounts of NACADA for the financial year 2013/14 to financial year 2016/17.

The Committee heard that the accounts presented before it were funds under the Alcoholic Drinks Control Fund established under the Alcoholic Drinks Control Act. The accounts were therefore to be considered by the Special Funds Accounts Committee.

The Committee resolved to re-invite NACADA on a later date to examine its audited accounts.

MIN/PIC/2019/177: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/2019/178: ADJOURNMENT

The meeting was adjourned at seven minutes to one O'clock.

Signed

Date.....

The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

18/07/2019.

MINUTES OF THE 22ND SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON WEDNESDAY 10TH APRIL 2019 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10.00 A.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
4. The Hon. Raphael Bitta Sauti Wanjala, MP
5. The Hon. Joash Nyamache Nyamoko, MP
6. The Hon. Thuku Zachary Kwenya, M.P
7. The Hon. John Muchiri Nyaga, M.P
8. The Hon. Rashid Kassim Amin, MP
9. The Hon. Mary Wamaua Njoroge, MP
10. The Hon. Omar Mohamed Maalim Hassan, MP
11. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
12. The Hon. Babu Owino Paul Ongili, MP

ABSENT WITH APOLOGY

1. The Hon. Paul Kahindi Katana, MP
2. The Hon. Justus Kizito Mugali, MP
3. The Hon. James Kamau Githua Wamacukuru, M.P
4. The Hon. Mohamed Hire Garane, M.P.
5. The Hon. Purity Wangui Ngirici, MP
6. The Hon. Gladys Wanga, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 2. Mr. Mohamed Boru | - | Third Clerk Assistant |
| 3. Ms. Sharon Rotino | - | Research Officer |
| 4. Mr. Thomas Ogwel | - | Fiscal Analyst |
| 5. Ms. Marlene Ayiro | - | Legal Counsel |
| 6. Ms. Noelle Chelagat | - | Media Relations Officer |
| 7. Ms. Winfred Atieno | - | Audio Recording Officer |

IN ATTENDANCE

- | | | |
|-------------------------|---|------------------------------------|
| 1. Mr. Joshiah Oyuko | - | Manager, Audit |
| 2. Mr. Henry Nyandwaki | - | Manager, Audit |
| 3. Mr. Peter Lugerah | - | Manager, Audit |
| 4. Mr. Leonard Chemuren | - | Manager, Audit |
| 5. Mr. Peter Ruteere | - | Inspectorate of State Corporations |
| 6. Mr. Victor Momanyi | - | Inspectorate of State Corporations |
| 7. Mr. Gerald Mwangi | - | Inspectorate of State Corporations |

MIN/PIC/2019/154: PRELIMINARIES

The Chairperson called the meeting to order at eight minutes past ten O'clock followed by a word of prayer.

MIN/PIC/2019/155: EXAMINATION OF AUDITED ACCOUNTS OF NATIONAL TRANSPORT SAFETY AUTHORITY

Mr. Francis Meja, the Director General of the National Transport Safety Authority, accompanied by Mr. Christopher Leparan (Director, Corporate Support Services) and Mr. Wycliffe Wasike (Deputy Director, Finance) appeared before the Committee to adduce evidence on the audited accounts of the Authority for FY 2015/16 to FY 2016/17.

The Committee heard that the Authority's audited accounts for the financial year 2015/2016 to financial year 2016/2017 were unqualified.

The Authority was commended for the good financial management.

MIN/PIC/2019/156: EXAMINATION OF AUDITED ACCOUNTS OF EXPORT PROMOTION COUNCIL

Mr. Peter Kibet Biwott, the Chief Executive Officer of the Export Promotion Council accompanied by Ms. Christine Mwaka (General Manager, Finance), Mr. Victor Odindo (Manager, Internal Audit) and Mr. Rodgers Kiptungo (Manager, Supply Chain Management) appeared before the Committee to adduce evidence on the audited accounts of the Council for FY 2010/11 to FY 2016/17.

The Committee heard that the Council's audited accounts were unqualified for the financial year 2010/11 through to financial year 2016/2017.

The Board was commended for the good financial management.

MIN/PIC/2019/157: EXAMINATION OF AUDITED ACCOUNTS OF KENYA PLANT HEALTH INSPECTORATE SERVICE

Dr. Esther Kimani, the Managing Director of Kenya Plant Health Inspectorate Services, accompanied by Mr. James Angawa (General Manager, Finance & Accounting) and Mr. Bartonjo Cheptarus (Manager, Finance) appeared before the Committee to adduce evidence on the audited accounts of the Service for the financial year 2011/12 to financial year 2016/17.

MIN/PIC/2019/158: PROPERTY, PLANT AND EQUIPMENT FY 2011/12 to FY 2016/17

The property, plant and Equipment balance of Kshs.1,147,144,151 includes eleven (11) parcels of land valued at Kshs.258,626,160 situated in Nakuru Municipality, Muguga in Kiambu, Kitale-Trans Nzoia, Kabete, Karen in Nairobi and Kisumu Municipality.

Except for the land in Karen, Kisumu and Kabete, the Inspectorate does not have ownership documents for the others.

Out of the 125.30 hectares of land in Kitale held by third parties, the Inspectorate has so far recovered 34.09 hectares while the balance of 91.21 hectares is still held by private developers or occupied by squatters.

Management Response

The Corporation does not have title deeds for parcels of land inherited from KARI (KALRO) at its inception in 1996. The following is the status of the parcels:

- a) **Nakuru Municipality** - The land which measures approximately 80 acres is within a larger parcel that is under KALRO. The land has been surveyed awaiting KALRO to initiate subdivision.
- b) **Muguga Kiambu** - This parcel measuring approximately 12 acres is within a larger parcel of land owned by KALRO. The process of subdivision and transfer was initiated and ongoing (Evidence No. 1.).
- c) **Kitale Trans Nzoia** - Processing of title for the parcel and recovery of encroached land has been a challenge. The Corporation's attempts to have the portion of land under her control approximated to be 42.336 hectares surveyed and titled has been futile. This is due to failure of the Director of Surveys to survey the land (Evidence No. 2).

Further, the recovery of approximately 91.21 hectares held by third parties has also not been done. This is in spite of several appeals to NLC and Ministry of Lands (Evidence 3, 4, 5 and 6). The Corporation has obtained from NLC County Coordinator a list of names of some of the third parties occupying the land (Evidence No. 7).

Committee Observations

The Committee made the following observations:

1. The land in Muguga has been fenced as per the recommendations of the 19th Report of the Public Investments Committee. The land has no dispute.
2. The total acreage of the land in Kitale is 330 acres but KEPHIS only has access to 120 acres which the Service has fenced.
3. The remaining 210 acres of the land in Kitale is occupied by private developers, some of whom have allotment letters for the land they occupy.
4. The land in Kitale was transferred to KEPHIS from the Kenya Agricultural Research Institute (by then referred to as Kenya Agriculture and Livestock Research Institute). There was no documentation accompanying the transfer of the land.
5. The Kenya Agricultural Research Institute has been allocated 10 acres from the 210 acres claimed by KEPHIS hence raising doubts on the validity of KEPHIS' claim to the land.

Committee Resolution

1. The Committee resolved that KEPHIS should conduct an official search for the land in Kitale to establish the official ownership status.

MIN/PIC/2019/159: BOARD EXPENSES FY 2011/12 to FY 2013/14

The inspectorate paid a total of Kshs.92,400 to non-Board members during the year contrary to Section 10(1) of the State Corporations Act, Cap 446 of the laws of Kenya which states that the chairman and members of the Board, other than the Chief Executive are to be paid sitting allowances from the funds of the Corporation upon attending board and or committee meeting.

The Inspectorate was therefore in breach of the Law to the extent of these payments.

Management Response

The Corporation made the payments in line with the practice prevailing in Government at the time. The Auditor General through letter (Evidence No. 8) has clarified that the payments are indeed legitimate and in order.

Committee Resolution

The audit query has been resolved.

MIN/PIC/2019/160: EMPLOYEE COSTS FY 2014/15 to FY 2015/16

Included in the employee costs figure of Kshs 468,968,000 as at June 2015 is Kshs 5,884,496.68 paid to the managing Director who has been on compulsory leave in accordance with the Ministry of Agriculture Letter Ref: MOA B.1/60A/A dated 7th August 2014. Further, Audit verification revealed that after the expiry of the 62 days' suspension as per the letter, the parent ministry extended the compulsory leave indefinitely. It's not clear and the management has not explained the outcome of the investigations and why the officer continues drawing salary and allowances without rendering services to the organization.

Management Response

On August 2014 the Managing Director was sent on compulsory leave through the Ministry of Agriculture letter Ref: MOA B.1/60A/4 VOL.I / (82) (Evidence No.9). Upon expiry of 60 days the leave was further extended indefinitely through Ministry of Agriculture letter Ref: MOA/B.1/60A/4 VOL. I (86) dated 6th November 2014 (Evidence No. 10) which lasted for the period up to expiry of contract on 26th February 2016. During this period the Managing Director earned salary and allowances which was within the law since the Ministry had neither suspended nor interdicted him. Further, during the period the Managing Director was not substantively replaced which suggested possibility of return from leave. Further compounding the situation in terms of decision making during the period was a lack of a Board following disbandment in 2014.

The Corporation's sought guidance from the Ministry on the issue of payment of salary and allowances to the Managing through letters Ref: PH/1563/26 dated 10th August 2015 and PH/1563/28 dated 10th February 2016 (Evidence 11 and 12) both of which were not replied.

Committee Resolutions

The Committee made the following resolutions:

1. The parent Ministry should provide an explanation on the employment status of the then Managing Director and the legal implications of being sent on compulsory leave.

MIN/PIC/2019/161: MATERIAL UNCERTAINTY RELATED TO SUSTAINABILITY OF SERVICES FY 2016/17

The statement of Financial performance on page 24 reflects a deficit of Kshs 43,359,000 for the year ended 30th June 2017 (2016 a deficit of Kshs 158,383,000). The statement of financial position on page 25 also reflects current assets totalling Kshs.176,140,000 and current liabilities totalling Kshs. 197,050,000 as at 30th June 2017, respectively resulting to a negative working capital of Kshs. 20,910,000. This trend, unless reversed, may affect the inspectorate's ability to sustain its services in the long term.

Management Response

The Corporation has addressed the challenge by widening its fees base which has successfully reversed the financial performance to a surplus by end of 2017/18 financial year as per attached financial statements (Evidence No. 13)

Committee Resolution

The audit query has been resolved.

MIN/PIC/2019/162: EXAMINATION OF AUDTED ACCOUNTS OF EWASO NGIRO SOUTH DEVELOPMENT AUTHORITY

Mr. Sammy Naporos, the Managing Director of Ewaso Ngiro South Development Authority, accompanied by Mr. Jonathan Leiyen (Chief Finance Manager), Mr. Mwalo Joel (Manager, Internal Audit) and Ms. Jepta Rono (Liaison Officer) appeared before the Committee to adduce evidence on the audited accounts of the Authority for the financial year 2012/13 to financial year 2016/17.

MIN/PIC/2019/163: EXAMINATION OF AUDTED ACCOUNTS OF EWASO NGIRO SOUTH DEVELOPMENT AUTHORITY FY 2012/13 to FY 2013/14

The Committee heard that the Authority's audited accounts for the financial year 2012/2013 to financial year 2013/2014 were unqualified.

MIN/PIC/2019/164: CASH AND CASH EQUIVALENTS FY 2014/15

The statement of financial position reported a balance of cash and cash equivalents of Kshs.28,841,129 as at 30th June 2015. The amount was in respect of eleven (11) bank accounts maintained by the Authority. However, the bank reconciliation statements and bank confirmation certificate for Comiform A/C No.and Kilgoris Co-operative A/C No.01141018229500 holding Kshs. were not availed for audit verification.

Management Response

The missing reconciliations were done at the branch (basin) offices. Copies of the bank reconciliations and bank certificates missing were provided to the office of the Auditor General for verification.

Committee Observation

The relevant documentation was provided by Management and verified by the Auditors.

Committee Resolution

The audit query is resolved.

MIN/PIC/2019/165: FUEL AND LUBRICANTS FY 2014/15

The statement of financial performance reflects a balance of Kshs.15,122,442 in respect of administrative expenses. Included in the balance is an expenditure on fuel and lubricants amounting to Kshs. 4,006,345. However, fuel register and work tickets for various vehicles that drew fuel were not provided for audit verification. As a result, the propriety of the fuel and lubricants expenditure of Kshs. 4,006,345 charged to administrative expenses for the year ended 30th June 2015 could not be confirmed.

Management Response

Management provided a fuel consumption statement from Total Kenya together with copies of vehicles work tickets with details of fuel drawn by each vehicle. The documentation was verified by the Office of the Auditor General.

Committee Observation

The relevant documentation was provided by Management and verified by the Auditors.

Committee Resolution

The audit query is resolved.

MIN/PIC/2019/166: EXAMINATION OF AUDITED ACCOUNTS OF EWASO NGIRO SOUTH DEVELOPMENT AUTHORITY FY 2015/16 to FY 2016/17

The Committee heard that the Authority's audited accounts for the financial year 2012/2013 to financial year 2013/2014 were unqualified.

Committee Observations

The Committee made the following observations:

1. Management had delayed submitting documentation to the Office of the Auditor in good time hence raising audit queries in financial year 2014/15.
2. The Authority had built a leather processing plant and was undertaking irrigation projects in Kajiado County.
3. ENSDA generates revenue of Kshs. 16,000,000 annually but is looking to increase that to Kshs. 80,000,000 once the leather plant is commissioned.

MIN/PIC/2019/167: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/2019/168: ADJOURNMENT

The meeting was adjourned at five minutes to two O'clock.

Signed

The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

Date.....

18/07/2019.

MINUTES OF THE 21ST SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON TUESDAY 9TH APRIL 2019 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10.00 A.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
4. The Hon. Joash Nyamache Nyamoko, MP
5. The Hon. Purity Wangui Ngirici, MP
6. The Hon. Thuku Zachary Kwenya, M.P
7. The Hon. John Muchiri Nyaga, M.P
8. The Hon. Mohamed Hire Garane, M.P.
9. The Hon. Rashid Kassim Amin, MP
10. The Hon. Omar Mohamed Maalim Hassan, MP
11. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
12. The Hon. Babu Owino Paul Ongili, MP

ABSENT WITH APOLOGY

1. The Hon. Gladys Wanga, MP
2. The Hon. Raphael Bitta Sauti Wanjala, MP
3. The Hon. Justus Kizito Mugali, MP
4. The Hon. James Kamau Githua Wamacukuru, M.P
5. The Hon. Mary Wamaua Njoroge, MP
6. The Hon. Paul Kahindi Katana, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 2. Mr. Mohamed Boru | - | Third Clerk Assistant |
| 3. Ms. Sharon Rotino | - | Research Officer |
| 4. Ms. Marlene Ayiro | - | Legal Counsel |
| 5. Mr. Thomas Ogwel | - | Fiscal Analyst |
| 6. Ms. Noelle Chelagat | - | Media Relations Officer |
| 7. Ms. Winfred Atieno | - | Audio Recording Officer |

IN ATTENDANCE

- | | | |
|-----------------------------|---|------------------------|
| 1. Mr. Anderson Kariuki | - | Director, Audit |
| 2. Mr. James Njuru | - | Deputy Director, Audit |
| 3. Mr. George Otieno Nashon | - | Deputy Director, Audit |
| 4. Mr. Joshiah Oyuko | - | Manager, Audit |
| 5. Ms. Jane Kariuki | - | Manager, Audit |
| 6. Ms. Florence Valla | - | Manager, Audit |
| 7. Mr. David Macharia | - | Manager, Audit |

8. Mr. Osman Mohamed - Inspectorate of State Corporations

MIN/PIC/2019/134: PRELIMINARIES

The Chairperson called the meeting to order at fourteen minutes past ten O'clock followed by a word of prayer.

MIN/PIC/2019/135: EXAMINATION OF COMMISSION FOR UNIVERSITY EDUCATION

Prof. Mwenda Ntaragwi, the Commission Secretary of the Commission for University Education, accompanied by Ms. Linah Kiptoo (Accountant) appeared before the Committee to adduce evidence on the audited accounts of the Commission for FY 2016/17.

MIN/PIC/2019/136: EXAMINATION OF AUDITED ACCOUNTS OF COMMISSION FOR UNIVERSITY EDUCATION FY 2016/17

The Committee heard that the Commission's audited accounts for the financial year 2016/2017 was unqualified.

The Board was commended for the good financial management.

MIN/PIC/2019/137: EXAMINATION OF AUDITED ACCOUNTS OF TANA AND ATHI RIVERS DEVELOPMENT AUTHORITY

Mr. Stephen Githaiga, the Managing Director of Tana and Athi Rivers Development Authority, accompanied by Mr. David Kimaiyo (Chief Manager, Finance), Ms. Beth Wanyoike (Finance Manager) and Joseph Mwangi (Deputy Finance Manager) appeared before the Committee to adduce evidence on the audited accounts of the Authority for the financial year 2014/15 to financial year 2016/17.

MIN/PIC/2019/138: GOING CONCERN FY 2014/15 & FY 2015/16

As reported in the previous year, the Authority recorded a loss of Kshs.753,407,355 (2013/2014) Kshs.717,088,891) which raised its cumulative deficit to Kshs.12,232,654,792 as at 30th June 2015. The deficit has mainly been attributed to depreciation charges of Kshs.387,984,972 on Masinga and Kiambere Hydro power facilities and non-remittance of accrued revenue due from Kenya Power and Lighting Company, following a Government directive that all revenue from hydroelectric power facilities be remitted to the National Treasury.

In view of the foregoing, the going concern status of the Authority is dependent upon financial support from the Government, its bankers and creditors.

Management Response

As correctly stated by the Auditor, the Authority recorded a deficit of Kshs.753, 407,355 (2013/14 Kshs.717,088,891). This brought the cumulative deficit to Ksh.12,232,654,792.00 as at 30th June 2015.

Before 1988, TARDA was self-sustaining through its internally generated revenue from the projects. The Authority did not require any assistance from the exchequer streams. Immediately KPLC disregarded the lease of commercial agreement in 1988 and eventually transfer of power generating and transmitting assets in the year 2000 the financial base and solvency of the Authority was incapacitated.

TARDA has been insolvent since the day generating and transmission assets were transferred to KenGen. Unless the claims as recommended by PWHC report of Kshs. 533 million p.a, ISG recommendation of Kshs. 420 million p.a and PIC in 19th and 21st reports recommended payment of annual obligations, which had accumulated to Kshs. 10.7B as at 30 June 2018 are honored, the going concern and balance sheet accounting of the Authority will continue to be negative and recurring year after year despite the fact that it is not the inefficiency of TARDA but the effects of the power sector restructuring in the late 1990's.

TARDA is currently undertaking sustainable projects, which will improve financial performance of the Authority.

Committee Observation

The Committee made the following observations:

1. The audit query had recurred in previous years and was addressed in the 19th and 21st Reports of the Public Investments Committee on audited accounts of State Corporations.
2. KENGEN pays the Authority an annual sum of Kshs. 62,000,000 for power generation at TARDA's dams. This is significantly lower than the recommended amount of Kshs. 533 million p.a in the PWHC report, Inspectorate of State Corporation's recommendation of Kshs. 420 million p.a and PIC in 19th and 21st reports recommended payment of annual obligations accrued over the years.

Committee Resolution

The Committee made the following resolutions:

1. To confirm the implementation status of the aforementioned PIC Reports.
2. The Committee further resolved to meet with the National Treasury, Kenya Power and KENGEN with a view to finding a solution to the matter.

MIN/PIC/2019/139: PROPERTY PLANT AND EQUIPMENT FY 2014/5 to FY 2016/17

Land without Ownership Documents

The property plant and equipment balance of Kshs.11,224,308,393 as at 30th June 2015 includes a sum of Kshs.22,674,600 representing the value of three(3) parcels of land located at Kibwezi, Kitui and measuring 924.83 hectares whose ownership documents have not been presented for audit verification.

In the circumstance, it has not been possible to confirm the ownership status of the three (3) parcel of land.

Management Response

Ownership documents for Kitui and Kibwezi are currently being processed after having being delayed due to inadequate finances. Emali lease has expired and the County Government of Kajiado has expressed their unwillingness to renew the lease.

Committee Observations

The Committee made the following observations:

1. The Authority had taken a long time to acquire title deeds for all the land it owns. Title deeds for land in Kitui and Kibwezi were in different stages of processing.
2. The land in Emali is the subject of an ownership dispute between the Kajiado County Government and the State Department of Livestock. The State Department had granted the land to TARDA and the Authority was awaiting the resolution of the dispute before moving forward with title deed processing.

Committee Resolution

The Authority was asked to provide a brief on the status of all land under TARDA ownership including a status of their respective title acquisition.

Fully Depreciated Assets FY 2014/15 to FY 2015/16

Included in the property plant and equipment balance of Kshs.11,224,308,393 as at 30th June 2015 are fully depreciated assets whose original cost was Kshs.1,942,275,373. However, some of these are still in use and have therefore not been adjusted from aggregate assets balance before charging depreciation. Further, management has not put in place policies on how to revalue the Authority's assets. In the circumstances, the accuracy and completeness of the depreciation charge for the year amounting to Kshs.449,983,150 has not been ascertained.

Management Response

The Authority has taken note of this, and will revalue the fully depreciated assets to correct the anomaly.

The Authority is in agreement with the auditor that there is no policy on revaluation of fully depreciated assets as pointed out. However, the process of developing the policy is in progress.

Committee Resolution

The Authority was asked to complete the process of developing a policy on revaluation of fully depreciated assets and revalue the assets to avoid recurrence of the audit query.

Assets Held by Former Managing Directors FY 2014/15 to FY 2015/16

As previously reported, the Authority incurred expenditures totaling Kshs.422,500 on purchase of mobile phones and iPads which were issued to a former Managing Director between July 2012 and February 2013. Further, available records indicate that one other former Managing Director was issued with a laptop, camera and mobile phones which, however had not been surrendered to the Authority as at 30th June 2015. The management has not provided a satisfactory explanation why these assets were not recovered from the two former Managing Directors after expiry of their respective tenures.

In the circumstances it has not been possible to confirm that the property, plant and equipment balance of Kshs.11,224,308,393 as at 30th June 2015 is fairly stated.

Management Response

The Management is in agreement with the Auditors that assets held by former Managing Director of Kshs. 422,500 for various mobile phones and Ipads have not yet been recovered. Mr. Abdul Agonga had filed a Constitutional Petition Number 15/2013. The said matter is still in court and as such the Authority has not been able to conclusively pursue the recovery of the assets. *Appendix 2014/15-02(b) (Lodgment of Plaintiff)*

Similarly, the Management wrote to former MD Mr. Francis Agoya severally to return the assets in his possession but he has not been responding to the demand letters.

Appendix 2014/15-02(c)(Demand Letter)

However, Management has written to the Inspectorate of State Corporations to assist in the recovery of the above assets. *Appendix 2014/15-02(d) (ISC letter)*

Committee Observation

1. The Committee observed that the Authority had so far spent Kshs. 150,000 in litigation against the former Managing Director, Mr. Abdul Agonga.

MIN/PIC/2019/140: TRADE AND OTHER RECEIVABLES FY 2014/15 to FY 2015/16

The trade and other receivables balance of Kshs.60,352,441 as at 30th June 2015 (2013/2014 Kshs.60,262,030) is net of the Kenya Power and Lighting Company debtor account. According to Note 18 to the financial statements, the account relates to bulk power sales amounting to Kshs.1,179,215,376 for the period prior to 1988 and which sum has been under dispute. Further, the balance of Kshs.60,352,441 includes debtors account - car loan balance of Kshs.259,396 which the Authority alleges is historical and cannot be supported, and a debtor account for Freshco Kenya Limited amounting to Kshs.7,576,126 which is not supported by contract documents.

In addition, the Authority did not provide age analysis for the trade receivable balance of 60,532,441 as at 30th June 2015. In addition, it was not possible to confirm whether adequate provision had been made against the long outstanding debts.

In the circumstances, it has not been possible to confirm the correctness and recoverability of the trade and other receivables balance of Kshs.60,352,441 as at 30th June 2015.

Management Response

- (a) The Authority provided for provision for bad and doubtful debts in the year 2011/12 and was verified from our financial statement.
- (b) **Car Loan Balances - Kshs.259,396.00:** This amount has been in our books since 1998/99 financial year as a hanging figure. By the conclusion of the financial year, TARDA had lost substantial information relating to project studies, technical and financial documents as a result of the August 1998 bomb blast, where TARDA was heavily affected. Among the financial and human resources documents were the car loan instruments.
- (c) **Freshco Account - Kshs.7,576,126:** This amount relates to a contract between TARDA and the company for cotton farming in Kiambere in September 2007. A copy of the contract document to support the arrangement and the above figure was availed for verification. *Appendix 2014/15-03(a) (Freshco Lease Agreement)*
- (d) Age analysis for Trade and other receivables has been done and is available for audit verification. *Appendix 2014/15-03(b) (Trade and Other receivables Age Analysis)*

Committee Observation

The Committee made the following observations:

1. The audit query had been addressed in the 21st PIC Report.
2. The Committee recommendation on adoption of paperless records was being implemented.

MIN/PIC/2019/141: REVALUATION RESERVE FY 2014/15 to FY 2015/16

The financial statements reflect a revaluation reserve of Kshs.19,697,833,221 as at June 2015. However, the reserve could not be verified as no documentary evidence was presented to confirm revaluation of assets done during the year under review. In addition, the reserve is not supported with corresponding increase in values of assets and furthermore, asset and depreciation on the revalued assets was not charged to the reserve. Further, the last revaluation of the Authority's assets was done in 2006 although international Public Sector Accounting Standard No. 17 requires that reevaluations be done after every five years.

In the circumstances, it has not been possible to confirm whether the revaluation reserve e balance of Kshs.19,697,221 as at 30th June 2015 is fairly stated.

Management Response

The Authority's assets were revalued in the year 2006 by J.B Mwaniki & Associates, during which revaluation reserve was brought to Kshs.19, 697,833,221.

Management wishes to state that no revaluation of assets was done in the year under review.

As correctly pointed out by the Auditor that revaluation of assets is supposed to be carried out every 5 years, however the exercise has been delayed by lack of budgetary support.

Committee Observation

The Committee made the following observations:

1. The Authority has been unable to carry out a revaluation exercise due to lack of funding.

Committee Resolution

The Authority was asked to prioritize funding for a revaluation exercise in its next budget.

MIN/PIC/2019/142: TRADE AND OTHER PAYABLES FY 2014/15 to FY 2015/16

Included in trade and other payables balance of Kshs. 143,525,579 as at 30th June 2015 are un remitted statutory deductions relating to the National Social Security Fund (NSSF) of Kshs.3,355,164 and withheld VAT Kshs.1,707,468 due to the Kenya Revenue Authority. The remittances have been outstanding for long, some dating back to 2004. Further, included in trade and other payables is a balance of Kshs.28,622,440.00 relating to unremitted pension. No explanation has been provided for the failure to remit statutory deductions to the respective institutions.

Further, as reported in the previous year, the Authority does not reconcile arrears and penalties owed to the NSSF. The omission signifies poor internal control and the Authority is likely to suffer heavy penalties if corrective action is not take without delay.

In addition, other creditors totaling to Kshs.20,636,111 have been outstanding for between one and nineteen years. Management has not explained this anomaly.

Consequently it has not been possible to confirm the accuracy and completeness of trade and other payables balance totaling to Kshs.143,525,579 as at 30th June 2015.

Management Response

- a) NSSF - Management concurs with the Auditors on the outstanding statutory. However, we wish to state that the NSSF balance was reconciled and fully paid, the Authority now settles this obligation as, and when it falls due.
- b) Outstanding VAT- The Authority took note of the auditor's observation and is developing a payment plan geared towards settling the outstanding balance.
- c) Pension - Ever since 1994, the Authority has been incurring an unpaid expenditure of over Kshs.21.6million p.a as employers' pension contribution on annual basis, which went up to Kshs.30million p.a in 2011 to date.

The Authority through its own resources has reduced these figures. Management will be pursuing National Treasury to provide for funds to settle this account.

- d) Other Creditors - Included under these are figures, that have been outstanding over 20 year without supporting documents because they were part of records that were destroyed by 1998 bomb blast. On several occasions, the Management has been requesting the Board to write off these figures from our books. The Board resolution has always been that we seek concurrence from the Treasury, the line Ministry and the Auditor General. This concurrence and advice from the above offices has not yet been availed.

Appendix 2014/15-05 (Request letter)

Committee Observations

1. The Committee observed that the Authority had settled the outstanding statutory balance with the National Social Security Fund.
2. The Authority had an agreement with the Kenya Revenue for payment of Kshs. 500,000 per month with a view to clear the outstanding amount owed to the Revenue Authority.

Committee Resolution

1. The Committee asked the Authority to provide evidence on the agreement with KRA.
2. The Authority should pursue concurrence from the National Treasury to write off long outstanding debts whose documentation is unavailable.

MIN/PIC/2019/143: IRREGULAR RECRUITMENT OF MANAGING DIRECTOR FY 2014/15 to FY 2015/16

The Committee heard that the Managing Director, Mr. Steven Ruimuku had changed his name from Steven Maina Githaiga to Steven Githaiga Ruimuku and that he had changed his date of birth to continue holding office irregularly.

Management Response

The matter was dealt with in the previous PIC report and deleted.

Committee Observation

The Committee made the following observations:

1. The audit query in question had been addressed in the 21st Report of the Public Investments Committee.

Committee Resolution

The audit query had been resolved.

MIN/PIC/2019/144: LOSS MAKING SERVICES (MASINGA DAM AND TANA DELTA RESORTS) FY 2014/15 to FY 2015/16

7.1 Masinga Dam Resort

During the year under review the Authority made sales amounting to Kshs.25,489,624 and incurred cost of sales amounting to Kshs.27,680,212 from Masinga Dam Resort resulting in a net loss of Kshs.2,190,588. The cause of this anomaly has not been explained.

7.2 Tana Delta Resort

Similarly, The Tana Delta Resort made sales amounting to Kshs.5,534,243 against the cost of sales amounting to Kshs.8,514,449 resulting in a gross of Kshs.2,980,206. Management has not put in place any new measures to make the venture profitable.

Management Response

Management concurs with the Auditor on loss making services. However, Management examined critically the business model on which the enterprise based programmes were operating, with a view of turning them around. The services have been turned around and are now not making losses.

The Committee resolved that the Authority should submit a list of all the properties leased out and the leases charged to the respective properties.

Committee Observation

The Committee made the following observations:

1. The Authority had instituted measures to turn around its services to profitability.
2. The Masinga Dam Resort has been making a profit since FY 2017/18 and had made a profit of approximately Kshs. 30,000,000.

Committee Resolution

The audit query had been resolved.

MIN/PIC/2019/145: OVER EXPENDITURE ON ACCOMMODATION AND SUBSISTENCE FY 2014/15

During the year under review, the Authority incurred a total of Kshs.19,743,075 on accommodation and subsistence allowances against the approved budget of Kshs.16,500,000 resulting in an over expenditure of Kshs.3,243, 075 contrary to section 12 of the state Corporations Act Cap 446.

Management Response

The Management concurs that there was over expenditure on accommodation and subsistence. This was as a result of increased activities and upward adjustment of accommodation and subsistence allowance by SRC. *Appendix 2014/15-08 (SRC Report)*

MIN/PIC/2019/146: FUNDING OF PARLIAMENTARY ACTIVITIES FY 2014/15

Included in the Administrative expenses balance of Kshs.4,717,495 is a sum of Kshs.652,367 paid to Authority's cashier, to support the activities of the parliamentary committee on environment and natural resources. It was not clear why the Authority agreed to fund parliamentary activities which were not budgeted for.

Management Response

This was not a direct payment to the Committee members. It was payment to our staff members who accompanied the committee during conservation activities in our area of jurisdiction of Makueni, Machakos and Tana River Counties.

Committee Resolution

The Authority was asked to provide payment vouchers to ascertain the list of beneficiaries.

MIN/PIC/2019/147: CONSULTANCY SERVICES - MUNYU MULTIPURPOSE DAM FY 2014/15

The Authority entered into a contract with a consultancy firm for a feasibility study on the Munyu Multipurpose dam and the greater Kibwezi Irrigation project under tender

No. TARDA/RFP/110/2013/2014 at a contract price of Kshs.347,714,640. The bidders listed were less than ten (10) contrary to the Public Procurement and Disposal Act 2005. In addition, the technical proposals drawn by for each bidder were not provided for audit verification. It was not clear whether evaluation was completed within the required 30 days prescribed in public procurement regulations. Although the contract period was twelve months ending 3 October 2015, the contract had not been completed as at the time of audit, eight months after the expected completion time.

Consequently, the authority was in breach of the Public Procurement and Disposal Act, 2005 and further, delay in completion of the project may result in additional project costs.

Management Response

The bidders who returned their EOI documents were 20 in number, hence no contravention of PPOA 2005. The technical proposals for each bidder were provided for audit verification.

Evaluation process was completed within the prescribed time by PPOA, date of close of tender was 14th February 2014 and evaluation date was on 21st February 2014.

Out of the project cost of Kshs. 347.4 million, only Kshs. 20 million has been released, hence the late completion of the project. *Appendix 2014/15-10 (List of bidders & Technical proposals)*

Committee Observation

The Committee made the following observations:

1. The Authority stated the project was initiated following a directive by the parent Ministry.
2. The Authority had not carried out a feasibility study before commencement of the project.

Committee Resolution

The Authority was asked to provide communication with the parent Ministry regarding the project.

MIN/PIC/2019/148: BIOLOGICAL ASSETS FY 2014/15 to FY 2015/16

The Authority wish to state that fruit bearing trees and other commercial trees in Kiambere and Kibwezi were not valued during stock taking exercise. The amount stated by the auditor of Kshs. 10.50 million relates to paddy in the Tana Delta farm and not trees in Kibwezi and Kiambere.

The valuation of fruit bearing trees in Kibwezi and Kiambere require engagement of a valuation expert and funding.

The Biological Assets movement schedule as per IPSAS 27 was availed for audit verification.

Appendix 2014/15-11 (Biological Assets Movement Schedule)

Committee Resolution

The Authority was asked to seek concurrence on the valuation exercise with a view to establishing the actual status of the valuation of biological assets.

MIN/PIC/2019/149: LEASE INCOME - TANA DELTA INVESTMENT PROJECT FY 2014/15 to FY 2015/16

The biological assets balance of Kshs. 21,694,045 as at 30th June 2015 excludes fruit bearing trees and other commercial trees in Kibwezi and Kiambere valued at Kshs.10,500,000 and un-valued trees at Kiambere. Further, biological assets movement schedule has not been disclosed in the financial statements despite a purchase of 127 goats by the Authority during the year under review.

Consequently, it has not been possible to confirm the accuracy and completeness of the biological assets balance of Kshs.21,694,045 as at 30th June 2015.

Management Response

Land Lease to Braken Agricultural Ltd - Authority entered into a contract with Braken Company for the lease of 10,000ha meant for rice growing at the Tana Delta who were the best bidder in both financial and technical among three (3) companies namely; Braken, Unifresh Exotics and B. N Kotecha & Sons.

Rice milling process consists of the dryer, conveyor systems and storage in terms of paddy awaiting actual milling. Before the paddy is brought for milling, the initial drying process on the ground has nothing to do with the Authority or the Agreement. The customer would have been expected to ensure the minimum moisture content of the paddy is achieved through the natural way. It is after this that the actual paddy milling starts by being put into the silos and final automatic drying process before the consignment is automatically dropped to the milling machines.

The cost of milling at Kshs.3.50 per kilo of paddy was actually good and favourable to the Authority because of the following:

- (a) The volume involved is huge so the average cost of milling operations would be low
- (b) Currently (2018), the cost of milling in Western Kenya of paddy is between Kshs.3.75 - Kshs.4 and Kshs.3.00 in Mwea.

TARDA's set price at Kshs.3.50 per kilo of paddy was favourable without prejudice.

One can only have a comparative analysis with either Mwea or the Western rice belt farmers and millers.

Net Expenses of Kshs.130million beyond income received against 260,000,000 Kgs:

Braken never produced any rice not even a single kilo and therefore TARDA did not receive a single shilling at all because Authority did not mill.

In this regards, TARDA did not lose anything through that Agreement which was later cancelled due to no-performance on the side of Braken.

Committee Observation

The Committee made the following observations:

1. The contract between the Authority and Braken Agricultural Limited had been cancelled.
2. The land that was leased out in the contract with Braken has since been re-advertized for a similar project.
3. Braken Agricultural Ltd. owed the Authority approximately Kshs. 60,000,000 for occupation of the land for two years.

Committee Resolution

1. The Authority was asked to look into the clauses highlighted by the Auditor General that would prejudice its position in any such future contracts.
2. TARDA was asked to follow up with Braken Ltd. on payments due to the Authority.

MIN/PIC/2019/150: CAPITAL WORKS-IN-PROGRESS FY 2014/15 to FY 2015/16

The Authority entered into a contract with Braken Agricultural Limited on 10 September 2015 in which the Authority, a lesser, leased out 10,00 Ha to Braken Agricultural Limited for the product of rice. However, Article 7 of the contract and specifies the terms that must be met by both the lessor and the lessee. In subsections (ii) and (iv) the Authority appears to be disadvantaged in terms of the gains and costs that will be arising as it is obligated to offer services to the lessee, including milling and storage of the harvest without compensation. In addition, the authority has not costing policy by which its products and services can be billed.

Independent inquiry at Tana Delta Rice Mills confirmed that at present, rice is milled at Shs.4 per kg but as per sub-section (i) of the contract, the Authority had offered to mill the rice at Kshs. 3.50 per Kilogram. This will result in net expense the Authority at Kshs.130,000,000 far beyond the income received as result of the lease.

Under (iii) of the contract, the Authority has also offered to provide sufficient storage space to Braken Agricultural Limited rice. However, it has not set the storage charges. The Authority will also be required to meet drying, fumigation, security and labour costs. Since the lessee is required to produce 260,000 tons of rice per annum, the storage charges that Authority will incur will be huge but these do not appear to have been taken into account when the contract agreement was drawn.

Consequently, value for money does not appear to have been considered under the contract as the Authority is likely to incur huge losses from the lease agreement.

Management Response

Tana Delta Irrigation Project (TDIP) - Kshs.234,152,289: This figure has been appearing in all our audited accounts for the last 20 years since 1999. They have always been classified as work in progress because the work remains incomplete and has never been commissioned. The attempt to complete with use of AIA was hampered by the El Nino of 1997. *Appendix 2015/16-02(c) (1998/1999 Financial Statement Extract)*

Committee Observation

The Authority should seek a solution to this matter to avoid recurrence of the query in its audited accounts.

Emali Borehole - Kshs. 1,297,400: As correctly stated by the auditor that the commencement of the borehole construction started in the year 2010 and has continued to be carried forward. Nevertheless, the borehole has been successfully completed, commissioned and transferred to non- current assets. The relevant documents are availed for audit verification. *Appendix 2015/16-02(d) (Certificate of Completion)*

Committee Observation

1. The audit query had been resolved.

MIN/PIC/2019/151: EUROPEAN UNION FUND GRANT - KSHS.30,714,048.00 FY 2015/16

As similarly reported in 2013/2014, included in the statement of financial position is Kshs.30, 714,048.00 in respect of a grant received from the European Union (EU) for implementation of community Based Mini-Hydro-electric power Development Project in Upper Tana Basin for poverty alleviation.

However, the funds have remained unutilized for a period of over four years. Available information indicates that the donor, the European Union, recalled the funds in the financial year 2013/2014 and advised TARDA to prepare a new proposal for another grant. The management has not explained why the funds were not put to intended use resulting to withdrawal of the same by the donor.

In the circumstance, the Authority's Management seems not to have given sufficient focus on achievement of the Authority's strategic goals.

Management Response

The Authority concurs with the auditor's observation. The Authority identified the Mini Hydros, did studies, submitted to EU for grant provision but the conditionality in the Agreement was that the Kenya Government provides 20% as counterpart funding.

The National Treasury endorsed the Agreement as a commitment to this and TARDA opened a special account for this funding as instructed. It was unfortunate that despite several requests by our line Ministry and ourselves to Treasury to provide and release the above 20% counterpart funding, it never did nor explained. *Appendix 2015/16-06(a) (Request Letter to Treasury)*

The EU having no other option, instructed TARDA to return its money back and to which we complied. *Appendix 2015/16-06(b) (RTGS)*

However, the Authority has since prepared a funding proposal to Kenya Climate Change and Adaptation Fund, which is currently being implemented. Further,

Authority prepared another proposal for Green Climate Fund and awaiting response.
Appendix 2015/16-06(c) (Funding Proposal)

Committee Observation

The National Treasury did not meet the conditionality in the Agreement that the Kenya Government provides 20% as counterpart funding despite endorsing the Agreement. The grant was therefore cancelled by the European Union.

Committee Resolution

The National Treasury should provide explanation on the lack of counterpart funding for the project that resulting in cancellation of the European Union Grant.

MIN/PIC/2019/152: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/2019/153: ADJOURNMENT

The meeting was adjourned at twenty five minutes past one O'clock.

Signed

The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

Date..... 18/06/2019

MINUTES OF THE 20TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY, 4TH APRIL 2019 IN THE COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDING AT 11:00 AM

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Thuku Zachary Kwenya, M.P
4. The Hon. John Muchiri Nyaga, M.P
5. The Hon. Joash Nyamache Nyamoko, MP
6. The Hon. Justus Kizito Mugali, MP

ABSENT WITH APOLOGY

1. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
2. The Hon. Babu Owino Paul Ongili, MP
3. The Hon. Rashid Kassim Amin, MP
4. The Hon. Dr. Chrisantus Wamalwa Wakhungu, MP
5. The Hon. Raphael Bitta Sauti Wanjala, MP
6. The Hon. Gladys Wanga, MP
7. The Hon. Purity Wangui Ngirici, MP
8. The Hon. Mary Wamaua Njoroge, MP
9. The Hon. James Kamau Githua Wamacukuru, M.P
10. The Hon. Mohamed Hire Garane, M.P.
11. The Hon. Paul Kahindi Katana, MP
12. The Hon. Omar Mohamed Maalim Hassan, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|-----------------------|---|-------------------------|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 2. Ms. Sharon Rotino | - | Research Officer |
| 3. Ms. Marlene Ayiro | - | Legal Counsel |
| 4. Mr. Thomas Ogwel | - | Fiscal Analyst |
| 5. Ms. Winfred Atieno | - | Audio Recording Officer |

IN ATTENDANCE

OFFICE OF THE AUDITOR GENERAL

- | | | |
|----------------------|---|------------------------------------|
| 1. Ms. Mercy Muasya | - | Deputy Director, Audit |
| 2. Mr. Hillary Mirwu | - | Manager, Audit |
| 3. Mr. Joshiah Oyuko | - | Manager, Audit |
| 4. Mr. Bernard Koech | - | Inspectorate of State Corporations |

MIN/PIC//2019/121: PRELIMINARIES

The Chairperson called the meeting to order at four minutes past eleven O'clock

followed by a word of prayer.

MIN/PIC/2019/122: CONFIRMATION OF MINUTES

1. Minutes of the 10th sitting held on 7th March 2019 were confirmed as true record of the proceedings after being proposed by the Hon. Kwenya Thuku, MP and seconded by the Hon. Prof. Mohamud Sheikh, MP.
2. Minutes of the 11th sitting held on 12th March 2019 were confirmed as true record of the proceedings after being proposed by the Hon. Kwenya Thuku, MP and seconded by the Hon. John Muchiri, MP.
3. Minutes of the 12th sitting held on 14th March 2019 were confirmed as true record of the proceedings after being proposed by the Hon. Abdisalan Ahmed, MP and seconded by the Hon. Muchiri Nyaga, MP.
4. Minutes of the 13th sitting held on 19th March 2019 were confirmed as true record of the proceedings after being proposed by the Hon. Abdisalan Ahmed, MP and seconded by the Hon. Prof. Mohamud Sheikh, MP.
5. Minutes of the 14th sitting held on 21st March 2019 were confirmed as true record of the proceedings after being proposed by the Hon. Justus Kizito, MP and seconded by the Hon. Joash Nyamoko, HSC, MP.
6. Minutes of the 15th sitting held on 26th March 2019 were confirmed as true record of the proceedings after being proposed by the Hon. Kwenya Thuku, MP and seconded by the Hon. Abdisalan Ahmed, MP.
7. Minutes of the 16th sitting held on 28th March 2019 were confirmed as true record of the proceedings after being proposed by the Hon. John Muchiri, MP and seconded by the Hon. Prof. Mohamud Sheikh, MP.
8. Minutes of the 17th sitting held on 29th March 2019 were confirmed as true record of the proceedings after being proposed by the Hon. Kwenya Thuku, MP and seconded by the Hon. John Muchiri, MP.
9. Minutes of the 18th sitting held on 30th March 2019 were confirmed as true record of the proceedings after being proposed by the Hon. John Muchiri, MP and seconded by the Hon. Kwenya Thuku, MP.

All the confirmed minutes were subsequently signed by the Chairman.

**MIN/PIC/2019/123: EXAMINATION OF THE AUDITOR GENERAL'S REPORTS ON
THE ACCOUNTS OF THE PEST CONTROL PRODUCT BOARD
FOR THE FINANCIAL YEARS 2013/14 TO 2016/17**

Mr. Peter Opiyo (CEO for Pest Control Product Board) accompanied by Mr. James Mwaura appeared before the Committee to adduce evidence on the Reports of the Auditor General on the financial statements of the Pest Control Product Board for the financial years 2013/14 through to 2016/17.

He briefed the Committee as follows:

MIN/PIC/2019/124: EXAMINATION OF THE AUDITOR GENERAL'S REPORTS ON THE ACCOUNTS OF THE PEST CONTROL PRODUCT BOARD FOR THE FINANCIAL YEARS 2013/14

The Committee heard the Board was issued with unqualified opinion.

MIN/PIC/2019/125: PRESENTATION OF THE FINANCIAL STATEMENTS AND DISCLOSURES FY 2014/15

The Committee heard that contrary to the requirements of International Public Sector Accounting Standards (IPSAS) 1 on the presentation of financial statements, the notes to the financial statements did not flow sequentially as they included notes 7,8 and 9 which did not originate from either the statement of financial performance or statement of financial position but instead appear to originate from and are part of note 10.

The Committee further heard that the statement of financial position reflected a balance of Kshs. 293,524,838.00 under property, plant and equipment which was indicated as falling under note 23 to the financial statements but actually fell under note 19.

Further, the statement of financial position reflected a balance of Kshs. 30,684,781.00 under work in progress which is indicated as falling under note 23 which does not exist in the notes to the financial statements.

Management Response

Management informed the Committee that Note 7 (repairs and maintenance), Note 8(Contracted Services) and 9 (grants/subsidies/CSR) were part of the larger note 10 (administration expenses) and therefore they did not feature independently in the statement of financial position. Note 10 comprised the above items among others.

The financial statement was revised and resubmitted and the audited set has notes up to note 19. The revised accounts reflected work in progress balance of Kshs. 30,684,781.00 now under note 15 to the financial statements.

Committee Observations

The Committee made the following observations:

1. Note 10 of the revised financial statements has incorporated total administration expenses which includes repairs and maintenance, Contracted Services and grants/subsidies/CSR.
2. Revised financial statements corrected the inconsistency of the notes
3. The query was raised due to late submission of documents for verification

Committee Resolutions

The Committee made the following resolutions:

1. Audit query resolved.

2. Management should provide documents for audit in a timely manner to avoid queries being raised.

MIN/PIC/2019/126: INVESTMENTS FY 2014/15

The Committee heard that the statements of financial position reflected a balance of Kshs. 79,760,686 under investments, described under note 13 to the accounts as investment at face value in treasury bills. No documentary evidence was provided to support or confirm ownership of the investment. Consequently, the viability and ownership of the investment could not be confirmed.

Management Response

Management informed the Committee that the statements of securities and schedules for investments had been provided for audit verification.

Committee Observation

The supporting documentation to confirm ownership of the investment of Kshs 76,0686,000 was availed after audit.

Committee Resolution

1. Audit query resolved.
2. Management should provide documents for audit in a timely manner to avoid queries being raised.

MIN/PIC/2019/127: ACCURACY OF THE FINANCIAL STATEMENTS FY 2014/15

Cash and cash Equivalents

The Committee heard that the cash and cash equivalents balance of Kshs. 2,663,164.24 and shown under note 11 to the accounts, included a balance of Kshs.1,3457,558.16 held at Kenya Commercial Bank, which differed with the amount of Kshs. 1,335,088.16 reflected in both the bank statements and cash book by an unexplainable and unreconciled difference of Kshs. 12,470.00.

Management Response

The management informed the Committee that reconciliation had been done and provision of the book statement.

Committee Observation

1. The anomaly has been rectified and reconciliations done.
2. Late submission of documents for audit may have led to recognition of the query

Committee resolution

1. Audit query resolved.
2. Management should provide documents for audit in a timely manner to avoid queries being raised.

MIN/PIC/2019/128: RECEIPTS FY 2014/15

The Committee heard that the statement of financial performance reflects, under other receipts, amounts totaling Kshs. 17,089,587.00 described under note 4 to the accounts as being comprised of Ksh. 5,790,280.00 from interest on investments and Kshs. 11,299,307.00 from miscellaneous income. However, the Kshs. 11,299,307 from miscellaneous income was not supported with necessary information and documentation.

Note 4 to the financial statements reflected a figure of Kshs. 4,613,152 described as advance interest on investment which had not been included in the statement of financial performance.

Therefore, completeness and validity of the total receipts figure of Kshs 17,402,118.00 could not be ascertained.

Management Response

Management provided the following breakdown of the miscellaneous income of Kshs. 11,299,307:

- i. Sale of list of registered products Kshs. 6,000.00
- ii. Gain on disposal Kshs. 89,620.00
- iii. Other income from bank statement Kshs 861,339.00
- iv. Charges on disposal of seized products Kshs. 2,700.00
- v. MNLD-Project funds Kshs. 1,859,167.00
- vi. Refunds from KSG for non-utilized training fee Kshs 81,400.00
- vii. Grant balance for the year 2012/2013 received in F/Y 2014/2015 Kshs. 8,399,081.38

Management further provided an investment schedule which showed that the figure of Kshs. 4,613,152 forms part of Kshs. 5,790,290 which is the total interest income for the year from investment in treasury bills and therefore it was in the statement of financial performance within the total figure of Kshs. 17,089,587 which is the total summation of 11,299,307 miscellaneous incomes and 5,790,280 interest on investment.

Committee Observations

- i. Extracts of ledgers for various income heads have now been availed and verified.
- ii. Late submission of documents or their misplacement occasioned raising of the query

MIN/PIC/2019/129: PROPERTY, PLANT AND EQUIPMENT FY 2014/15

The Committee heard that property, plant and equipment movement schedule under note 19 reflected additions during the year of Kshs. 29,721,150.00 which, however, differed by an amount Ksh. 5,373,028 from the corresponding figure of Kshs. 35,094,178 shown in the statement of cash flows. No explanations or reconciliations had been provided on the variances. Consequently, the accuracy of the financial statements could not be confirmed.

Management Response

The management indicated that the statement of cash flows was prepared on cash accounting basis while the plant and property movement schedule was prepared on accrual basis. The difference of Kshs. 5,373,028.00 was a balance brought down from previous year for a creditor for an amount held as retention for the construction of the administration block which was paid during the year therefore forming part of the cash outflow as per attached Creditors schedule for the F/Y2012/2013.

Committee Observation

The query arose due to late submission of documents for audit

Committee Resolution

1. Audit query resolved.
2. Management should provide documents for audit in a timely manner to avoid queries being raised.

MIN/PIC/2019/130: RECEIPTS FY 2015/16

The Committee heard that the statement of financial performance for the year ended 30th June 2016 reflected an amount Kshs. 2,011,001 under other receipts and as further disclosed in note 4 to the financial statements, which relates to miscellaneous income. The amount of Kshs. 2,011,001 reflected in the financial statements differed from the amount of Kshs. 1,674,091 reflected in general ledger and other supporting documents. The resulting difference of Kshs. 336,910 had not been explained.

Management Response

The management informed the Committee that the full ledger had been provided which included Kshs. 336,910 interest on treasury bills earned upfront as computed.

Committee Observation

Ledgers provided show evidence of the Kshs 336,910.

Management did not provide explanations for these variances during the time of audit

Committee resolution

1. Audit query resolved.

2. Management should provide documents for audit in a timely manner to avoid queries being raised.

MIN/PIC/2019/131: EXAMINATION OF THE AUDITOR GENERAL'S REPORTS ON
THE ACCOUNTS OF THE PEST CONTROL PRODUCT BOARD
FOR THE FINANCIAL YEAR 2016/17

The Committee heard that the Auditor-General issued the Pest Control Product Board with an unqualified opinion for the financial year under review.

MIN/PIC/2019/132: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/2019/133: ADJOURNMENT

The meeting was adjourned at ten minutes past twelve O'clock.

Signed

The Hon. Abdullswamad Sharif Nassir, MP
(Chairperson)

Date.....

18/08/2019

MINUTES OF THE 19TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON TUESDAY 2ND APRIL 2019 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10.00 A.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
4. The Hon. Raphael Bitta Sauti Wanjala, MP
5. The Hon. Joash Nyamache Nyamoko, MP
6. The Hon. John Muchiri Nyaga, M.P
7. The Hon. James Kamau Githua Wamacukuru, M.P
8. The Hon. Omar Mohamed Maalim Hassan, MP
9. The Hon. Paul Kahindi Katana, MP

ABSENT WITH APOLOGY

1. The Hon. Purity Wangui Ngirici, MP
2. The Hon. Gladys Wanga, MP
3. The Hon. Thuku Zachary Kwenya, M.P
4. The Hon. Mohamed Hire Garane, M.P.
5. The Hon. Rashid Kassim Amin, MP
6. The Hon. Mary Wamaua Njoroge, MP
7. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
8. The Hon. Justus Kizito Mugali, MP
9. The Hon. Babu Owino Paul Ongili, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 2. Mr. Mohamed Boru | - | Third Clerk Assistant |
| 3. Ms. Sharon Rotino | - | Research Officer |
| 4. Ms. Marlene Ayiro | - | Legal Counsel |
| 5. Mr. Thomas Ogwel | - | Fiscal Analyst |
| 6. Ms. Noelle Chelagat | - | Media Relations Officer |
| 7. Ms. Winfred Atieno | - | Audio Recording Officer |

IN ATTENDANCE

- | | | |
|-----------------------------|---|--|
| 1. Mr. Stephen Karani | - | Director, Audit |
| 2. Mr. Justus Okumu | - | Deputy Director, Audit |
| 3. Mr. George Otieno Nashon | - | Deputy Director, Audit |
| 4. Mr. Joshiah Oyuko | - | Manager, Audit |
| 5. Mr. Fredrick Kimani | - | Manager, Audit |
| 6. Mr. Victor Momanyi | - | Deputy Inspector General, State Corporations |

MIN/PIC/2019/110: PRELIMINARIES

The Chairperson called the meeting to order at eight minutes past ten O'clock followed by a word of prayer.

MIN/PIC/2019/111: EXAMINATION OF AUDITED ACCOUNTS OF ENGINEERS BOARD OF KENYA

Eng. Nicholas Musuni, the Chief Executive Officer/Registrar of the Engineers Board of Kenya, accompanied by Eng. Okere Makhoha (Director, Compliance), Eng. Grace Onyango (Director, Capacity Building), Mr. O.K Mungania (Manager, Legal Services) and Mr. Tony Langat (Accountant) appeared before the Committee to adduce evidence on the audited accounts of the Board for FY 2014/15 to FY 2016/17.

MIN/PIC/2019/112: EXAMINATION OF AUDITED ACCOUNTS OF ENGINEERS BOARD OF KENYA FY 2014/15 to FY 2016/17

The Committee heard that the Board's audited accounts for the financial year 2014/2015 through to financial year 2016/17 were unqualified.

The Board was commended for the good financial management.

MIN/PIC/2019/113: EXAMINATION OF AUDITED ACCOUNTS OF KENYA UNIVERSITIES AND COLLEGES CENTRAL PLACEMENT SERVICE

Mr. John Muraguri, the Chief Executive Officer of the Kenya Universities and Colleges Central Placement Service, accompanied by Mr. Michael Kimani (Finance Manager), Mr. Maxwell Zange (Human Resource Manager), Ms. Edna Adala (Manager Legal Services & Corporation Secretary), Ms. Daina Kibogo (Manager, Supply Chain Management) and Ms. Ednah Oyori (Senior Accountant) appeared before the Committee to adduce evidence on the audited accounts of the Service for the financial year 2013/14 to financial year 2016/17.

MIN/PIC/2019/114: EXAMINATION OF AUDITED ACCOUNTS OF KENYA UNIVERSITIES AND COLLEGES CENTRAL PLACEMENT SERVICE FY 2013/14 to FY 2016/17

The Committee heard that the Corporation's audited accounts for the financial year 2013/2014 through to financial year 2016/2017 were unqualified.

The Corporation was commended for the sound financial management.

MIN/PIC/2019/115: EXAMINATION OF AUDITED ACCOUNTS OF KENYA PORTS AUTHORITY

Mr. Daniel Manduku, the Managing Director of the Kenya Ports Authority accompanied by Capt. William Ruto (General Manager, Operations) Eng. Rashid Salim (General Manager, Engineering), Eng. Alfred Masha Nyanje (Ag. General Manager, Infrastructure Development) and Ms. Beatrice Nyamoita (Alternate

Director to PS, Transport) appeared before the Committee to adduce evidence on the audited accounts of the Authority for the financial year 2014/15 to financial year 2016/17.

MIN/PIC/2019/116: PROPERTY, PLANT & EQUIPMENT

1.1 Stalled Projects FY 2014/15 to FY 2016/17

As reported in the previous year, the property, plant and equipment balance of Kshs.2,279,884,090 as at 30th June 2014 include four (4) parcels of land under reference number LR No. 13529, 3756 and 209/10350 valued at Kshs.1,035,600,000 out of which only LR No. 209/10350 is registered under the name of the University.

Further, included in the above balance for property, plant and equipment is an amount of Kshs.8,228,852 for work-in-progress projects which stalled during the year. Note 17 to the financial statements does not present the work-in-progress in the correct format.

Motor vehicles valued at Kshs.47,088,710 had been depreciated to nil at the beginning of the period but were still in use during the year under review. The management has not put in place a revaluation policy to ascertain if the motor vehicles carry any nominal value that is economically useful to the University's operation or dispose them altogether for a possible gain or loss.

Consequently, the accuracy, ownership and existence of the property, plant and equipment balance of Kshs.2,279,884,090 as at 30th June 2014 could not be confirmed.

Management Response

The two stalled projects are as below;

Project description	Value (Kshs)
Design of alternative road to container terminal	15,594,547.00
Canteen at Gate 18	5,884,681.20
Total	21,479,228.20

The above projects were impaired in full during the year ending 30th June, 2013, occasioning financial loss to the Authority. This was the best accounting treatment under the circumstances that prevailed and the correct procedure for the impairment was duly followed as stipulated in the assets management policy. The approval by the Board is attached. **Appendix 1**

The canteen at Gate 18

In April 2007, the Authority commenced the construction of a canteen to serve port users and employees outside gate No. 18. The first phase of the project, covering the

main structure (building and civil works) was completed in February, 2008 by M/s M Tech Building Works Ltd, at a cost of Kshs 5,884,681.20.

The second phase was however stopped by M/s Export Processing Zones Authority, vide Letter Ref: CONF/EPZ/339/OPER (148) dated 25th March 2009 on grounds that, the land in question had already been allocated to an investor, licensed to carry out business as an EPZ enterprise. **Appendix 2A**

M/s Export Processing Zones Authority, vide their letter Ref: EPZ/CONF/339/CEO 105 dated 8th November, 2013 proposed to exchange the land with that of KPA, located at Jomvu Kuu, Mombasa. **Appendix 2B**

Subsequently, a series of meetings with EPZA have been held and all the land for exchange was valued. There are some claims by investors that have not been resolved but there was an agreement that there will be a land-for-land exchange.

The issue of the construction of the canteen has also been subject of investigations by Ethics and Anti-Corruption Commission (EACC) following recommendations by PIC. Management has co-operated with the investigations and is yet to receive a progress report from the Ethics and Anti-Corruption Commission (EACC). **Appendix 2C**

Committee Resolution

The Committee made the following observations:

1. The audit query in question had been addressed in the 20th Report of the Public Investments Committee.
2. As per the recommendations of the 20th Report of the Public Investments Committee, the matter was taken up for investigations by the Ethics and Anti-Corruption Commission.
3. The Authority had engaged the Commission on the progress of investigations on 11th July, 2016 and 10th March, 2017.
4. There was no due diligence done by the Authority before commencement of the canteen project.

Committee Resolution

The Committee resolved that the Authority should provide the status of the investigations on the matter.

1.2 Unutilized parcels of land FY 2014/15 to FY 2016/17

The Committee heard that the Authority had Fourteen (14) pieces of land measuring about 263.47 hectares and valued Kshs. 660,932,445 which are not utilized for the purpose the Authority procured them for.

Management Response

The action taken by Management and current status of the fourteen (14) unutilized plots are as explained here below.

a) Details of 7 parcels of land that are so far secured are;

No	Description	Asset No.	Cost (Kshs.)	Current Status and Risk Exposure
i	Plot No. MSA/XLVII/81, 82 & 83; 1.466 Acres Housing the White House Buildings, Mombasa	170143	29,700,000.00	The three plots have a leasehold title for a term of 99 years with effect from 1st April, 1991. They are secured by a boundary wall and guarded by a contracted security firm. The plots currently have Six (6) old dilapidated developments. The Board approved development of an ultra-modern facility to accommodate KPA non-operational offices including the headquarters, which need to be moved out of the port to create additional space for operations. Feasibility studies have been completed, the next stage is design and construction; Appendix 3
		170144	26,000,000.00	
		170145	28,680,000.00	
ii	Plot No. LR/16121; 2.5 Ha; Located at Shimoni, Kwale	170159	9,325,550.00	The plot was acquired in 1994, is vacant and is fenced in preparation for Shimoni port development whose feasibility study has been completed. Appendix 4
iii	Plot No. MN/V/1683; 1.018 Ha Located at Miritini, Mombasa	170158	6,288,695.00	The parcel was bought in April 1994 and is vacant. The Board had in 2014 considered disposal of the parcel. The Authority will further engage the Parent Ministry and Treasury for approval to dispose. The plot is heavily infested with squatters
iv	Plot No. MN/V/196; 63 acres, Located	170036	63,000,000.00	The parcel was bought by the former Kenya Cargo Handling

	at Jomvu Kuu, Mombasa			<p>Services Ltd and is vacant. KPA published a caveat in the media on 29th January 2016 to ward off squatters.</p> <p>There are also plans to exchange this land with Export Processing Zones Authority (EPZA).</p> <p>The firm of Muchoki, Kangata Njenga & Co. Advocates has also been instructed to institute a civil suit to evict the squatters.</p> <p>The Authority has also identified an Auctioneer (Siuma Auctoneers) to evict the squatters and consultations are underway.</p> <p>Appendix 6</p>
		170234	3,600,000.00	<p>The two parcels were acquired in 1992 and are being cultivated by the locals. KPA is in the process of engaging National Housing Corporation with a view to developing the parcel through a joint venture. Appendix 7</p>
v	Plot No. MN/17944/45; 2.4 Ha, Located in Kisumu	170235	3,600,000.00	
vi	Plot No. LR 24588; 9.182 Ha, Located in Malaba	170233	19,650,000.00	<p>This parcel was compulsorily acquired by the Government on behalf of the Authority in 1987. It is vacant, and guarded by a contracted security firm. It is reserved for future development in view of the development of the SGR to Malaba.</p>
vii	Plot No. MN 5325; 17.10 Hectares, Located at Taita-Taveta	140306	2,500,000.00	<p>The plot was allocated to the Authority in 2012 by the Town Council of Taveta for the purpose of establishing an Inland Container Depot at the border town. It is vacant, fenced with</p>

				chain link fence and is secure, with a site office constructed in the year 2014. It is reserved for future port development (ICD)
	TOTAL		192,344,245.00	

b) Actions taken by Management on the other seven (7) parcels of land are as follows

No	Description	Asset No.	Cost (Kshs.)	Current Status and Risk Exposure
i	Plot No. MN/III/528/E; 173.6 Ha, located at Takaungu, Kilifi	170232	233,783,200.00	<p>The plot was bought in October 1993. Part of it is occupied by squatters. A proposal to resettle squatters on part of the plot to forestall further encroachment was not approved by the government.</p> <p>An attempt to secure the unencroached portion of the land was made through fencing. This was however frustrated when the fencing was vandalized. The matter was reported to the police.</p> <p>Appendix 8</p> <p>The firm of Sichangi Partners Advocates has also been instructed to institute a civil suit to evict the squatters.</p> <p>The land has been impaired by 10%</p>
ii	Plot No. LR/9093; 7 Ha, Located in Malindi	170160	66,585,000.00	<p>The plot was acquired in 1994 and has squatter settlements. The Board resolved in 2014 that the plot be surrendered to the Government through the National Land Commission to settle squatters subject to due process. This was not progressed due to</p>

				<p>policy concerns.</p> <p>The firm of Cootow & Associates Advocates was then instructed to institute a civil suit to evict the squatters.</p> <p>However it has emerged the KAA was expanding the Malindi Airport and land featured among the list of parcels to be affected by the expansion. KPA has notified the KAA of its claim to the encroached parcel.</p> <p>Appendix 9</p> <p>The land has been impaired by 25%</p>
iii	Plot No. MS/46/I; 5.073 Ha, Located at Likoni; Mombasa	170225	25,000,000.00	<p>The plot was bought in October 1991 and is an open field utilized as a football pitch by the locals. Management plans to either offer the plot for sale to the Kenya Navy or sell it as per the Public Procurement and Disposal of Assets Act. It has been impaired by 10%.</p>
iv	Plot No. MS/1682/I; 2.708 Ha, located at Likoni, Mombasa	170238	26,765,000.00	<p>The plot was acquired in 1994 and is partly occupied by squatters but a large portion is being used by the Community as playing ground. The Authority will be developing the open grounds into a pitch as part of its CSR. Preparation of BQ's is underway to enable tendering and survey map is attached.</p> <p>Appendix 10</p> <p>It has been impaired by 25%</p>
v	Plot No. MS/137/II; 2.46 Acres, Located at Mtongwe, Mombasa	170226	21,600,000.00	<p>This plot was acquired in 1991 and was being used by a youth group as a fish landing site and farming. The Board approved granting of</p>

				<p>lease for 33 years to M/s Midland Energy Limited, who agreed to remove the group. Midland have gone quiet on the matter. However following the opening of the Mtongwe ferry a public road has been created to serve the Mtongwe ferry area and KPA is engaging the county in this regard with a view to resurveying the land for informed decision making on future use of the plot.</p> <p>Appendix 11</p> <p>The land has been impaired by 20%</p>
vi	Plot No. MN/V/1614; 2.5 Ha, Located at Kibarani, Mombasa	170239	18,820,000.00	<p>The plot, acquired in 1992, is occupied by squatters. The Board had in 2014 approved disposal by advertisement. KPA has instructed the firm of Sisule Munyi Kilonzo & Associates Advocates to institute a civil suit to evict the squatters before it can be disposed. The land has been impaired by 25%</p>
vii	Plot No. MN/VII/3794; 12.24 Ha, located at Chaani, Mombasa	170224	90,735,000.00	<p>This land is held on leasehold for 99 years with effect from 1st July, 1993. It is currently occupied by squatters who have put up permanent and semi-permanent buildings. The Authority has instructed the firm of Miller & Company Advocates to institute a civil suit to evict the squatters before we can dispose. It has been impaired by 5%.</p>
	TOTAL		483,288,200.00	

Committee Observations

The Committee made the following observations:

1. The Audit query recurred in the financial years 2014/15 to 2016/17.

2. The valuation of the respective pieces of land was done in 2009.
3. A report detailing all the assets that the Authority owns was received by Management on 1st April, 2019.

Committee Resolutions

The Authority was asked to provide the report on the assets it owns to the Office of the Auditor General for verification.

MIN/PIC/2019/117: LEASEHOLD LAND FY 2014/15

Irregular Charging of Property

The Committee heard that the Authority had leased its land in Mombasa (Title number Mombasa/Block I/254) measuring 3.07 acres to Solvochem Tanzania Limited a private company registered in the republic of Tanzania. The lease was charged by Solvochem East Africa Limited, a limited liability company to secure a loan. This was a failure to adhere to the KPA Act and use of public property as security for a loan advance to a foreign company.

Management Response

This matter was resolved with the Auditor General. The auditor had queried the legality of consents by the Authority to its lessees to charge their leasehold interests to banks and financial institutions. The Authority sought a legal opinion from the office of the Attorney General on the interpretation and impact of section 19(5) of the KPA Act with regard to the consents granted to lessees to charge KPA's properties as security for loans.

The Attorney General vide his letter ref: AG/CONF/2/C/15 VOL.V dated February 14, 2017 gave the opinion that it was not irregular for KPA to give consent to lessees to charge for reasons the KPA safeguards its strategic interest over its property by, amongst other things, that the consent is necessary to enable it maximize use and benefits of its parcels, leases are subordinate to KPA's interest and there is always due diligence through internal processes before consent is given. Charged property is not under risk in case of default as the charge is only against the leasehold interest and in particular the unexpired term. **Appendix 12**

Committee Resolution

The Authority was asked to provide a list of all KPA land leased out and any loans charged to these properties.

Irregular Extension of Leases

The Committee heard that the Authority had irregularly extended a lease on land parcel Mombasa/Block/XLVII/14 8 while the current lease had 22 months before expiry contrary to existing lease provision expressly prohibiting request or extension at any point before the lease attained 12 months to expiry.

Management Response

This matter was resolved with the Auditor-General. The Board (KPA) during its 304th meeting approved the extension, after the Authority received a written request from Comarco. The approval was made against the undertaking that, upon expiry of the lease period, the existing charges expired with the lease.

As regards due diligence the Authority undertook an official search dated 23rd February 2014 and also did a fresh valuation of the plot in line with due diligence.

Appendix 13

Committee Resolutions

The audit query had been resolved.

MIN/PIC/2019/118: RECLAIMED LAND

Excision of Part of Harbour Area

The Committee heard that there was encroachment through sea reclamation and undertaking of development on land parcels ref LR NO.MN/VI/4789, LR NO. VI 4180, 3819 and 3823 which is a Harbor Area as pronounced by KPA tariff book being part of tidal waters encircling the Mombasa.

Management Response

The current status is that the National Land Commission is handling the case following a presidential directive that land around the Kibarani area in the hands of private parties should be repossessed.

The Authority did not grant its approval for the reclamation by the developer. In fact, when KPA noticed the said work was ongoing, a letter dated 20th September 2010 seeking clarifications and asking them to stop the works was written. They responded via letters dated 7th October 2010 that the ongoing works did not involve reclamation but rather involved cut and fill procedures up to their plots boundaries.

The National Land Commission through letter dated 17th December, 2015 also addressed the firm and asked them to stop the reclamation. The Land Commission is the one mandated by law to intervene. Copy of the letter was availed. **Appendix 14**

Committee Observations

The Committee made the following observations:

1. The National Land Commission was handling the matter of the excision of part of the Harbour area.
2. The County government of Mombasa had taken up possession of the land.
3. The Audit query was recurring in the financial years 2015/16 to 2016/17.

MIN/PIC/2019/119: ANY OTHER BUSINESS

The Authority was questioned on the matter of the proposed takeover of part of port operations by the Kenya National Shipping Line as reported in the audited accounts of the National Shipping Line.

The Authority noted that the proposed takeover of the port operations by the Kenya National Shipping Line was a Cabinet decision that was being implemented by the two State Corporations.

The Committee resolved to undertake an inquiry into the matter.

The Authority was asked to provide communication of the Cabinet Memoranda by the Principal Secretary in the State Department of Transport.

MIN/PIC/2019/120: ADJOURNMENT

The meeting was adjourned at twenty minutes to one O'clock.

Signed

The Hon. Abdullswamad Sharraf Nassir, MP
(Chairperson)

Date.....

15/08/2019

MINUTES OF THE 18TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON SATURDAY 30TH MARCH 2019 IN THE CONFERENCE ROOM, THIRD FLOOR, ENGLISH POINT MARINA, MOMBASA AT 1315HRS.

PRESENT

1. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman and chairing the meeting)
2. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
3. The Hon. Raphael Bitta Sauti Wanjala, MP
4. The Hon. Mary Wamaua Njoroge, MP
5. The Hon. Purity Wangui Ngirici, MP
6. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
7. The Hon. Thuku Zachary Kwenya, M.P
8. The Hon. John Muchiri Nyaga, M.P
9. The Hon. James Kamau Githua Wamacukuru, M.P
10. The Hon. Paul Kahindi Katana, MP
11. The Hon. Justus Kizito Mugali, MP

ABSENT WITH APOLOGY

1. The Hon. Joash Nyamache Nyamoko, HSC, MP
2. The Hon. Gladys Wanga, MP
3. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
4. The Hon. Rashid Kassim Amin, MP
5. The Hon. Omar Mohamed Maalim Hassan, MP
6. The Hon. Babu Owino Paul Ongili, MP
7. The Hon. Mohamed Hire Garane, M.P.

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|-----------------------------|
| 1. Ms. Florence Abonyo | - | Director Committee Services |
| 2. Mr. John Mutega | - | Principal Clerk Assistant I |
| 3. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 4. Mr. Mohamed Boru | - | Third Clerk Assistant |
| 5. Mr. Alex Mutuku | - | Senior Serjeant-At-Arms |
| 6. Ms. Sharon Rotino | - | Research Officer III |
| 7. Ms. Noelle Chelagat | - | Media Relations Officer III |
| 8. Ms. Winfred Atieno | - | Audio Recording Officer |
| 9. Mr. Thomas Ogwel | - | Fiscal Analyst |

MIN/PIC/2019/106: PRELIMINARIES

The Vice/Chairperson called the meeting to order at fifteen minutes past one O'clock followed by a word of prayer.

**MIN/PIC/2019/107: CONSIDERATION OF THE DRAFT REPORT ON
PROCUREMENT AND IMPLEMENTATION OF THE EGMS BY
KRA**

The Committee went through the report that it had adopted in the previous meeting and confirmed that the contents of the report were as adopted. Specifically, the Committee confirmed the accuracy of the following paragraphs:

- (a) Paragraph 20(b) on inclusion of the 21 firms that bid for the First EGMS tender
- (b) Paragraph 20(c) on inclusion of the 9 prequalified bidders
- (c) Paragraph 3 on inclusion of the procurement process by including a provision that the averment of made therein had not been substantiated.
- (d) Paragraph 28 on the fact that the Committee wrote but never received any response from the Ministry of Foreign Affairs on any improprieties of SICPA Security Solutions SA in other countries
- (e) Paragraph 30 on correspondence between KRA and PPRA regarding the procurement.

MIN/PIC/2019/108: ANY OTHER BUSINESS

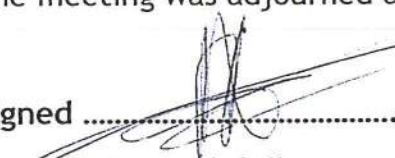
Accommodation while in Mombasa. The Committee deliberated on the Liaison Committee resolution backlisting English point Hotel from a list of Hotels prequalified to accommodate the Committee. It observed that the Hotel in question had improved on the issues it had been accused of and therefore suitable for use by the Committee as it is close to the airport and secure. Therefore the Hotel remained the first among equals whenever the Committee seeks for accommodation in Mombasa.

Since it was a liaison Committee decision, the Chairman was urged to present the Committee decision to liaison when it sits next.

MIN/PIC/2019/109: ADJOURNMENT

The meeting was adjourned at thirty minutes past one O'clock.

Signed


The Hon. Abdullswamad Sharif Nassir, MP
(Chairperson)

Date.....

04/04/2019

MINUTES OF THE 17TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON FRIDAY, 29TH MARCH 2019 IN MAIN CONFERENCE ROOM, ENGLISH POINT MARINA AT 3.00 P.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Dr. Chrisantus Wamalwa Wakhungu, MP
4. The Hon. Raphael Bitta Sauti Wanjala, MP
5. The Hon. Gladys Wanga, MP
6. The Hon. Purity Wangui Ngirici, MP
7. The Hon. Thuku Zachary Kwenya, M.P
8. The Hon. Mary Wamaua Njoroge, MP
9. The Hon. John Muchiri Nyaga, M.P
10. The Hon. James Kamau Githua Wamacukuru, M.P
11. The Hon. Mohamed Hire Garane, M.P.
12. The Hon. Paul Kahindi Katana, MP
13. The Hon. Joash Nyamache Nyamoko, MP
14. The Hon. Justus Kizito Mugali, MP
15. The Hon. Omar Mohamed Maalim Hassan, MP

ABSENT WITH APOLOGY

1. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
2. The Hon. Babu Owino Paul Ongili, MP
3. The Hon. Rashid Kassim Amin, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|-------------------------|---|------------------------------|
| 1. Mrs. Florence Abonyo | - | Director, Committee Services |
| 2. Mr. John Mutega | - | Principal Clerk Assistant |
| 3. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 4. Mr. Mohamed Boru | - | Clerk Assistant III |
| 5. Ms. Sharon Rotino | - | Research Officer |
| 6. Ms. Marlene Ayiro | - | Legal Counsel |
| 7. Mr. Thomas Ogwel | - | Fiscal Analyst |
| 8. Ms. Winfred Atieno | - | Audio Recording Officer |

IN ATTENDANCE

OFFICE OF THE AUDITOR GENERAL

- | | | |
|-------------------------|---|----------------|
| 1. Mr. Joshiah Oyuko | - | Manager, Audit |
| 2. Dr. Sammy Kimungunyi | - | Manager, Audit |

MIN/PIC/102/2019: PRELIMINARIES

The Chairperson called the meeting to order at twenty minutes past three O'clock

followed by a word of prayer.

**MIN/PIC/103/2019: CONSIDERATION OF THE DRAFT REPORT ON THE INQUIRY
INTO THE PROCUREMENT OF THE EGMS SYTEM BY THE
KENYA REVENUE AUTHORITY**

The Chairperson took the Committee through the draft report on the inquiry into the procurement of the EGMS system by the Kenya Revenue Authority and adopted it unanimously with the following amendments:

1. Under Section 2.4 on Expression of Interest (EOI) for Provision of Security Printing and Digital Solutions, parts (b), (c) and (f) should indicate the names of the companies that expressed interest for provision of the referenced service.
2. Under Tender Number KRA/HQs/ICB-037/2011-12, the names of the companies that took part in the tender should be indicated.
3. Inclusion of a paragraph that the Kenya Association of Manufacturers did not substantiate the information they shared regarding the pricing cost of Excise stamps in other jurisdictions.
4. Inclusion of a paragraph indicating that the Kenya Revenue Authority and the State Law Office confirmed that the third contract for EGMS began in 2016 when the first milestone was attained as per the contract terms.
5. Inclusion of a paragraph indication that the Kenya Revenue Authority sough advise of the State Law Office before commencing the procurement for the EGMS system.
6. Inclusion of a paragraph indicating that the documents tabled before the Committee by the Hon. Joshua Kuttuny, MP could not be substantiated.
7. Inclusion of paragraph indicating that the Committee wrote to the Ministry of Foreign Affairs seeking information on the cost of Excise Stamps in Brazil by SICPA SA. No response has been received on the matter.
8. Inclusion of a paragraph exempting taxation of plain drinking water.

Committee Recommendations

The Committee made the following recommendations:

1. Whereas Kenya Association of Manufacturers and Kenya Revenue Authority confirmed that there was public participation in the roll-out of the Excisable Goods Management System, the Kenya Revenue Authority, the Kenya Bureau of Standards and the Anti-Counterfeit Agency should conduct extensive and all-inclusive public participation prior to implementing systems such as EGMS.
2. Subject to paragraph (1) above, Parliament should legislate on a law on public participation as provided for in the Constitution.

3. The Kenya Revenue Authority should share their current Excisable Goods Management Systems with the Kenya Bureau of Standards and the Anti-Counterfeit Agency at no extra cost to the manufacturers.
4. Upon expiry of the existing contract, the Kenya Revenue Authority, the Kenya Bureau of Standards and the Anti-Counterfeit Agency should develop a multifunctional stamp for use by the three government entities, or any other that will need the system, which will ensure efficient monitoring and reduce wastage of public funds utilized in developing different stamps.
5. Parliament should amend the relevant laws to exempt "plain drinking water" from any taxation.

MIN/PIC/104/2019: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/105/2019: ADJOURNMENT

The meeting was adjourned at forty minutes past twelve O'clock.

Signed

The Hon. Abdullswamad Sharraf Nassir, MP
(Chairperson)

Date.....

04/04/2019

followed by a word of prayer.

MIN/PIC/2019/089: EXAMINATION OF AUDITED ACCOUNTS OF SACCOS SOCIETIES REGULATORY AUTHORITY

Mr. John Mwaka, the Chief Executive Officer of the Saccos and Societies Regulatory Authority accompanied by Mr. Kenneth Opiyo (General Manager, Finance and Planning) appeared before the Committee to adduce evidence on the audited accounts of the Authority for FY 2014/15 to FY 2016/17.

MIN/PIC/2019/090: EXAMINATION OF AUDITED ACCOUNTS OF SACCOS AND SOCIETIES REGULATORY AUTHORITY FY 2014/15

The Committee heard that the Authority's audited accounts for the financial year 2014/2015 was unqualified.

Other matter

Paragraph: Financial Performance and Service Sustainability

The Authority realized a deficit of Kshs.23, 104,816 (2013/2014 - deficit of Kshs.12, 641,360) or about 100% decline from its previous operations. The continuity existence of the Authority and service sustainability is therefore dependent on the continued Government financial support. My opinion however is not qualified in respect to this matter.

Management Response

The Authority has not realized deficits for the financial years 2016/17 and the draft for year 2017/18. However the Authority concluded the process of engaging stakeholders towards review of the rate for the deposit levy that stood at 0.1% of total deposits held being a major source of AIA i.e. internally generated funding which was approved by parliament under Legal Notice No 48 issued on 22nd February 2018 implemented copy attached to fund its operations.

MIN/PIC/2019/091: EXAMINATION OF AUDITED ACCOUNTS OF SACCOS AND SOCIETIES REGULATORY AUTHORITY FY 2015/16

The Committee heard that the Authority's audited accounts for the financial year 2015/2016 was unqualified.

Emphasis matter: Financial Performance

The Authority continued to realize a deficit of Kshs.48,312,883 (2015 - loss of Kshs.23,104,816) representing over 100% decline from its previous operations while total revenue for the year of Kshs.269,737,606 (2015: Kshs.304,412,314) decrease by Kshs.34,674,708 leading to approximately 11.4% decrease. This situation if not checked could lead to the Authority being in precarious financial position. My opinion is not qualified in respect to this matter.

Management Response

In view of the response given under financial year 2014/15, the Authority has not realized any deficit in the years 2016/17 and draft report for 2017/18 towards ensuring increased funding of its operations moving forward.

MIN/PIC/2019/092: EXAMINATION OF AUDITED ACCOUNTS OF SACCOS AND SOCIETIES REGULATORY AUTHORITY FY 2016/17

The Committee heard that the Authority's audited accounts for the financial year 2016/2017 was unqualified.

The Authority was commended for the good financial management.

MIN/PIC/2019/093: EXAMINATION OF AUDITED ACCOUNTS OF KENYA RURAL ROADS AUTHORITY

Eng. Luka Kimeli, the Ag. Director General of the Kenya Rural Roads Authority accompanied by Eng. Peter Gichohi (Director), Eng. Julius Gakubia (Ag. Director, Road Asset Management), CPA Dan Manyasi (Director, Corporate Services) and CPA Matilda Wakere (Deputy Director, Finance) appeared before the Committee to adduce evidence on the audited accounts of the Authority for the financial year 2014/15 to financial year 2016/17.

The Committee resolved to reschedule the meeting with the Authority to allow for preparation of documentation and verification by the Auditors.

MIN/PIC/2019/094: EXAMINATION OF AUDITED ACCOUNTS OF SOUTH EASTERN KENYA UNIVERSITY

Prof. Geoffrey Muluvi, the Vice Chancellor of South Eastern University Kenya accompanied by Prof. Reuben Muasya (Deputy Vice-Chancellor, Finance), Mr. Moffat Njoroge (Ag. Finance Officer) and Mr. Robai Muslivi (Legal Officer) appeared before the Committee to adduce evidence on the audited accounts of the University for financial year 2012/13 to financial year 2016/17.

MIN/PIC/2019/095: PROPERTY, PLANT & EQUIPMENT FY 2012/13 to FY 2016/17

As reported in the previous year, the property, plant and equipment balance of Kshs.2,279,884,090 as at 30th June 2014 include four (4) parcels of land under reference number LR No. 13529, 3756 and 209/10350 valued at Kshs.1,035,600,000 out of which only LR No. 209/10350 is registered under the name of the University.

Further, included in the above balance for property, plant and equipment is an amount of Kshs.8,228,852 for work-in-progress projects which stalled during the year.

Note 17 to the financial statements does not present the work-in-progress in the correct format.

Motor vehicles valued at Kshs.47,088,710 had been depreciated to nil at the beginning of the period but were still in use during the year under review. The management has not put in place a revaluation policy to ascertain if the motor vehicles carry any nominal value that is economically useful to the University's operation or dispose them altogether for a possible gain or loss.

Consequently, the accuracy, ownership and existence of the property, plant and equipment balance of Kshs.2,279,884,090 as at 30th June 2014 could not be confirmed.

Management Response

Historical Background on the South Eastern Kenya University Land

- (a) The University inherited three parcels of land which comprise the land amounting to Kshs.1,036,600,000 appearing in the property, plant and equipment schedule from Ukamba Agricultural Institute.

This was one of Kenya's institutes of technology established in the 1970's to meet the country's needs for skilled and semi-skilled human resources in the area of technology.

- (b) The three properties are:-

- (i) LR NO. 13529 (IR No. 5739) situated in Yatta, Kitui measuring 4047.7 hectares, which was a lease granted by the County Council of Kitui for a term of 99 years from 1st October 1976 on condition that it be used for educational purposes only. (Grant attached herein and marked 1)
- (ii) LR. NO. 209/10350 (Grant IR 52199) situated in Nairobi and measuring 0.78315 hectares. The same was also a lease for a term of 99 years from 1st May, 1985. (Grant attached herein and marked 2)
- (iii) LR. No. 12970 (IR No. 4109) situated in Emali in the name of the trustees of UKAI; David Muoka Mutiso, Kyale Mwendwa, Musembi Mbathi and Mathew Muli, a lease from the then County of Masaku for a term of 99 years from 1st February 1985. (Grant attached herein and marked 3)
- (iv) Under the articles and memorandum of association of UKAI, the trustees were the only persons authorized to deal with the properties of UKAI.

- (c) Pursuant to Legal Notice No. 102 of 2008 dated 15th July 2008, the President in exercise of the powers conferred upon him by the University of Nairobi Act (Chapter 210 of the Laws of Kenya) made the South Eastern University College ("SEUCO") a constituent college of the University of Nairobi. (Legal Notice attached herein and marked 4)

- (i) Sections 3 and 4 of the SEUCO Order provided that SEUCO shall be the successor to Ukambani Agricultural Institute (UKAI) and that all rights, liabilities and assets held by UKAI existing at the commencement of the Order would automatically be transferred to the University College. It later became SEKU following the grant of charter on 1st March 2013.

There are several cases pending in court relating to the ownership of the parcels of land. The University Management and lawyers are making efforts to have the said parcels of land registered in the name of the University.

The status of the various parcels of land is as follows:

1. NAIROBI LAND - L.R. NO. 209/10350

(a) CIVIL SUIT NO. 136 OF 2009 - UKAI VS SOUTH EASTERN KENYA UNIVERSITY AND CITY COUNCIL OF NAIROBI

- (i) The suit was filed by UKAI seeking a declaration that L.R. No. 209/10350 situated in Upper Hill Nairobi was the exclusive property of the plaintiff and hence was not subject to Legal Notice No. 102 of 2008 and was not transferred to SEUCO.
- (ii) By a ruling issued on 21st April 2011 by Hon. Lady Justice R.N. Nambuye, the said injunction was denied on the grounds that the directors of UKAI had no mandate to protect the properties that were vested in SEKU. (Ruling marked 5)
- (iii) After the ruling, the plaintiff filed a Notice of Appeal.
- (iv) This matter came up for hearing before Honourable Justice Obaga on 24th January, 2019. The hearing commenced with the Plaintiff's witness, Steven Ndamubki Muli being examined in chief after which the defendant conducted part of their cross-examination.
- (v) The matter is slated for further hearing on 7th May, 2019. (letter from our lawyers attached marked 6)

(b) PETITION NO. 11 OF 2010 UKAI VS ATTORNEY GENERAL & SOUTH EASTERN KENYA UNIVERSITY

- (i) The petitioner sought to have the court quash and declare null and void, the Gazette Notice. No. 102 of 2008.
- (ii) In this matter, Justice David Majanja delivered a ruling on 25th May, 2012 staying the petition pending the hearing of the High Court Civil case No. 136 of 2009. (Ruling marked 7)

(c) PETITION NO. 96 OF 2012 - SOUTH EASTERN UNIVERSITY COLLEGE VS. THE REGISTRAR OF TITLES, THE ATTORNEY GENERAL AND UKAMBA AGRICULTURAL INSTITUTE LTD

- (i) The University wrote to the National Land Commission on 13th February, 2015 requesting them to assist the University obtain new grants in favour of the University with respect to L.R. NO. 13529 (Kitui), L.R. No. 12970 (Emali) and L.R. No. 209/10350 (Nairobi).
 - (ii) The University again wrote to the National Land Commission via letter dated 1st April, 2015 requesting the Commission to issue new grants with respect to L.R. No. 13529 (Kitui) and L.R. No. 12970 (Emali). In addition, the University also requested the Commission to assist in obtaining vacant possession of L.R. No. 209/10350.
 - (iii) The University was invited via the Standard Newspaper of 28th October, 2016 together with Dubai Bank Ltd to appear before the National Land Commission with respect to the dispute concerning ownership of L.R. No. 209/10350.
 - (iv) The University instructed the firm of Kilonzo & Co. Advocates to make a presentation on behalf of the University via letter dated 2nd November, 2016.
 - (v) Our advocates filed the necessary submissions via letter dated 24th November, 2016.
 - (vi) The Public hearing was conducted on 27th January, 2017 at the National Land Commission.
 - (vii) Our advocates via letter dated 31st July 2017 informed us that the National Land Commission had declared the title as legally held by the University. **(Attached is a copy of the gazette notice marked 11)**
 - (viii) The University wrote to the Director, Land Administration of National Land Commission requesting for information concerning the processing of titles for Kitui and Emali Land. **(Attached is a copy of the letter marked 12)**
 - (ix) The University Management visited the National Land Commission offices on 29th January, 2018 and spoke to Commissioner Rose M. Musyoka who confirmed that the Commission was working on the titles and would forward a response soon.
 - (x) The University further obtained information relating to two gazette notices issued by the National Land Commission relating to the land in Nairobi:
- (aa) Gazette Notice No. 11650 issuing notice of the intention by Government to acquire L.R. No. 209/10350 **(Attached is a copy marked 13)**. The University has written to the Chairperson National Land Commission relaying its intention to seek compensation in case the government proceeds and compulsorily acquires the said parcel of land. **(Attached is a copy marked 14)**
- (bb) Gazette Notice No. 5696 issuing a corrigenda retracting the earlier decision of the National Land Commission to vest L.R. No. 209/10350 to the University. **(Attached is a copy of the Gazette Notice marked 15.)**

The University has written to the National Land Commission seeking a clarification concerning the same. (Attached is a copy of the letter marked 16) In addition the University has written to Kilonzo and Co. Advocates to verify the authenticity of the gazette notice and update us on the correct status relating to Judicial Review No. 57 of 2017 given that they had informed us via their letter dated 31st July, 2018 that they intended to file an application for dismissal for want of prosecution. (Attached is a copy of the letter marked 17)

(g) MEMORANDUM OF APPEAL NO. 32 OF 2017

(i) UKAI has filed a memorandum of appeal No. 32 of 2017, dated 16th August, 2017 at the High Court of Kenya praying for their appeal to be allowed and the determination of the National Land Commission made via Gazette Notice of 17th July, 2017 to be set aside.

(ii) They are yet to file the record of proceedings with regard to the appeal

(iii) We have instructed Kilonzo & Co. advocates to defend the interests of the University in this matter.

(iv) The matter came up for mention on 22nd January, 2018 before the Deputy Registrar to confirm whether the Appellant had filed the record of appeal.

(v) The Appellant had not yet filed its record of Appeal.

(vi) The matter came up for mention on 22nd February, 2018 before Hon. Barasa for purposes of confirming whether the Appellant had filed the Record of Appeal.

(vii) The Counsel for the Appellant informed the court that he served the officials of National Land Commission to come and explain to the court why they had failed to furnish the Appellant with certified copies of Proceedings and Ruling.

(viii) In view of the fact the officials of the National Land Commission had failed to honour the summons, the Appellant requested for warrants of arrest be issued against them but the Deputy Registrar fixed the matter for mention before a Judge to enable the counsel to make his application.

(ix) The matter shall be mentioned on 25th January, 2019. (Attached is a letter from our advocates marked 18)

(h) JUDICIAL REVIEW NO. 57 OF 2017 (REPUBLIC VS. THE NATIONAL LAND COMMISSION AND 2 OTHERS EX-PARTE UKAI & 3 OTHERS)

(i) The review was filed by UKAI directors seeking to stop the National Land Commission proceedings concerning the property of the University.

(ii) It was commenced by way of a judicial review application dated 13th March, 2017.

(iii) Instructions were issued to Kilonzo & Company Advocates to represent the University.

- (iv) Both parties have filed submissions and are waiting for the ruling.
- (v) Matter was last mentioned on 31st July, 2018. Our lawyers intend to file an application for dismissal for want of prosecution once the one year lapses for want of prosecution. (Copy of letter attached herein and marked 19)

2. EMALI LAND - L.R. NO. 12970

- (a) We received an email communication dated 8th January, 2016 from the Secretary Makueni County Land Management Board forwarding a petition by a group calling itself Kwitu Kinyoo Community Association. (Document marked 20)
- (b) We responded through a letter dated 13th January, 2016 indicating that the said land belongs to SEKU and that we shall resist any move to illegally alienate the land. (letter marked 21)
- (c) The Secretary Makueni County Land Management Board wrote a response dated 27th January, 2016 requesting copies of ownership documents.
- (d) We wrote to the National Land Commission on 8th July, 2016 alerting them of the plot to illegally grab University land.
- (e) The National Land Commission wrote a letter Ref: CLMB/MKN/CORP.4 VOL.1/-53 dated 27th January, 2016 concurring with our concerns but requested for additional information be provided.
- (f) We responded through a letter Ref: SEKU/VC/LEG-2/22/VOL.4.4/24 dated 4th August, 2016 and forwarded a copy of the title, the Legal Notice establishing SEUCO and a copy of the Charter establishing SEKU.
- (g) A letter Ref: SEKU/VC/LEG-2/22/VOL.4.4/21 dated 1st August, 2016 requesting the National Land Commission to issue a title in favour of SEKU for the Emali and Kitui Land was done. (letter marked 22)
- (h) The Governor, Makueni County in a letter dated 11th August 2016 had supported the request by the Kwitu Kinyoo Community Association and further requested the National land Commission not to issue the University with a title until there is consensus on the matter. We were invited to appear before the National Land Commission on 8th November, 2016 together with all the interested parties. (letter marked 23)
- (i) We appeared before the National Land Commission together with the County Government of Makueni led by Prof. Kivutha Kibwana and the representatives of Kwitu Kinyoo Community Association.
- (j) The University team was represented by Kethi Kilonzo of Kilonzo & Co. Advocates, the Chairman of Council, Vice-Chancellor and former trustees of UKAI.

- (k) Our lawyer made a presentation to the National Land Commission.
- (l) The Chairman directed the County Government of Machakos to submit their written submissions in two weeks and to serve our advocates with the same.
- (m) The University is still waiting for the invitation from the National Land Commission.
- (n) Our lawyers have written to the National Land Commission requesting for the case to be finalized.

(3) KITUI LAND L.R. NO.13529

- (a) The University wrote a letter Ref: SEKU/VC/LEG-2/22/VOL.4/4/21 dated 1st August, 2016 requesting the National Land Commission to issue us with a title to enable us to implement a public private project and other planned activities.
- (b) The National Land Commission, via their letter Ref: NLC/CHAIRMAN/VOL.VIXII/207, directed the Director Land Administration, NLC, to process titles for LR. NO. 13529, Kitui. (letter marked 24)
- (c) Our legal officer is following up for the issuance of the title.
- (d) The Vice-Chancellor and the Legal Officer visited the National Land Commission offices on 29th January, 2018 and spoke to Commissioner Rose M. Musyoka who confirmed that the Commission was working on the titles and would forward a response soon.

(i) HCCC NO. 107 OF 2010 MAINGI MBINZI & 314 OTHERS VS COUNTY COUNCIL OF KITUI & SEUCO

- (i) The plaintiffs filed a suit seeking, among other orders, the declaration that the L.R. No. 13529 was trust land and that they were settled on a portion of 9500 acres leaving 500 acres for use by UKAI.
- (ii) They also sought an injunction to restrain the University from evicting them from the said land.
- (iii) The application was dismissed by Hon. Justice Waweru on 13th October 2011.
- (iv) The Suit No. 107 of 2010 was struck out by Lady Justice B. Thuranira Jaden and orders dated 1/10/2013 issued to remove the plaintiffs from the land.

(j) CIVIL APPEAL NO. 6 OF 2017 MAINGI MBINZU & 314 OTHERS -VS- COUNTY COUNCIL OF KITUI AND ANOTHER

- (v) The squatters filed a notice of appeal (dated 23rd December, 2015) and record of appeal (dated 10th January 2017) at the Court of Appeal and, in addition, filed a civil appeal application dated 14th March,

2017 seeking an injunction from the ruling delivered on 15th December, 2015 in HCCC. NO. 107 OF 2010.

- (vi) However, the Registrar Court of Appeal wrote a letter to the applicants' advocates directing the applicants to file the main appeal for hearing so as to save on time and for expeditious disposal of the matter.
- (vii) Our advocates filed a notice of motion application dated 14th March, 2017 seeking to have the notice of appeal and record of appeal struck out for being defective.
- (viii) Our advocates submissions dated 1st August, 2017 were filed in court on 2nd August, 2017.
- (ix) Appeal by the appellants was dismissed with costs to the university. (Judgment marked 25)
- (x) We have requested our lawyers to follow up on the costs on our behalf.

4. KITUI TOWN LAND -2 ACRES

- (a) The University in a letter dated 17th February, 2011 wrote to the Municipal Council of Kitui requesting for land to set up a campus.
- (b) The University was awarded 2 acres of land by the then Municipal Council of Kitui following a decision (Min. No. (WHTP) 8/2011 by the Town Planning Committee in a meeting held on 2nd March, 2011.
- (c) The university proceeded to secure the land by fencing it and following up on the approval of the Part Development Plan. PDP No. KTI/29/11/03 signed by the Director of Physical Planning was published in the Gazette Notice No. 7964 on 27th June, 2011 and advertised in the Daily Nation and Taifa Leo in 2011.
- (d) The physical planner wrote to the University via letter dated 4th July, 2017 requesting for comments on Part Development Plan No. KTI/29/2011/03
- (e) The University responded via letter dated 7th July 2017 confirming that there was no objection to the site allocated to the University and requested the Chief Physical planner to proceed and finalize processing the ownership documents in favour of SEKU.
- (f) The University wrote to the Chief officer, Ministry of Lands, Infrastructure & Urban Development via letter dated 12th July, 2016 and Ref: SEKU/VC/OUTGOING MAIL/18/VOL.I seeking to confirm whether the PDP No. KTI/29/2011/03 had been approved.

- (g) The Chief Officer, Ministry of Lands, Infrastructure & Urban Development responded via letter dated 14th July, 2016 stating that the PDP had not been approved as certain requirements for the approval of the plan were yet to be fulfilled.
- (h) The University via their letter dated 27th July, 2016 informed the Chief Officer that the University had complied with all the requirements and proceeded to attach copies of the documents confirming compliance.
- (i) The Chief Officer has forwarded the documents to the Director, Physical Planning for approval.
- (j) The University is following up with the Director of Physical Planning to establish whether the documents forwarded to his office relating to the Kitui town land have been approved.
- (k) The Vice-chancellor and the Legal officer visited the officers of the Director of Physical Planning on 29th January, 2018 for purposes of ascertaining whether approval had been granted.
- (l) The Director of Physical Planning confirmed that the necessary approvals would be granted within a short period of time and the same communicated to the University.
- (m) The PDP was approved. (Copy attached and marked 26)
- (n) The University has written to the Chief Officer, requesting for his assistance to obtain the services of the county survey in order to have the land surveyed and the report together with the PDP forwarded to the National Land Commission for processing of the ownership documents. (letter written to the Chief Officer marked 27)

5. WOTE TOWN LAND - 30 ACRES

- (i) The University received via letter dated 27th July, 2016, Part Development Plan from the County Government of Makueni in relation to the 30 acres of land donated to the University by the County Government. (letter marked 28)
- (ii) The University proceeded to write to the National Land Commission in a letter Ref: SEKU/VC/LEG-2/22/VOL.4/4/23 dated 1st August, 2016 requesting for an allotment letter in favour of SEKU for the 30 acres of land in Wote.
- (iii) The National Land Commission in their letter Ref: NLC/CHAIRMAN/VOL. VXII/204 wrote to the Director Land Administration, NLC, requesting for verification of the documents and, in addition, requested the Director to liaise with the Director of Physical Planning to confirm approval of allotment as per the laws. (letter marked 29)
- (iv) The National Land Commission, via their letter Ref: NLC/CHAIRMAN/VOL.VIXII/207, directed the Director Land Administration, NLC,

to process title for the 30 acres of land in Wote. The University is following up with the Director of Physical Planning to establish whether the documents forwarded to his office relating to the Wote land have been approved.

- (v) The Vice-chancellor and the Legal officer visited the offices of the Director of Physical Planning on 29th January, 2018 for purposes of ascertaining whether approval had been granted.
- (vi) The Director of Physical Planning confirmed that the necessary approvals would be granted within a short period of time and the same communicated to the university.

6. LAND IN MTITO-ANDEI - PLOT NO. 3756

- (i) The University is currently processing ownership documents for plot number 3756 measuring 20 acres of land.
- (ii) Attached is a certificate of ownership dated 29th July, 2013 for plot No.3756 Mang'elele Settlement signed by the District Land Adjudication & Settlement Officer, Ministry of Lands, Kibwezi District. (certificate marked 30)
- (iii) The University is currently working on ensuring that the documents are forwarded to the Director of Physical planning for purposes of obtaining the approved PDP.

7. MWINGI /NZELUNI/1970 AND MWINGI/MWINGI/5713

- (i) The University has physical possession and title deeds over the land which was received as a donation on 13th July, 2015 and 22nd September, 2015 respectively.
- (ii) The title deeds of the two parcels of land are attached herein (marked 31 and 32)
- (iii) The university has written to the County Executive of Lands and Physical Planning via the letter dated 26th April, 2018 requesting for his services to have the two parcels of land valued and the reports submitted as soon as possible. (letter marked 33)
- (iv) The University has not yet received a response to its letter dated 26th April, 2018. Recognition of these parcels of land will be made in the current financial year after valuation.

OBSERVATION (1)

- (i) On 1st April, 2016 the university wrote to the governor of Makueni county, Prof. Kivutha Kibwana, requesting for the allocation of 30 acres in line with the Commission for University Education Regulations. (letter marked 34)

- (ii) On 29th April, 2016 Prof. Kivutha Kibwana wrote back to the university agreeing to allocate the University 30 acres of land in exchange of the 5 acres already allocated (letter marked 35)
- (iii) The University Council approved the surrender of the 5 acres already allocated to the University and accepted the allocation of an alternative piece of land via its meeting held on 30th June, 2016 (extract of the minutes marked 36)
- (iv) The University wrote to Prof. Kivutha Kibwana, governor of Makueni county, on 30th June, 2016 informing him of the Council decision that authorized the University Management to surrender the five (5) acres of land previously allocated to the University and accept the allocation of 30 acres. (Letter marked 37)

OBSERVATION (2)

- (v) The University has physical possession and title deeds over the Mwingi /Nzeluni/1970 and Mwingi/Mwingi/5713 land which was received as a donation on 13th July, 2015 and 22nd September, 2015 respectively.
- (vi) The title deeds of the two parcels of land are attached and marked 38 and 39)
- (vii) The university has written to the County Executive of Lands and Physical Planning via the letter dated 26th April, 2018 requesting for his services to have the two parcels of land valued and the reports submitted as soon as possible. (letter marked 40)
- (viii) The University has also written to the Cabinet Secretary through the Chief Administrative Secretary & Principal Secretary requesting for their intervention and assistance in safeguarding SEKU land. (letter marked 41)

Conclusion

The University has not yet received a response to its letter dated 26th April, 2018. Recognition of these parcels of land will be made in the subsequent financial years after valuation.

Committee Observations

The Committee made the following observations:

1. The matter of the University's land in dispute is in court awaiting adjudication.
2. The National Land Commission had determined that the land in Nairobi LR 209/10350 belongs to the University. The complainants went to court on the matter.

MIN/PIC/2019/096: CASH AND CASH EQUIVALENTS FY 2013/14

The cash and cash equivalence balance of Kshs.33,886,653 as at 30th June 2014 include Kshs.19,718,415 (Note 19) for development account whose cash book balance

was Kshs.20,265,960 resulting to and unreconciled and unexplained difference of Kshs.1,547,545.

In the circumstance, the accuracy and completeness of the cash and cash equivalents balance of Kshs.33,886,653 as at 30th June 2014 could be confirmed.

Management Response

The difference of Kshs. 1,547,545 is attributable to previous year's figures brought forward. Great efforts have been invested to agree the cash book postings to the bank statement entries and this has been adjusted in the FY 2014/2015. (Attached is a document showing the current position marked 44)

Committee Resolution

The audit query has been resolved.

MIN/PIC/2019/097: PRIOR YEAR ADJUSTMENT FY 2013/14

The capital fund balance of Kshs.1,644,011,579 as at 30th June 2014 include unexplained adjustment on the main account balance of Kshs.7,264,497. Further, no disclosure is given in the financial statements to explain the inclusion of this adjustment.

As a result, it has not been possible to establish the completeness and accuracy of the Capital Fund balance of Kshs.1,644,011,579 as at 30th June 2014.

Management Response

The cash book balance in the FY 2012/2013 showed an overdraft of Ksh.11,763,043 part of which cheques amounting to Kshs.7,264,497 had been shown as un presented in bank reconciliation for the National Bank of Kenya collection account as at the June 2013, however in the bank reconciliation of July 2014 it was noted that cheques amounting to Kshs. 2,923,265 had been cleared, Kshs. 4,231,514 had been cancelled and Kshs. 109,716 were stale in the FY 2012/2013.

Consequently, they were written back to the cash book to reflect the true opening balance in the FY 2013/2014 and an adjustment to the capital fund was done.

(Attachment marked 45)

Committee Resolution

The audit query has been resolved.

MIN/PIC/2019/098: TRADE AND OTHER PAYABLES FROM EXCHANGE TRANSACTIONS FY 2013/14

The statement of financial position reflects trade and other payables from exchange transactions balance of Kshs.315,287,625 as at 30th June 2014. However, the schedule provided for audit review revealed capital projects balance of

Kshs.59,863,924 whereas the financial statements shows Kshs.60,206,617. The resulting difference of Kshs.342,693 has not been explained.

In view of the foregoing, the accuracy and completeness of the trade and other payables balance of Kshs.315,287,625 as at 30th June 2014 could not be ascertained.

Management Response

The amount of capital creditors in the Statement of Financial position was derived from the trial balance.

However the make-up of the ledger balance in account had different total as shown below:

NO	DESCRIPTION	TB/SFP AMOUNT	LEDGER AMOUNT	DIFFERENCE
1	Capital creditors	Ksh.60,206,617	Ksh.59,863,923	Ksh.342,694

This difference has been reconciled with the ledger and trial balance showing the same balance in the FY 2014/2015.

(Attachment marked 46)

Committee Resolution

The audit query has been resolved.

MIN/PIC/2019/099: BUDGETARY CONTROL AND PERFORMANCE FY 2015/16

During the year under review, the University had an approved a budget of Kshs.1,234,068,000 comprised of Kshs.1,065,584,000 for recurrent budget and Kshs.168,484,000 for development budget. The annual revenue for the University was projected at Kshs.1,234,068,000 comprising Kshs.843,568,000 from government grants of Kshs.813,568,000 (recurrent and development) and research grants of Kshs.30,000,000 and Kshs.390,500,000 from internally generated revenue sources (both development of Kshs.12,000,000 and recurrent of Kshs.378,500,000. The total revenue collected from internal and external sources during the period under review translated to 93.7% of the targeted collection. An analysis for the income and expenditure budget versus the actual is as indicated below:-

1.1 Recurrent Income

Items	Budgeted (Kshs.)	Actual (Kshs.)	Variance (Kshs.)	Performance %
Recurrent Grants (GoK Capitation)	657,084,000	647,626,262	9,457,738	98.5%
Research Grants	30,000,000	28,051,238	1,948,762	94%

Non-exchange transactions Income	687,084,000	675,677,500	11,406,500	98%
Tuition and other related fees	318,000,000	279,537,188	38,462,812	88%
Internally Generated	60,500,000	43,962,368	16,537,632	73%
Income From exchange transactions	378,500,000	323,499,556	55,000,444	85%
Total Income	1,065,584,000	999,177,056	66,406,944	93.7%

The University needs to enhance internal revenue collection to support its service delivery goal and objectives.

Management Response

Financial discipline is vital for prudent financial management. Prudence concept prohibits overestimating the amount of revenues recognized to be factored in a budget.

The University recorded a revenue transaction when it was certain.

Students' reduction in terms of admission into the University majorly contributed to the decline in Appropriation in Aid. This was due to poor performance in KCSE thus a decline in the number of candidates eligible for admission into the University.

Committee Resolution

The audit query has been resolved.

1.2 Recurrent Expenditure

Items	Budgeted (Kshs.)	Actual (Kshs.)	Variance (Kshs.)	Absorption %
Administration	192,541,262	138,212,236	54,329,026	70%
Employee costs	664,050,000	663,573,717	476,283	100%
Other Operating and Maintenance Expenses	196,992,738	182,166,887	14,825,851	91%
Total Recurrent Expenditure	1,053,584,000	983,952,840	69,631,160	93%

The above analysis reflects an overall under expenditure of Kshs.69,631,160 in the recurrent budget.

Management Response

The University recorded expense transaction or liability was recorded when it was probable.

Other than a balanced budget, the University managed liquidity risk through continuous monitoring of forecast and actual cash flows which in turn determined the level of expenditure to be incurred.

Unexpected decrease or increase in some of the budget line items necessitated a realignment of the expenditure. This was approved by the University Council on 2nd April, 2016.

1.3 Development Budget

The development budget for the year under review amounted to Kshs.168,484,000 comprised of Government grants of Kshs.156,484,000 and internally generated funds of Kshs.12,000,000. The University received Kshs.100,888,551 against a budget of Kshs.156,484,000 from the Government as capital grant to finance construction of various projects resulting in unreleased grants of Kshs.55,595,449.

In the circumstance, the University did not carry out development projects worth Kshs.55,595,449 being grants budgeted but not received from the government.

Management Response

The Government reduced capital grants through supplementary budgets of Financial Year 2015/2016. By end of the period Kshs.55,595,449 allocated in the year had not been received from the exchequer.

Committee Resolution

The audit query has been resolved.

MIN/PIC/2019/100: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/2019/101: ADJOURNMENT

The meeting was adjourned at ten minutes past one O'clock.

Signed

The Hon. Abdullswamad Sharif Nassir, MP
(Chairperson)

Date.....

09/04/2019

MINUTES OF THE 15TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON
TUESDAY 26TH MARCH 2019 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS
AT 10.00 A.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
4. The Hon. Raphael Bitta Sauti Wanjala, MP
5. The Hon. Joash Nyamache Nyamoko, HSC, MP
6. The Hon. Paul Kahindi Katana, MP
7. The Hon. Purity Wangui Ngirici, MP
8. The Hon. Gladys Wanga, MP
9. The Hon. Thuku Zachary Kwenya, M.P

ABSENT WITH APOLOGY

1. The Hon. Justus Kizito Mugali, MP
2. The Hon. Babu Owino Paul Ongili, MP
3. The Hon. John Muchiri Nyaga, M.P
4. The Hon. Mohamed Hire Garane, M.P.
5. The Hon. Rashid Kassim Amin, MP
6. The Hon. James Kamau Githua Wamacukuru, M.P
7. The Hon. Mary Wamaua Njoroge, MP
8. The Hon. Omar Mohamed Maalim Hassan, MP
10. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 2. Mr. Mohamed Boru | - | Third Clerk Assistant |
| 3. Ms. Sharon Rotino | - | Research Officer |
| 4. Ms. Marlene Ayiro | - | Legal Counsel |
| 5. Ms. Noelle Chelagat | - | Media Relations Officer |
| 6. Ms. Winfred Atieno | - | Audio Recording Officer |

IN ATTENDANCE

- | | | |
|------------------------|---|------------------------|
| 1. Mr. Ronald Bichanga | - | Director, Audit |
| 2. Ms. Jane Kariuki | - | Deputy Director, Audit |
| 3. Ms. Evelyn Kauna | - | Manager, Audit |
| 4. Mr. Josiah Oyuko | - | Manager, Audit |
| 5. Ms. Gladys Maina | - | Manager, Audit |
| 6. Mr. John Wangila | - | Manager, Audit |
| 7. Mr. Wanyonyi Weyao | - | Supervisor, Audit |

MIN/PIC/2019/077: PRELIMINARIES

The Chairperson called the meeting to order at five minutes past ten O'clock followed by a word of prayer.

MIN/PIC/2019/078: EXAMINATION OF AUDITED ACCOUNTS OF KENYA NATIONAL EXAMINATIONS COUNCIL

Dr. Mercy Karogo, the Ag. Chief Executive Officer of the Kenya National Examinations Council accompanied by Mr. Abraham Oloo (Financial Controller) and Ms. Imelda Barasa (Director of Examination Administration appeared before the Committee to adduce evidence on the audited accounts of the Council for FY 2015/16 to FY 2016/17.

MIN/PIC/2019/079: NEW MITIHANI HOUSE FY 2015/16 & FY 2016/17

As reported in the previous years, the Council staff continued being housed at five (5) different sites because the new building (Mitihani House) was not completed as anticipated. The project is only 60% complete despite the fact that the work has been going on for the last twenty nine (29) years. Physical visit to the project on 21 February 2017 revealed that Tower C is partly completed and occupied by the Council staff. According to the engineer's estimated dated 24 March 2017, the project still requires approximately Kshs.1,685,281.385 to have it completed. According to the Management, the cause of the delay and escalation in the costs of the project is attributed to challenges relating to project management by the Ministry of Land, Housing and Urban Development and non-remittance of development grants by the parent Ministry.

Further, although Kshs.420,000,000 was allocated for the project, in the year under review only Kshs.320,000,000 was remitted to the Council. In addition estimates for the financial year 2016/2017 indicates that the project was allocated Kshs.60,000,000 under the Ministry of Education, Science and Technology. This amount however, not adequate to complete the project as estimated by the engineer's valuation of Kshs.1,685,281,385 to completion.

It appears the Ministry is not desirous to complete the project and as a result the project will continue incurring additional escalation costs. The current total costs of the projects stands at Kshs.1,889,215,227 as at 30th June 2016 compared to the initial budgeted cost of Kshs.248,925,596 in the year 1986.

Management Response

Background to the New Mitihani House Project

The New Mitihani House Project was conceived in the year 1986 by the Government through the Ministry of Education, The National Treasury, and the then Ministry of Public Works. The concept was to House all the KNEC activities on Plot LR/188/4/451/11/79 next to the Kenya Bureau of Standards South C, Off Mombasa Road.

The Kenya National Examinations Council remains the user client while the Ministry of Public Works was the Project Manager.

The New Mitihani House project was meant to consolidate all KNEC activities under one roof and comprised of the following scope:

Three interconnected blocks of office space referred to as Towers A, B and C comprising of one common basement, ground floor and six upper floors on each tower; A Printing Plant for printing all the Council's Examination Papers; External Road works and Landscaping works; Cabro Paving, Street Lighting and Landscaping of access road from the tarmac.

Since its inception in 1986, the project remains incomplete and has been implemented through the following eight contracts:

In February 1986 the initial contract was awarded to Mavji Construction Company Ltd as the Main contractor with a contract sum of Kshs.258 million. The Project was decommissioned in December 2016 under instructions from The National Treasury.

The second contract which commenced on March 1987 was awarded to Mistry Javda Parbat & Co Ltd at a contract sum of Kshs.249 million. The project stalled in 28th July 1989 as a result of inadequate budgetary allocation from the National Treasury to the Ministry of Education which is the funding Ministry. The project was mutually wound up and the site was handed over to the Ministry of Works, Housing and Physical Planning on the 31st of December 1998.

The project was then placed under the stock of stalled projects in 2003 and was implemented in five phases as follows:-

The Phase I for the Construction of the Printing Press Block next to New Mitihani House commenced on 7th February 2005. The project of Kshs.113 million was awarded to Capital Construction Company Ltd. The project was completed and handed over to the Council on 17th May 2006.

The Phase II for the Security and Civil works on the Printing Press Block commenced on 29th May 2006. The project of Kshs.17 million was awarded to Crissam Arces Limited. The project was completed and handed over to the Council on 8th February 2007.

The Phase III consists of completion works to Basement and Ground Floor commenced on 29th November 2006. The project of Kshs.343 million was awarded to Jaswant M/S Singh & Brothers Ltd. The contractual arrangement was mutually wound up at 97% completion on 30th September 2009 at cost of Kshs.378 million due to challenges attributed to sharing the construction site with the Phase V Contractor.

The Phase V comprised 1st to 6th floor of the office block which commenced on 21st October 2008. The project of Kshs.866 million was awarded to Ongata Works Ltd.

Inadequate budgetary allocation has led to six contract extension periods resulting to a variation of the contract sum to Kshs.1.085 Billion. The Contractor has billed the Ministry of Land, Housing & Urban development for Kshs.151,409,920.33 as final Account.

This pending bill is being assessed before settlement by the Ministry of Land, Housing & Urban Development directly to the Contractor.

The Phase VI comprised internal partitions, services, finishes, road works and landscaping of the office block which commenced on 30th May 2013. The project of Kshs. 1.5 Billion was awarded to Ongata Works Ltd.

The contract for the Supply & Installation of 4 Lifts had been awarded to M/S Schindler Ltd in Phase V contract. The subcontract was terminated in 2013 due to the non-performance of the subcontractor. The Council then awarded the Contract to M/S Elevonic Lifts in August 2014 for Kshs.27 million. The works at assessed at 60% complete with two lifts installed & serving Towers B and C.

The cause of the delay and escalation in the costs of the project is attributed to challenges relating to project management by the Ministry of Public works (currently Ministry of Lands, Housing and Urban development) who are the Project Managers and the low capitation of development Grants by the parent Ministry of Education and the National Treasury.

There is need for all the project stakeholders to have a meeting and find a way in which the above issues can be resolved. The Council is in consultation with the Parent Ministry regarding the budgetary allocations and timely remittances of the same.

Committee Observations

The Committee made the following observations:

1. The matter had appeared in the 21st Report of the Public Investments Committee on the audited accounts of State Corporations. The Committee had recommended for provision of adequate budgetary allocation to enable the completion of the project. No action had been taken on this recommendation.
2. The CEO had written to and visited the National Treasury to seek solutions to the matter without success.
3. The Council does not generate any revenue by virtue of its unique mandate.

Committee Resolutions

The Committee made the following resolutions:

1. A meeting to be convened bringing together the Council, the National Treasury, the Ministry of Education, Ministry of Public Works and the Committee with a view to finding a solution to the matter.
2. The Council was asked to submit all communication regarding the matter under consideration.

3. The Council should also provide a chronology of the project including year-by-year breakdown of the amounts spent and progress made.
4. The Council was also asked to provide copies of Board minutes discussing the project.
5. The Committee would consider visiting the site of the project to verify progress.

MIN/PIC/2019/080: EXAMINATION OF AUDITED ACCOUNTS OF PUBLIC PROCUREMENT REGULATORY AUTHORITY

Mr. Maurice Juma, the Director General of the Public Procurement Regulatory Authority accompanied by Ms. Rose Nyamweya (General Manager, Finance and Administration) and Ms. Chris Sakwa (Manager, Finance) appeared before the Committee to adduce evidence on the audited accounts of the Authority for the financial year 2014/15 to financial year 2016/17.

The Committee heard that the Authority's audited accounts for the financial year 2014/2015 was unqualified.

MIN/PIC/2019/081: EXAMINATION OF AUDITED ACCOUNTS OF PUBLIC PROCUREMENT REGULATORY AUTHORITY FY 2015/16

The Committee heard that the Authority's audited accounts for the financial year 2015/2016 was unqualified.

MIN/PIC/2019/082: EXAMINATION OF AUDITED ACCOUNTS OF PUBLIC PROCUREMENT REGULATORY AUTHORITY FY 2016/17

The Committee heard that the Authority's audited accounts for the financial year 2016/2017 was unqualified.

The Authority was commended for the good financial management.

MIN/PIC/2019/083: EXAMINATION OF AUDITED ACCOUNTS OF KENYA WILDLIFE SERVICE

Mr. John Waweru, the Director General of the Kenya Wildlife Service accompanied by Mr. John Mwangi (Head of Finance), Mr. Raphael Meli (Senior Land Officer), Mr. Peter Mathenge (Financial Accountant), Mr. Edwin Wanyonyi (Deputy Director) and Mr. Michael Kipkorir (Deputy Director) appeared before the Committee to adduce evidence on the audited accounts of the Kenya Wildlife Service for financial year 2012/13 to financial year 2016/17.

MIN/PIC/2019/084: PROPERTY, PLANT & EQUIPMENT FY 2012/13 to FY 2016/17

The property, plant and equipment balance of Kshs. 8,202,884,000 as at 30 June 2013 (Kshs. 5,749,119,000 as at 30 June 2017) excludes as similarly reported in the previous years, the value of various parcels of land across the country without title documents on which the Service has put up various developments including buildings. The parcels of land without title documents comprise twelve (12) National Parks,

twenty nine (29) national Reserves, nine (9) sanctuaries, nine (9) marine parks and one hundred and twenty seven (127) field plots. It has not been possible in the circumstances, to ascertain the completeness and accuracy of the property, plants and equipment balance Kshs. 8,202,884,000 as at 30 June 2013.

Management Response

It is true that the Service has developed structures and occupies land which houses the National Parks, Reserves, Sanctuaries and Station without the pre-requisite ownership documents as reported in that years' audit. However, the Service is in the process of acquiring title deeds and has since undertaken various activities to accelerate the process of titling. This include, physical planning, surveying and forwarding deed plans for resolution of land disputes by NLC. Currently the organization has a total of 222 parcels of land of which 45 have ready titles and the remaining are at various stages of titling process mentioned above.

These parcels of land are located in vast areas across the country and as such it is an expensive exercise to carry out valuation. It is worth noting that the last assets valuation exercise was carried out in 2008. Management appreciates the need to value and incorporate these assets in the financial statements and as such negotiations are at advanced stage in securing funding towards valuation of all the assets including the titled land. Considering the mechanisms already put in place, management anticipates that the valuation exercise will be carried out in the current financial year (2018-2019FY). (Appendix X current Land Status)

The annual depreciation of Kshs1,082,485,000 is the charge for year 2016/2017. It was calculated based on the brought forward balances, excluding fully depreciated assets and adding the new acquisitions during the year. KWS finance department uses accounting system (Sunsystem) for the financials and it incorporates general ledger only. This means that depreciation is calculated manually through excel worksheets. However, the Service is currently in the process of upgrading the Sunsytem to incorporate among others, acquisition of assets module, which will allow for system generated depreciation charge.

In 2008, KWS engaged PWC to carry out valuation exercise for certain categories and assets. One of the deliverables was development of an assets register. The various categories of valued assets were incorporated in the register. The mode of operations for the register were that an assets had to be tagged using bar code then a bar code reader would be used to update the register. This meant that the assets manager had to physically go round the entire organization update the register and then have the same data in the general ledger. Due to the vastness of the organizations area of coverage we realized a lot of delay which affected our financials as payments are almost real time. This has resulted to timing difference between payments and register update. To address this shortcoming the organization is currently in the process of upgrading our financial system and the consultant is already on board

which will incorporate an assets module thus do away with manual calculation of depreciation.

Committee Observations

The Committee made the following observations:

1. The value of the KWS property, plant and equipment depreciated from Kshs. 8,202,884,000 as at 30 June 2013 to Kshs. 5,749,119,000 as at 30 June 2017. This is due to depreciation of vehicles while land retains the value it had before and is yet to be valued.
2. KWS has a total of 222 properties across the country. Of these, 45 have title deeds while the rest do not have title deeds. Twenty one of these properties have land disputes and are under adjudication.
3. National Reserves under the Service are Trust Lands vested in County governments and therefore, Counties are expected to get the title deeds.

Committee Resolution

The Committee resolved that KWS should provide a breakdown of the 222 properties including their respective status of registration and the status of adjudication for the disputed land.

MIN/PIC/2019/085: IRREGULAR INTER-VOTE TRANSFER FY 2012/13

During the year under review, the Service received an amount of Kshs. 1,186,174,130 as development funding for use in various capital projects. This amount includes Kshs. 897,214,130 which was meant for the construction and rehabilitation of non-classified roads and other related civil works (construction of bridges, ferry and airstrips). Examination of the expenditure schedules and analysis under the roads maintenance category, however, revealed that only a meagre Kshs. 112,679,768 or 13% was used for the intended purpose while the balance of Kshs. 784,534,362 or 87% was irregularly reallocated and expended as recurrent expenditure. It was noted during the field inspection that various unclassified roads were not however, motorable. No explanation has been provided for the irregular inter-vote transfers which also hampered the development of essential infrastructure for effective conservation and management and protection of wildlife during the year.

Management Response

Out of the total Kshs.1,208,200,000 allocated for development, KWS received a total amounting to Kshs.1,190,200,000. The variance of Kshs.118,000,000 wasn't received during the financial year. The funds were utilized as follows;

- | | | |
|--|---|------------------|
| a) Rehabilitation of roads | - | Kshs.425,745,267 |
| b) Cost of maintenance of roads, plant and equipment | - | Kshs. 33,302,285 |
| c) Purchase of equipment | - | Kshs.372,882,000 |

d) Rehabilitation of civil works - Kshs.156,019,000
Total Expenditure - Kshs.987,948,552

Utilization of funds in KWS for routine maintenance and rehabilitation of roads, buildings and maintenance of plant and equipment are classified as recurrent costs. But in the printed estimates they are captured as development expenditure. Hence the variance Kshs.112,679,768 between the actual development funds of Ksh. Kshs.1,208,200,000 reported by external auditors and Kshs.987,948,552 included in KWS financial statements. The net balance between the amounts received and actual GOK capital expenditure (Kshs.1,190,200,000-987,948,552) amounts to Kshs.202,251,448. These funds were utilized in the day to day operations of the organization.

Further, please note that the Service not able to utilize fully the developments funds as a result of shortfall in the approved revenue budget. KWS had projected to collect Ksh.5.29 billion as internal revenue. However, what was realized during the FY was Ksh.4.36 billion, translating to a shortfall of Ksh.930million. This necessitated the review of the budget so as to ensure the operations of the organization were not affected adversely.

The shortfall in revenue also coincided with upsurge in poaching and human wildlife conflict cases necessitating enhanced security operations and problem animal control activities. The organization was then compelled to reallocate more funds towards containing this situation. To this end substantial amounts were also spent both on procurement of security equipments and fence construction. The approved revised budget reflected these changes. (Appendix I)

MIN/PIC/2019/086: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/2019/087: ADJOURNMENT

The meeting was adjourned at thirty minutes past twelve O'clock.

Signed

Date.....04/04/2019

The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

MINUTES OF THE 14TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY 21ST MARCH 2019 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10.00 A.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
3. The Hon. Justus Kizito Mugali, MP
4. The Hon. Joash Nyamache Nyamoko, HSC, MP
5. The Hon. Mohamed Hire Garane, M.P.
6. The Hon. Paul Kahindi Katana, MP
7. The Hon. James Kamau Githua Wamacukuru, M.P

ABSENT WITH APOLOGY

1. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
2. The Hon. Raphael Bitta Sauti Wanjala, MP
3. The Hon. Rashid Kassim Amin, MP
4. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
5. The Hon. Mary Wamaia Njoroge, MP
6. The Hon. Omar Mohamed Maalim Hassan, MP
7. The Hon. Purity Wangui Ngirici, MP
8. The Hon. Gladys Wanga, MP
9. The Hon. Babu Owino Paul Ongili, MP
10. The Hon. Thuku Zachary Kwenya, M.P
11. The Hon. John Muchiri Nyaga, M.P

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 2. Mr. Mohamed Boru | - | Third Clerk Assistant |
| 3. Ms. Sharon Rotino | - | Research Officer |
| 4. Ms. Marlene Ayiro | - | Legal Counsel |
| 5. Ms. Noelle Chelagat | - | Media Relations Officer |
| 6. Ms. Winfred Atieno | - | Audio Recording Officer |

IN ATTENDANCE

- | | | |
|----------------------|---|----------------|
| 1. Mr. Joshiah Oyuko | - | Manager, Audit |
|----------------------|---|----------------|

MIN/PIC/2019/073: PRELIMINARIES

The Chairperson called the meeting to order at fourteen minutes past eleven O'clock followed by a word of prayer.

The Committee heard that the Kenya Medical Training College had sent a letter indicating their unavailability for the meeting and expressed concern on the late communication.

MIN/PIC/2019/074: CONFIRMATION OF MINUTES

Minutes of the 11th sitting were confirmed as a true record of proceedings having been proposed by Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP and seconded by Hon. Joash Nyamache Nyamoko, MP.

MIN/PIC/2019/075: ANY OTHER BUSINESS

The Committee resolved to hold a report writing retreat to adopt the report on its inquiry into the procurement process for the Excise Goods Management System from 28th to 31st March, 2019 in Mombasa county.

MIN/PIC/2019/076: ADJOURNMENT

The meeting was adjourned at twenty two minutes past eleven O'clock.

Signed

The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

Date.....

04/04/2019.

MINUTES OF THE 13TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON
TUESDAY 19TH MARCH 2019 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS
AT 10.00 A.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
4. The Hon. Raphael Bitta Sauti Wanjala, MP
5. The Hon. Rashid Kassim Amin, MP
6. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
7. The Hon. James Kamau Githua Wamacukuru, M.P
8. The Hon. Mary Wamaia Njoroge, MP
9. The Hon. Joash Nyamache Nyamoko, MP
10. The Hon. Mohamed Hire Garane, M.P.
11. The Hon. Omar Mohamed Maalim Hassan, MP
12. The Hon. Paul Kahindi Katana, MP

ABSENT WITH APOLOGY

1. The Hon. Purity Wangui Ngirici, MP
2. The Hon. Gladys Wanga, MP
3. The Hon. Justus Kizito Mugali, MP
4. The Hon. Babu Owino Paul Ongili, MP
5. The Hon. Thuku Zachary Kwenya, M.P
6. The Hon. John Muchiri Nyaga, M.P

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 2. Mr. Mohamed Boru | - | Third Clerk Assistant |
| 3. Ms. Sharon Rotino | - | Research Officer |
| 4. Ms. Marlene Ayiro | - | Legal Counsel |
| 5. Ms. Noelle Chelagat | - | Media Relations Officer |
| 6. Ms. Winfred Atieno | - | Audio Recording Officer |

IN ATTENDANCE

- | | | |
|-----------------------------|---|------------------------|
| 1. Mr. George Otieno Nashon | - | Deputy Director, Audit |
| 2. Mr. Joseph Irungu | - | Manager, Audit |
| 3. Mr. Benard Maina | - | Manager, Audit |
| 4. Mr. Bernard Muriuki | - | Supervisor, Audit |

MIN/PIC/2019/066: PRELIMINARIES

The Chairperson called the meeting to order at twenty minutes to ten O'clock followed by a word of prayer.

MIN/PIC/2019/067: EXAMINATION OF AUDITED ACCOUNTS OF NGO COORDINATION BOARD

Mr. Mutuma Nkanata, the Executive Director of the NGO Coordination Board accompanied by Mr. Andrew Ogombe (Deputy Director), Mr. David Njane (Finance Manager), Ms. Dorris Muthoni (Procurement Manager) and Mr. Mark Ngecho (Senior Investments Officer) appeared before the Committee to adduce evidence on the audited accounts of the Board for FY 2013/14 to FY 2016/17.

The Committee resolved to reschedule the meeting with the Board to allow for preparation of documentation and verification by the Auditors.

MIN/PIC/2019/068: EXAMINATION OF AUDITED ACCOUNTS OF KENYA URBAN ROADS AUTHORITY FY 2014/15

Eng. Silas Kinoti, the Ag. Director General of the Kenya Urban Roads Authority appeared before the Committee to adduce evidence on the audited accounts of the Board for FY 2014/15 to FY 2016/17.

The Committee heard that the Authority's audited accounts for the financial year 2014/2015 was unqualified.

MIN/PIC/2019/069: EXAMINATION OF AUDITED ACCOUNTS OF KENYA URBAN ROADS AUTHORITY FY 2015/16

The Committee heard that the Authority's audited accounts for the financial year 2015/2016 was unqualified.

MIN/PIC/2019/070: EXAMINATION OF AUDITED ACCOUNTS OF KENYA URBAN ROADS AUTHORITY FY 2016/17

The Committee heard that the Secretariat's audited accounts for the financial year 2016/2017 was unqualified.

The Authority was commended for their prudent financial management.

MIN/PIC/2019/071: ANY OTHER BUSINESS

The Committee heard that the Authority is only mandated to build urban trunk roads which are audited by the Office of the Auditor General and the Kenya Roads Board.

The Committee further heard that there was no duplication of roles between the Authority and County governments. Management stated that Counties had been taking advantage to claim roads built by KURA.

The Committee further heard that the Ag. Executive Director had been acting in the capacity for three and a half years.

MIN/PIC/2019/072: ADJOURNMENT

The meeting was adjourned at two minutes to eleven O'clock.

Signed

The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

Date.....

04/07/2019.

MINUTES OF THE 12TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY 14TH MARCH 2019 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10.00 A.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
4. The Hon. Raphael Bitta Sauti Wanjala, MP
5. The Hon. John Muchiri Nyaga, M.P
6. The Hon. Joash Nyamache Nyamoko, HSC, MP
7. The Hon. Mohamed Hire Garane, M.P.
8. The Hon. Paul Kahindi Katana, MP
9. The Hon. Mary Wamaua Njoroge, MP
10. The Hon. James Kamau Githua Wamacukuru, M.P

ABSENT WITH APOLOGY

1. The Hon. Purity Wangui Ngirici, MP
2. The Hon. Gladys Wanga, MP
3. The Hon. Rashid Kassim Amin, MP
4. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
5. The Hon. Justus Kizito Mugali, MP
6. The Hon. Babu Owino Paul Ongili, MP
7. The Hon. Thuku Zachary Kwenya, M.P
8. The Hon. Omar Mohamed Maalim Hassan, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 2. Mr. Mohamed Boru | - | Third Clerk Assistant |
| 3. Ms. Sharon Rotino | - | Research Officer |
| 4. Ms. Marlene Ayiro | - | Legal Counsel |
| 5. Ms. Noelle Chelagat | - | Media Relations Officer |
| 6. Ms. Winfred Atieno | - | Audio Recording Officer |

IN ATTENDANCE

- | | | |
|-----------------------|---|----------------|
| 1. Mr. Joshiah Oyuko | - | Manager, Audit |
| 2. Mr. Evans Kaleka | - | Manager, Audit |
| 3. Ms. Sabina Mwadime | - | Manager, Audit |

MIN/PIC/2019/047: PRELIMINARIES

The Chairperson called the meeting to order at twenty-eight minutes past ten O'clock followed by a word of prayer.

MIN/PIC/2019/048: EXAMINATION OF AUDITED ACCOUNTS OF LAPSET AUTHORITY

Mr. Silvester Kasuku, the Chief Executive Officer of LAPSET Authority accompanied by Mr. John Musale (Ag. Finance and Planning Manager), Mr. Morris Owino (Ag. Accounts Manager) and Mr. Benjamin Mutea (Procurement Officer) appeared before the Committee to adduce evidence on the audited accounts of the Board for FY 2013/14 to FY 2015/16.

MIN/PIC/2019/049: EXAMINATION OF AUDITED ACCOUNTS FOR FY 2013/14

The Committee heard that the Board received unqualified reports from the Auditor General for the FY 2013/14.

The Committee commended the management of KMPDB for their prudent financial management.

MIN/PIC/2019/050: EMPHASIS OF MATTER - IRREGULAR PROCUREMENT OF AIR TRANSPORT SERVICES FY 2014/15

Although LAPSET Corridor Development Authority (LACD) prequalified eighteen firms for the provision of air ticketing services during the financial year 2014/15, only one firm, M/S Ride on Agencies Limited was directly selected to provide the services at a cost of Kshs. 7,178,607 contrary to Section 75 of the Public Procurement and Disposal Act 2005, which prohibits a procuring entity from using direct procurement in a discriminatory manner. The Auditor General's opinion on the matter was not qualified.

Management Response

The matter was listed in the audited accounts but the accounts for the FY 2014/15 was not qualified. The Authority procured air tickets from a number of providers in the financial year under consideration.

Committee Resolution

The matter had been resolved with the auditors as the management provided evidence of prequalified firms to auditors for verification.

The Committee resolved that the Authority provides evidence on the procurement of air tickets to the Office of the Auditor General for verification and concurrence.

MIN/PIC/2019/051: LAPSET YOUTH SCHOLARSHIP PROGRAMME FY 2015/16

The statement of financial performance for the year ended 30th June 2016 reflected expenditure of Kshs. 57,425,750 on grants and subsidies. The expenditure as disclosed under Note 8 to the financial statements relates to LAPSET presidential youth scholarship program under which one thousand students from Lamu County are to be sponsored for studies in various institutions. Audit of related records however revealed that the Authority sponsored and incurred expenditure totaling Kshs.

1,807,232 during the year under review on ten students who are non-residents of Lamu County. In the circumstances, the propriety of the expenditure of Kshs. 1,807,232 cannot be verified.

Management Response

During the year under review, the Authority incurred an expenditure of Kshs. 57,425,750 on grants being funds spent on LAPSSET Presidential Youth Scholarship Program.

The ten youths sponsored under the Program had National Identification cards which bear other districts as District of birth.

Selection of youth for placement under the Program was done by LAPSSET Presidential Scholarship selection committee based in Lamu county. The committee membership is composed of local leaders under chairmanship of Lamu County Commissioner. A list of the selected youth was later forwarded to the Authority (LCDA) and the names of the ten youths were among the recommended students from Lamu county. (*List of student beneficiaries and their District of birth submitted as Annex 1*)

The ten youths were bonafide Lamu county residents though their Districts of birth reflected on their ID's may depend on the physical locality/address where one was born which may not be his/her home county.

Committee Observations

1. The Committee observed that the Program targeted Lamu as it was the starting point of the LAPSSET project and that the Authority has recommended for the implementation of the scholarship in other counties where LAPSSET traverses.
2. Further, the Committee concurred with explanation given that the beneficiaries may have been bearing names of other districts but they were in fact inhabitants of Lamu and hence cannot be discriminated.

Committee Resolution

The Committee resolved that the list of scholarship beneficiaries should be signed by the members of the LAPSSET Presidential Scholarship selection committee and be submitted to the Office of the Auditor General for verification.

MIN/PIC/2019/052: CONSULTANCY SERVICES FY 2015/16

Consultancy Services for Development of Institutional Framework Organization Structure

The Committee heard that the Authority awarded a contract for provision of consultancy services for development of institutional framework/organizational structure to an audit firm at Kshs. 13,799,650 on 4 May 2015. Evidence of negotiation as expected under Clause 1.9 of the Contract Agreement and in line with Section

128(1) of the Public Procurement and Disposal Act 2015 has however not been made available for audit review.

Management Response

The Authority awarded the contract for consultancy services for review of LCDA Institutional Framework/Organization Structure on 4th May 2015.

However, the Treasury circular No. 02/2016 stated that the new Public Procurement and Asset Disposal Act shall be applicable only to procurements which commenced on or after 7th January, 2016.

The procurement process for Consultancy services for review of LCDA Institutional Framework/Organizational Structure commenced on 13th February 2015 and hence was not subject to the Public Procurement and Disposal Act 2015.

Negotiation Report

This contract was also signed as per the terms of reference spelt out in the bidding document and the tender sum quoted by the consultant which were agreeable to both parties.

Section 84 of the Public Procurement and Disposal Act, 2005 under which the contract was administered states that 'A procuring entity may negotiate with a person who submitted the successful proposal and may request and permit changes (in the terms of reference)

It was therefore not mandatory to conduct negotiations in a contract if the terms and scope of the assignment are agreeable to both parties. Hence the Authority adhered to the law in the procurement process.

Committee Observation

1. The auditors erroneously made reference to a Public Procurement and Asset Disposal Act 2015 instead of the Public Procurement and Disposal Act of 2005
2. The Committee resolved that the audit query is resolved.

Consultancy services for Strategic Environmental Assessment for the LAPSET Infrastructure Corridor Kshs. 80,738,320

The Committee heard that the Authority also awarded a contract for strategic environmental assessment to a local firm at Kshs. 80,738,320 on 28 January 2016. Evidence made available for audit revealed that technical and financial negotiations were not undertaken contrary to the requirements of clauses 6.2 and 6.3 of the contract document and in line with Section 128 (1) of the Public Procurement and Disposal Act 2015.

In the circumstances therefore, it was not possible to confirm that the Authority, as required under Section 38 of the Public Audit Act 2015, obtained value-for-money on

the two consultancy service contracts procured at a total contract sum of Kshs. 94,537,970.

Management Response

The tender was advertised on 13th August 2015. Tender evaluation was done and thereafter, the tender committee adjudicated and awarded it on 18 December 2015.

The Treasury circular No. 02/2016 stated that the new Public Procurement and Asset Disposal Act shall be applicable only to procurements which commenced on or after 7th January, 2016.

The tender was therefore processed under the PPDA 2005 and hence was not subject to the Public Procurement and Disposal Act 2015.

Negotiation Report

This contract was also signed as per the terms of reference spelt out in the bidding document and the tender sum quoted by the consultant which were agreeable to both parties.

Section 84 of the Public Procurement and Disposal Act, 2005 under which the contract was administered states that 'A procuring entity may negotiate with a person who submitted the successful proposal and may request and permit changes (in the terms of reference)

It was therefore not mandatory to conduct negotiations in a contract if the terms and scope of the assignment are agreeable to both parties. Hence the Authority adhered to the law in the procurement process.

Committee Observation

1. The auditors erroneously made reference to a Public Procurement and Asset Disposal Act 2015 instead of the Public Procurement and Disposal Act of 2005
2. The Committee resolved that the audit query is resolved.

MIN/PIC/2019/053: ACTUAL EXPENDITURE DIFFERENCES FY 2015/16

The heard that actual expenditure reflected in the statement of financial performance differs with the actual amount reflected in the statement of comparison of budget and actual amounts for the year ended 30 June 2016 as follows:

Item	Statement of Financial Performance (Kshs)	Statement of Comparison of Budge & Actual (Kshs)
Employee costs	79,747,620	81,673,607
Depreciation	10,545,474	Nil
Grants & Subsidies	57,425,750	43,977,852
Operating expenses	227,764,523	227,927,445
Total Expenses	383,318,885	361,414,422

Management Response

The actual expenditure reflected in the statement of performance were different from the actual amount reflected in the statement of comparison of budget and actual amounts. Both statements were prepared in line with International Public Sector Accounting Standards (IPSAS) and template provided by the National Treasury (*Annex 4*)

The difference in amounts reflected in the two statements was occasioned by the basis of accounting used. Statement of performance prepared using accrual basis of accounting while statement of comparison of budget actual amount was on cash basis of accounting. Hence the actual amounts captured in statement of comparison of budget and actual amounts tally with the figures reflected in the statement of cash flow and not statement of performance.

However Note 16 of page 19 of the same annual report addressed the matter. (*Reconciliation for the two statements provide as Annex 5*)

Committee Observations

1. Use of different reporting standards caused the difference.
2. Reconciliation has since been made after the treasury circular of 30th June 2018.
3. The Committee resolved that the audit query is resolved.

MIN/PIC/2019/054: EXAMINATION OF THE AUDITED ACCOUNTS OF NATIONAL COMMUNICATION SECRETARIAT FY 2008/09

Mr. Daniel Obam, the Chief Executive Officer of the National Communication Secretariat accompanied by Eng. Vincent Adul (Communication Technology Expert) and Mr. Peter Wambugu Muhoro (Accountant) appeared before the Committee to adduce evidence on the audited accounts of the Secretariat for the financial year 2008/09 to financial year 2016/17.

The Committee heard that the Secretariat's audited accounts for the financial year 2008/2009 was unqualified.

MIN/PIC/2019/055: EXAMINATION OF THE AUDITED ACCOUNTS OF NATIONAL COMMUNICATION SECRETARIAT FY 2009/10

The Committee heard that the Secretariat's audited accounts for the financial year 2009/2010 was unqualified.

MIN/PIC/2019/056: EXAMINATION OF THE AUDITED ACCOUNTS OF NATIONAL COMMUNICATION SECRETARIAT FY 2010/11

The Committee heard that the Secretariat's audited accounts for the financial year 2010/2011 was unqualified.

MIN/PIC/2019/057: EXAMINATION OF THE AUDITED ACCOUNTS OF NATIONAL COMMUNICATION SECRETARIAT FY 2011/12

The Committee heard that the Secretariat's audited accounts for the financial year 2011/2012 was unqualified.

MIN/PIC/2019/058: EXAMINATION OF THE AUDITED ACCOUNTS OF NATIONAL COMMUNICATION SECRETARIAT FY 2012/13

The Committee heard that the Secretariat's audited accounts for the financial year 2012/2013 was unqualified.

MIN/PIC/2019/059: EXAMINATION OF THE AUDITED ACCOUNTS OF NATIONAL COMMUNICATION SECRETARIAT FY 2013/14

The Committee heard that the Secretariat's audited accounts for the financial year 2013/2014 was unqualified.

MIN/PIC/2019/060: EXAMINATION OF THE AUDITED ACCOUNTS OF NATIONAL COMMUNICATION SECRETARIAT FY 2014/15

The Committee heard that the Secretariat's audited accounts for the financial year 2014/2015 was unqualified.

MIN/PIC/2019/061: EXAMINATION OF THE AUDITED ACCOUNTS OF NATIONAL COMMUNICATION SECRETARIAT FY 2015/16

The Committee heard that the Secretariat's audited accounts for the financial year 2015/2016 was unqualified.

MIN/PIC/2019/062: EXAMINATION OF THE AUDITED ACCOUNTS OF NATIONAL COMMUNICATION SECRETARIAT FY 2016/17

The Committee heard that the Secretariat's audited accounts for the financial year 2016/2017 was unqualified.

MIN/PIC/2019/063: OTHER MATTER FY 2016/17

A review of the Secretariat's staff composition revealed that one ethnic community accounts for 44% of the total staff. Therefore, the Secretariat contravened Article 232 (1) (h) on the values and principles of public service for the representation of the Kenya's diverse communities, and Section 7 of the National Cohesion and Integration Act, 2008 on discrimination in employment in all public establishments and which should represent the diversity of the people of Kenya and that no public establishment shall have more than a third of its staff coming from one ethnic community.

Consequently, the management is in breach of law.

Management Response

The recruitment of staff at the top position at the Secretariat i.e the Communications' secretariat and experts was conducted by the Ministry of Information, Communication and Technology. The Secretariat was not involved and hence did not influence bias towards or against any ethnic community.

In the ongoing recruitment to fill the current vacant positions, the Secretariat was keen to bring the matter to the attention of the recruitment panel involved in the process of selecting, shortlisting and interviewing of candidates.

Committee Observations

1. The National Cohesion and Integration Committee has been following up on these matters as they fall within its mandate.
2. The two officers recruited recently did not include tribes that had been overrepresented.

Committee recommendation

The secretariat should adhere to Section 7 of the NCIC Act whenever recruitment of staff happens.

MIN/PIC/2019/064: ANY OTHER BUSINESS

No other business arose

MIN/PIC/2019/065: ADJOURNMENT

The meeting was adjourned at three minutes to twelve O'clock.

Signed

Date.....

The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

MINUTES OF THE 11TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON
TUESDAY 12TH MARCH 2019 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS
AT 10.00 A.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
4. The Hon. Raphael Bitta Sauti Wanjala, MP
5. The Hon. Thuku Zachary Kwenya, M.P
6. The Hon. John Muchiri Nyaga, M.P
7. The Hon. Joash Nyamache Nyamoko, MP
8. The Hon. Mohamed Hire Garane, M.P.
9. The Hon. Omar Mohamed Maalim Hassan, MP
10. The Hon. Paul Kahindi Katana, MP

ABSENT WITH APOLOGY

1. The Hon. Purity Wangui Ngirici, MP
2. The Hon. Gladys Wanga, MP
3. The Hon. Rashid Kassim Amin, MP
4. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
5. The Hon. Justus Kizito Mugali, MP
6. The Hon. Mary Wamaua Njoroge, MP
7. The Hon. James Kamau Githua Wamacukuru, M.P
8. The Hon. Babu Owino Paul Ongili, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 2. Mr. Mohamed Boru | - | Third Clerk Assistant |
| 3. Ms. Sharon Rotino | - | Research Officer |
| 4. Ms. Marlene Ayiro | - | Legal Counsel |
| 5. Ms. Noelle Chelagat | - | Media Relations Officer |
| 6. Ms. Winfred Atieno | - | Audio Recording Officer |

IN ATTENDANCE

- | | | |
|-----------------------------|---|--|
| 1. Mr. George Otieno Nashon | - | Deputy Director, Audit |
| 2. Mr. Evans Kaleka | - | Manager, Audit |
| 3. Mr. David Gichuhi | - | Deputy Inspector General, Corporations |

MIN/PIC/2019/043: PRELIMINARIES

The Chairperson called the meeting to order at twenty minutes past ten O'clock followed by a word of prayer.

MIN/PIC/2019/044: EXAMINATION OF AUDITED ACCOUNTS OF MEDICAL PRACTITIONERS AND DENTISTS BOARD

Mr. Daniel Yumbya, the Chief Executive Officer of Kenya Medical Practitioners and Dentists Board accompanied by Mr. Sospeter Oyano (Accountant), Mr. John Mburu (Human Resource Manager) and Mr. Michael Onyango (Legal Officer) appeared before the Committee to adduce evidence on the audited accounts of the Board for FY 2013/14 to FY 2016/17.

The Committee heard that the Board received Unqualified reports from the Auditor General for the FY 2013/14 to FY 2016/17

The Committee commended the management of KMPDB for their prudent financial management.

MIN/PIC/2019/045: ANY OTHER BUSINESS

The Committee requested the Office of the Auditor General to provide a status update on the Special Audits requested.

MIN/PIC/2019/046: ADJOURNMENT

The meeting was adjourned at ten minutes to eleven O'clock.

Signed

Date.....

The Hon. Abdullswamad Sharraf Nassir, MP
(Chairperson)

MINUTES OF THE 10TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY 7TH MARCH 2019 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10.00 A.M.

PRESENT

1. The Hon. Abdullswamad Sharif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
4. The Hon. Raphael Bitta Sauti Wanjala, MP
5. The Hon. Thuku Zachary Kwenya, M.P
6. The Hon. John Muchiri Nyaga, M.P
7. The Hon. Justus Kizito Mugali, MP
8. The Hon. Rashid Kassim Amin, MP
9. The Hon. Mary Wamaua Njoroge, MP
10. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP

ABSENT WITH APOLOGY

1. The Hon. Joash Nyamache Nyamoko, HSC, MP
2. The Hon. Purity Wangui Ngirici, MP
3. The Hon. Gladys Wanga, MP
4. The Hon. James Kamau Githua Wamacukuru, M.P
5. The Hon. Babu Owino Paul Ongili, MP
6. The Hon. Mohamed Hire Garane, M.P.
7. The Hon. Omar Mohamed Maalim Hassan, MP
8. The Hon. Paul Kahindi Katana, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 2. Mr. Mohamed Boru | - | Third Clerk Assistant |
| 3. Ms. Sharon Rotino | - | Research Officer |
| 4. Ms. Noelle Chelagat | - | Media Relations Officer |
| 5. Ms. Winfred Atieno | - | Audio Recording Officer |

IN ATTENDANCE

- | | | |
|-----------------------------|---|--|
| 1. Mr. Lamech Achika | - | Director, Audit |
| 2. Mr. George Otieno Nashon | - | Deputy Director, Audit |
| 3. Mr. Evans Kaleka | - | Manager, Audit |
| 4. Mr. David Gichuhi | - | Deputy Inspector General, Corporations |

MIN/PIC/2019/040: PRELIMINARIES

The Chairperson called the meeting to order at twenty nine minutes past ten O'clock followed by a word of prayer by Hon. Chrisantus Wamalwa, MP.

MIN/PIC/2019/041: MEETING WITH KERIO VALLEY DEVELOPMENT AUTHORITY

Mr. David Kimosop, the Managing Director of Kerio Valley Development Authority accompanied by Mr. Moses Kipchumba (Manager, Finance and Accounting), Mr. Peter Kirui (Assistant Manager, Audit), Eng. Paul Serem (Assistant Manager, Irrigation), Mr. Joshua Mosoti (Assistant Manager, Finance and Accounting) and Ms. Charity Muui (Supply Chain Management Officer) appeared before the Committee to adduce evidence on the audited accounts of the Authority for FY 2015/16 to FY 2017/18.

The Committee heard that the Auditors had not seen the response to the audit queries by Kerio Valley Development Authority (KVDA) before this meeting.

The Committee further heard that the Management letter for the Authority's FY 2017/18 accounts had not been issued.

The Hon. Rashid Kassim Amin and The Hon. Justus Kizito declared their interest as per Standing Order 90 in that they knew the KVDA Managing Director on a personal basis.

Committee Resolution

The Committee resolved to defer the sitting to allow the Auditors to review the responses by KVDA for concurrence.

MIN/PIC/2019/042: ADJOURNMENT

The meeting was adjourned at ten minutes to eleven O'clock.

Signed

The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

Date..... 04/04/2019

MINUTES OF THE 11TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON TUESDAY 12TH MARCH 2019 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10.00 A.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
4. The Hon. Raphael Bitta Sauti Wanjala, MP
5. The Hon. Thuku Zachary Kwenya, M.P
6. The Hon. John Muchiri Nyaga, M.P
7. The Hon. Joash Nyamache Nyamoko, MP
8. The Hon. Mohamed Hire Garane, M.P.
9. The Hon. Omar Mohamed Maalim Hassan, MP
10. The Hon. Paul Kahindi Katana, MP

ABSENT WITH APOLOGY

1. The Hon. Purity Wangui Ngirici, MP
2. The Hon. Gladys Wanga, MP
3. The Hon. Rashid Kassim Amin, MP
4. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
5. The Hon. Justus Kizito Mugali, MP
6. The Hon. Mary Wamaua Njoroge, MP
7. The Hon. James Kamau Githua Wamacukuru, M.P
8. The Hon. Babu Owino Paul Ongili, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 2. Mr. Mohamed Boru | - | Third Clerk Assistant |
| 3. Ms. Sharon Rotino | - | Research Officer |
| 4. Ms. Marlene Ayiro | - | Legal Counsel |
| 5. Ms. Noelle Chelagat | - | Media Relations Officer |
| 6. Ms. Winfred Atieno | - | Audio Recording Officer |

IN ATTENDANCE

- | | | |
|-----------------------------|---|--|
| 1. Mr. George Otieno Nashon | - | Deputy Director, Audit |
| 2. Mr. Evans Kaleka | - | Manager, Audit |
| 3. Mr. David Gichuhi | - | Deputy Inspector General, Corporations |

MIN/PIC/2019/043: PRELIMINARIES

The Chairperson called the meeting to order at twenty minutes past ten O'clock followed by a word of prayer.

MIN/PIC/2019/044: EXAMINATION OF AUDITED ACCOUNTS OF MEDICAL PRACTITIONERS AND DENTISTS BOARD

Mr. Danel Yumbya, the Chief Executive Officer of Kenya Medical Practitioners and Dentists Board accompanied by Mr. Sospeter Oyano (Accountant), Mr. John Mburu (Human Resource Manager) and Mr. Michael Onyango (Legal Officer) appeared before the Committee to adduce evidence on the audited accounts of the Board for FY 2013/14 to FY 2016/17.

The Committee heard that the Board received Unqualified reports from the Auditor General for the FY 2013/14 to FY 2016/17

The Committee commended the management of KMPDB for their prudent financial management.

MIN/PIC/2019/045: ANY OTHER BUSINESS

The Committee requested the Office of the Auditor General to provide a status update on the Special Audits requested.

MIN/PIC/2019/046: ADJOURNMENT

The meeting was adjourned at ten minutes to eleven O'clock.

Signed

Date.....21/03/2019.....

The Hon. Abdullswamad Sharraf Nassir, MP
(Chairperson)

MINUTES OF THE 10TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY 7TH MARCH 2019 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10.00 A.M.

PRESENT

1. The Hon. Abdullswamad Sharraf Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
4. The Hon. Raphael Bitta Sauti Wanjala, MP
5. The Hon. Thuku Zachary Kwenya, M.P
6. The Hon. John Muchiri Nyaga, M.P
7. The Hon. Justus Kizito Mugali, MP.
8. The Hon. Rashid Kassim Amin, MP
9. The Hon. Mary Wamaua Njoroge, MP
10. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP

ABSENT WITH APOLOGY

1. The Hon. Joash Nyamache Nyamoko, MP
2. The Hon. Purity Wangui Ngirici, MP
3. The Hon. Gladys Wanga, MP
4. The Hon. James Kamau Githua Wamacukuru, M.P
5. The Hon. Babu Owino Paul Ongili, MP
6. The Hon. Mohamed Hire Garane, M.P.
7. The Hon. Omar Mohamed Maalim Hassan, MP
8. The Hon. Paul Kahindi Katana, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 2. Mr. Mohamed Boru | - | Third Clerk Assistant |
| 3. Ms. Sharon Rotino | - | Research Officer |
| 4. Ms. Noelle Chelagat | - | Media Relations Officer |
| 5. Ms. Winfred Atieno | - | Audio Recording Officer |

IN ATTENDANCE

- | | | |
|-----------------------------|---|--|
| 1. Mr. Lamech Achika | - | Director, Audit |
| 2. Mr. George Otieno Nashon | - | Deputy Director, Audit |
| 3. Mr. Evans Kaleka | - | Manager, Audit |
| 4. Mr. David Gichuhi | - | Deputy Inspector General, Corporations |

MIN/PIC/2019/040:

PRELIMINARIES

The Chairperson called the meeting to order at twenty nine minutes past ten O'clock followed by a word of prayer by Hon. Chrisantus Wamalwa, MP.

MIN/PIC/2019/036: MEETING WITH THE PS FOR TRANSPORT

1. The Chairman informed the Committee that the proposed meeting with the Principal Secretary, State Department of Transport on the matter of the proposed takeover of operations at Jomo Kenyatta International Airport (JKIA) by Kenya Airways (KQ) was rescheduled on receiving advice that the said meeting could only be fruitful once the requested special audit has been done and made available to the Committee.
2. The Committee expressed concern on the erroneous media reports indicating that the Speaker had stopped the Public Investments Committee from considering the matter of KQ's proposed takeover of the management and operations of the JKIA.
3. The Committee noted that its Progress Report on the inquiry into the proposed takeover of operations at JKIA by Kenya Airways had been scheduled for debate albeit the second last order of the day. The Members undertook to be present in the House to support the report.

MIN/PIC/2019/037: COMMITTEE WORKPLAN

The Committee deliberated on the matter and resolved as follows:

1. The Committee would invite the Kenya Airports Authority to conclude examination of the Auditor General's report for the Authority that has been pending.
2. To expedite examination of accounts, the Committee will be meeting at least one state corporation with clean accounts on both Tuesdays and Thursdays. The secretariat, in consultation with the Chairman, was asked to develop a programme to implement the same.
3. Endorse the Chairman's decision to request for a Special Audit on procurement of transportation services of cargo through the SGR by the Kenya Railways Corporation.
4. The Committee would consider meeting on Fridays if time allows.
5. The Committee will expedite conclusion of the pending Report on Procurement of EGMS by the KRA.

MIN/PIC/2019/038: ADJOURNMENT

The meeting was adjourned at sixteen minutes past twelve O'clock.

Signed
The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

Date..... 12/02/2019

MINUTES OF THE 8TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY 28TH FEBRUARY 2019 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10.00 A.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
3. The Hon. Raphael Bitta Sauti Wanjala, MP
4. The Hon. Paul Kahindi Katana, MP
5. The Hon. Justus Kizito Mugali, MP
6. The Hon. Babu Owino Paul Ongili, MP
7. The Hon. Purity Wangui Ngirici, MP
8. The Hon. Mohamed Hire Garane, M.P.

ABSENT WITH APOLOGY

1. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
2. The Hon. Mary Wamaua Njoroge, MP
3. The Hon. John Muchiri Nyaga, M.P
4. The Hon. Gladys Wanga, MP
5. The Hon. Thuku Zachary Kwenya, M.P
6. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
7. The Hon. Joash Nyamache Nyamoko, MP
8. The Hon. Omar Mohamed Maalim Hassan, MP
9. The Hon. Rashid Kassim Amin, MP
10. The Hon. James Kamau Githua Wamacukuru, M.P

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 2. Mr. Mohamed Boru | - | Clerk Assistant III |
| 3. Ms. Sharon Rotino | - | Research Officer |
| 4. Ms. Noelle Chelagat | - | Media Relations Officer |
| 5. Ms. Winfred Atieno | - | Audio Recording Officer |

AUDITOR GENERAL

- | | | |
|---------------------|---|----------|
| Mr. George Nahashon | - | Director |
|---------------------|---|----------|

MIN/PIC/2019/030: PRELIMINARIES

The Hon. Justus Kizito, MP (Ag. Chairperson for the meeting) called the meeting to order at fifty minutes past ten O'clock followed by a word of prayer.

**MIN/PIC/2019/031: EXAMINATION OF AUDITOR GENERAL'S REPORTS OF THE
ACCOUNTS OF KASNEB FOR FYS 2015/16 AND 2015/2016**

Mr. I. M. Njuguna appeared before the Committee to adduce evidence on the Reports of the Auditor General on the financial statements of the Kenya Accountants And Secretaries National Examination Board for the financial years 2015/15 and 2015/16. He informed the Committee that:

1. Audit report for the FY 2015/2016 was unqualified
2. Audit report for the FY 2016/2017 was unqualified

MIN/PIC/2019/032: COMMITTEE OBSERVATIONS

The Committee congratulated KASNEB for maintaining financial prudence in expenditure and accounting for public resources.

MIN/PIC/2019/033: ADJOURNMENT

The meeting was adjourned at seven minutes past eleven O'clock.

Signed
The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

Date..... 05/03/2019

MINUTES OF THE 7TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON TUESDAY, 26TH FEBRUARY 2019 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10.00 A.M.

PRESENT

1. The Hon. Abdullswamad Sharraf Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
4. The Hon. Raphael Bitta Sauti Wanjala, MP
5. The Hon. Thuku Zachary Kwenya, M.P
6. The Hon. James Kamau Githua Wamacukuru, M.P
7. The Hon. Paul Kahindi Katana, MP
8. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
9. The Hon. Joash Nyamache Nyamoko, MP
10. The Hon. Omar Mohamed Maalim Hassan, MP
11. The Hon. Rashid Kassim Amin, MP
12. The Hon. Justus Kizito Mugali, MP
13. The Hon. Babu Owino Paul Ongili, MP

ABSENT WITH APOLOGY

1. The Hon. Mary Wamaia Njoroge, MP
2. The Hon. Purity Wangui Ngirici, MP
3. The Hon. John Muchiri Nyaga, M.P
4. The Hon. Gladys Wanga, MP
5. The Hon. Mohamed Hire Garane, M.P.

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 2. Mr. Mohamed Boru | - | Clerk Assistant III |
| 3. Ms. Sharon Rotino | - | Research Officer |
| 4. Ms. Noelle Chelagat | - | Media Relations Officer |
| 5. Ms. Winfred Atieno | - | Audio Recording Officer |

MIN/PIC/026/2019: PRELIMINARIES

The Chairperson called the meeting to order at thirty minutes past ten O'clock followed by a word of prayer.

MIN/PIC/027/2019: CONFIRMATION OF MINUTES

1. Minutes of the 1st sitting held on 7th February 2019 were confirmed as a true record of the proceedings after being proposed by the Hon. Rashid Kassim, MP and seconded by Hon. Justus Kizito, MP.

2. Minutes of the 2nd sitting held on 7th February 2019 were confirmed as a true record of the proceedings after being proposed by the Hon. Zachary Thuku, MP and seconded by Hon. Rashid Kassim, MP.
3. Minutes of the 3rd sitting held on 12th February 2019 were confirmed as a true record of the proceedings after being proposed by the Hon. Ahmed Abdisalan, MP and seconded by Hon. Abdullswamad Sharrif Nassir, MP, MP.
4. Minutes of the 4th sitting held on 14th February 2019 were confirmed as a true record of the proceedings after being proposed by the Hon. Rashid Kassim, MP and seconded by Hon. Justus Kizito, MP.
5. Minutes of the 5th sitting held on 19th February 2019 were confirmed as a true record of the proceedings after being proposed by the Hon. Zachary Thuku, MP and seconded by Hon. Justus Kizito, MP.
6. Minutes of the 6th sitting held on 21st February 2019 were confirmed as a true record of the proceedings after being proposed by the Hon. Prof. Mohamed Sheik Mohamed, MP

MIN/PIC/028/2019: ADOPTION OF THE PROGRESS REPORT ON THE INQUIRY INTO PROPOSED TAKEOVER OF JOMO KENYATTA INTERNATIONAL AIRPORT BY THE KENYA AIRWAYS

The Committee went through the draft report and adopted it unanimously. The secretariat was asked to process it for tabling.

MIN/PIC/029/2019: ADJOURNMENT

The meeting was adjourned at thirty minutes past twelve O'clock.

Signed

The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

Date.....

26/02/2019

MINUTES OF THE 6TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY, 21ST FEBRUARY 2019 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10.00A.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Dr. Chrisantus Wamalwa Wakhungu, MP
4. The Hon. Raphael Bitta Sauti Wanjala, MP
5. The Hon. Purity Wangui Ngirici, MP
6. The Hon. Thuku Zachary Kwenya, M.P
7. The Hon. Gladys Wanga,MP
8. The Hon. John Muchiri Nyaga, M.P
9. The Hon. James Kamau Githua Wamacukuru, M.P
10. The Hon. Paul Kahindi Katana, MP
11. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
12. The Hon. Mohamed Hire Garane, M.P.
13. The Hon. Joash Nyamache Nyamoko, MP
14. The Hon. Omar Mohamed Maalim Hassan, MP
15. The Hon. Rashid Kassim Amin, MP

ABSENT WITH APOLOGY

1. The Hon. Mary Wamaua Njoroge, MP
2. The Hon. Babu Owino Paul Ongili, MP
3. The Hon. Justus Kizito Mugali, MP

IN ATTENDANCE - NATIONAL ASSEMBLY

1. The Hon. Alfred Keter, MP
2. The Hon. Moses Kuria, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Mr. Mohamed Boru | - | Clerk Assistant III |
| 2. Ms. Sharon Rotino | - | Research Officer |
| 3. Ms. Doreen Karani | - | Legal Counsel |
| 4. Ms. Noelle Chelagat | - | Media Relations Officer |
| 5. Ms. Winfred Atieno | - | Audio Recording Officer |

IN ATTENDANCE

- | | | |
|-----------------------------|---|------------------------|
| 1. Mr. Boniface Muli | - | Director, Audit |
| 2. CPA Henry Nyandwaki | - | Deputy Director, Audit |
| 3. Mr. George Otieno Nashon | - | Manager, Audit |
| 4. Mr. Joshiah Oyuko | - | Manager, Audit |

MIN/PIC/022/2019: PRELIMINARIES

The Chairperson called the meeting to order at two minutes past ten O'clock followed by a word of prayer.

MIN/PIC/023/2019: EVIDENCE BY THE KENYA AIRPORTS AUTHORITY

Mr. Johnny Andersen, the Managing Director of the Kenya Airports Authority accompanied by Mr. Alex Gitari (General Manager, Finance), Ms. Katherine Kisila (Corporation Secretary), Mr. Samson Kimilu (General Manager, Risk Management & Internal Audit), Mr. Patrick Wanjuki (General Manager, Procurement & Logistics), and Ms. Angela Tilitei (Communication Manager) appeared before the Committee to adduce evidence on the proposed takeover of Jomo Kenyatta International Airport by Kenya Airways.

He informed the Committee as follows:

1. On 29th May, 2018, the Cabinet, through a Cabinet Memorandum (CAB 18/28) granted an in-principle approval to Kenya Airways (KQ) and Kenya Airports Authority (KAA) to develop and subsequently engage in a framework that will lead to the optimization of operations of Jomo Kenyatta International Airport (JKIA).
2. In a letter dated 19th June, 2018, the Principal Secretary (PS), State Department of Transport issued instructions to KAA and KQ to proceed with the implementation of the Cabinet directive.
3. On 5th October, 2018, the Authority received a Privately Initiated Investment Proposal from KQ. The PIIP is anchored on the Public Private Partnership (PPP) Act, 2013 and broadly envisages the following transaction structure:
 - a. A 30-year concession framework under which KQ will seek, through a Special Purpose Vehicle (SPV) to manage and develop JKIA at a fee (concession fee) leaving KAA to manage all other Kenyan airports and airstrips;
 - b. Inclusion of JKIA's aviation infrastructure in the concession as will be enumerated in the Project Agreement upon conclusion of due diligence;
 - c. Engagement by the Concessionaire of an external Airport Advisor to implement solutions and airport management best practices; and
 - d. KQ committing to meet minimum investment requirements as shall be negotiated with KAA.
4. The rationale for the proposed transaction is to implement Government policy which seeks consolidation of key aviation assets to realize significant operational efficiencies and synergies, restoration of the aviation sector's regional and international competitiveness, protection of JKIA's regional hub status, improved diversification and utilization of JKIA resources and support for KQ's turnaround.
5. KQ accounts for over 40% of KAA's business and revenues. KQ and KAA therefore

have a symbiotic relationship which could be enhanced for the benefit of Kenya's aviation sector through closer collaboration with KAA. The Authority therefore supports an engagement with KQ that will result in the optimization of the country's aviation assets and this has been the basis for accepting to evaluate the proposal as a basis for forging a mutually regarding partnership.

Committee Observations

The Committee made the following observations:

1. The Committee observed that the following documents were not submitted by the Authority as requested during the previous meeting:
 - a. A copy of the Cabinet memo referenced in their submission. They stated that they only received a letter from the Principal Secretary, Transport informing them of the cabinet decision on the proposed takeover;
 - b. A copy of the Privately Initiated Investment Proposal (PIIP) by Kenya Airways. A copy of the letter forwarding the PIIP was instead submitted;
 - c. Correspondence by KAA in response to the letters by PS, Transport as well as the KQ Managing Director;
 - d. A copy of the Report by the Transactional Advisor on the proposed takeover. The Authority noted that the Report was a draft and not the final version, hence could not be shared.
2. The Chair of the KAA Board had indicated his conflict of interest during the Board's 296th sitting by stating that he is the Chairman of a bank which is a big shareholder in KQ. He however stated that he would put this conflict aside and focus on KAA.
3. The KAA Board had been apprised of the matter of the proposed takeover including the risks associated with it.
4. JKIA accounts for nearly 83% of KAA's revenue and 51% of the recurrent expenditure. The Authority would therefore lose the majority of its revenue-generating asset if the takeover was to be effected.
5. Should JKIA be handed over to KQ, the arrangement will deprive KAA significant resources given that the concession fee will not significantly cover the operational costs of the remaining airports, airstrips and the head office.
6. In KQ's financial model as per the PIIP, the annual concession fee has been set at USD 28 Million (equivalent to Kshs. 2.9 Billion) in 2019, rising gradually to USD 35 Million (Kshs. 3.6 Billion) and peaking at USD 60 Million (Kshs. 6.1 Billion) in 2033.
7. In comparison, KAA's non-JKIA operations in the 2018/19 financial year amount to Kshs. 6.6 Billion in recurrent expenditure, hence leaving a shortfall of Kshs. 3.7 Billion from the concession fee of Kshs. 2.9 Billion.
8. KQ's proposal further assumes that KAA will retain all contingent liabilities including those arising from JKIA operation, a situation that would leave KAA worse off financially.

9. KQ had attempted various interventions geared at restructuring, including engaging McKinsey but had not been successful in such attempts. There was therefore no guarantee that its proposed takeover of JKIA would work.
10. The attempt to model KQ's takeover of JKIA operations along the line of national carriers in Ethiopia and United Arab Emirates was not practical since the latter two's national airlines are fully owned by their respective States.
11. The procurement process for the transactional advisor was not an open tender but a restricted tender and the Authority pointed out that the decision was advised by the time constraints that would not allow for a lengthy procurement process.
12. The transaction advisor, MMC Africa Law, had a valid contract for the provision of service to KAA and had been paid 10% of the total contract sum.
13. KAA did not initiate the proposal. The PIIP was submitted by Kenya Airways following the Government directive. KAA was also limited in terms of offering a different strategic direction from the one proposed by KQ as the Government policy set out the end result to be achieved.
14. The Authority had allegedly been given a mid-December 2018 timeline to complete the transaction as per the Board minutes.
15. The Authority was considering the PIIP as mandated by the Public Private Partnership Act and was carrying out due diligence on the proposal. No decision had as yet been made on whether to accept or reject the proposal.

Committee Resolutions

The Committee made the following resolutions:

1. All engagement between the Kenya Airports Authority and Kenya Airways regarding the Privately Initiated Investment Proposal on the takeover of JKIA operations should cease until the Committee inquiry is concluded and the House pronounces itself on the matter.
2. The Office of the Auditor General should conduct a special audit on the proposed concession arrangement with a view to establishing adherence to the relevant laws, the risks that KAA and the public face if the takeover is implemented and the procurement process for the services of the transaction advisor.

MIN/PIC/024/2019: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/025/2019: ADJOURNMENT

The meeting was adjourned at twenty minutes past one O'clock.

Signed.....

Date.....

The Hon. Abdullswamad Sharrif Nassir, MP (Chairperson)

MINUTES OF THE 5TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON
TUESDAY, 19TH FEBRUARY 2019 IN COMMITTEE ROOM 7, MAIN PARLIAMENT
BUILDINGS AT 10.00A.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Dr. Chrisantus Wamalwa Wakhungu, MP
4. The Hon. Raphael Bitta Sauti Wanjala, MP
5. The Hon. Purity Wangui Ngirici, MP
6. The Hon. Thuku Zachary Kwenya, M.P
7. The Hon. Gladys Wanga, MP
8. The Hon. John Muchiri Nyaga, M.P
9. The Hon. James Kamau Githua Wamacukuru, M.P
10. The Hon. Paul Kahindi Katana, MP
11. The Hon. Joash Nyamache Nyamoko, MP
12. The Hon. Babu Owino Paul Ongili, MP
13. The Hon. Justus Kizito Mugali, MP
14. The Hon. Omar Mohamed Maalim Hassan, MP
15. The Hon. Rashid Kassim Amin, MP

ABSENT WITH APOLOGY

1. The Hon. Mary Wamaua Njoroge, MP
2. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
3. The Hon. Mohamed Hire Garane, M.P.

IN ATTENDANCE - NATIONAL ASSEMBLY

1. The Hon. Alfred Keter, MP
2. The Hon. Jude Njomo, MP
3. The Hon. Joshua Kandie, M.P.

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Mr. Mohamed Boru | - | Clerk Assistant III |
| 2. Ms. Sharon Rotino | - | Research Officer |
| 3. Ms. Doreen Karani | - | Legal Counsel |
| 4. Ms. Noelle Chelagat | - | Media Relations Officer |
| 5. Ms. Winfred Atieno | - | Audio Recording Officer |

IN ATTENDANCE

- | | | |
|------------------------|---|------------------------------------|
| 1. Mr. Boniface Muli | - | Director, Audit |
| 2. CPA Henry Nyandwaki | - | Deputy Director, Audit |
| 3. Mr. Joshiah Oyuko | - | Manager, Audit |
| 4. Mr. Francis Kabui | - | Manager, Audit |
| 5. Mr. Bernard Ngulalu | - | Inspectorate of State Corporations |

MIN/PIC/018/2019: PRELIMINARIES

The Chairperson called the meeting to order at eight minutes past ten O'clock followed by a word of prayer. The Chairperson noted that incidental to the matter of the Authority's audited accounts was the matter of the proposed takeover of operations at Jomo Kenyatta International Airport by Kenya Airways. The Managing Director of Kenya Airports Authority was asked to appraise the Committee on the matter.

MIN/PIC/019/2019: EVIDENCE BY THE KENYA AIRPORTS AUTHORITY

Mr. Johnny Andersen, the Managing Director of the Kenya Airports Authority accompanied by Mr. Alex Gitari (General Manager, Finance), Ms. Katherine Kisila (Corporation Secretary), Mr. Samson Kimilu (General Manager, Risk Management & Internal Audit), Mr. Fred Odawo (General Manager, Engineering Services), Mr. Patrick Chonde (Finance Manager) and Ms. Angela Tilitei (Communication Manager) appeared before the Committee to adduce evidence on the report of the Auditor General on the financial statements of the Authority for the financial year 2015/2016.

He informed the Committee as follows:

1. The matter of the proposed takeover of the operations and management of Jomo Kenyatta International Airport (JKIA) by Kenya Airways was a Cabinet decision that was communicated to Kenya Airports Authority in June 2018.
2. The Principal Secretary in the State Department of Transport wrote to Kenya Airports Authority noting the rationale for the proposed takeover being the need to optimize operations at JKIA and reclaim the airports' status as aviation hub in the region. This was after the airport lost significant market share other airports in the region in the last few years.
3. In October 2018, Kenya Airports Authority received a proposal from Kenya Airways to operate, manage and develop JKIA for a concessional period of 30 years
4. The Authority proceeded to seek guidance from the National Treasury on how to deal with the matter and received communication to the effect that they should consider the proposal.
5. Kenya Airports Authority was assessing the proposed takeover and has invited the public to submit their views on the matter.
6. On 18th November, 2018, Kenya Airports Authority tendered for the services of a transactional advisor to carry out due diligence on the technical, financial and legal implications of the proposed takeover.
7. The transaction advisor would assist in developing a negotiating criteria for the Authority based on the information and gaps identified from the due diligence process.
8. The Authority had not taken a position on the proposed takeover but would await the report from the transactional advisor and the feedback from the

public before pronouncing its position.

Committee Observations

The Committee made the following observations:

1. The proposal to have Kenya Airways take over the operation and management of Jomo Kenyatta airport was a government policy that was communicated to Kenya Airports Authority through the Ministry of Transport, Infrastructure, Housing and Urban Development.
2. The project is being considered by the Kenya Airports Authority having received a proposal from Kenya Airways to take over operations of the airport through a 30-year concession.
3. The Kenya Airports Authority's Board of Directors had considered the matter of the proposed takeover and advised the management to appoint a transactional advisor who would help in carrying out the necessary due diligence.
4. The Report from the transactional advisor had identified a lot of gaps and risks that KAA faces from the proposed takeover, including loss of revenue.
5. The proposed takeover is being rushed despite obvious risks associated with it including concerns on its financial viability and the potential loss of jobs at Kenya Airports Authority.
6. There is a potential conflict of interest in the proposed takeover where the Chairperson of the KAA Board also chairs a bank which is a shareholder in Kenya Airways, the entity that proposes to take over the airport.
7. The procurement for the services of the transactional advisor was done through restricted tendering due to what the Authority cited as time constraints in going through an open tendering process.
8. As of February 2019, Kenya Airways owes a debt of approximately Kshs. 3.8 B to Kenya Airports Authority.
9. Kenya Airports Authority is a profit-making State Corporation while Kenya Airways has been posting losses in their most recent financial statements yet the latter proposes to take over the management of Jomo Kenyatta International Airport from the former.
10. Staff based at the Kenya Airports Authority had sought legal action in court to stop the proposed takeover of JKIA operations by Kenya Airways.

Committee Resolutions

The Committee made the following resolutions:

1. The Management of Kenya Airports Authority should re-appear before the Committee on Thursday 21st February, 2019 with a written submission providing a chronology of the project from conceptualization to the current status.
2. The Management should avail the following documents when re-appearing before the Committee:
 - a. A copy of the Cabinet Memo on the proposed takeover of JKIA by Kenya

Airways;

- b. Board resolutions on the matter;
 - c. KAA letter to Treasury seeking guidance on the proposal;
 - d. The Privately Initiated Investment Proposal from Kenya Airways;
 - e. Details on the procurement process for the transactional advisor;
 - f. A copy of the due diligence report by the transactional advisor;
 - g. The current status of the public participation exercise for the proposed takeover.
3. The Board of Directors at Kenya Airports Authority to appear before the Committee to adduce evidence on the matter.

MIN/PIC/020/2019: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/021/2019: ADJOURNMENT

The meeting was adjourned at six minutes past twelve O'clock.

Signed.....

The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

Date.....

26/07/2019