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REPUBLIC OF KENYA

TWELFTH PARLIAMENT

NATIONAL ASSEMBLY – FOURTH SESSION

Directorate of Committee Services

PUBLIC INVESTMENTS COMMITTEE

THE TWENTY THIRD REPORT

ON CONSIDERATION OF THE AUDITOR GENERAL'S REPORTS ON THE FINANCIAL STATEMENTS OF STATE CORPORATIONS

VOLUME I

DIRECTORATE OF COMMITTEE SERVICES
THE NATIONAL ASSEMBLY
PARLIAMENT BUILDINGS
NAIROBI

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TABLE OF CONTENTS

LIST OF ABBREVIATIONS/ACRONYMS

ACU	-	AIDS Control Unit
Ag.	-	Acting
AG	-	Attorney General
CAK	-	Communications Authority of Kenya
CBK	-	Central Bank of Kenya
CEO	-	Chief Executive Officer
DCI	-	Directorate of Criminal Investigations
DG	-	Director General
EACC	-	Ethics and Anti-Corruption Commission
EOT	-	Extension of Time
FY	-	Financial Year
GoK	-	Government of Kenya
IAS	-	International Accounting Standards
ICT	-	Information, Communications & Technology
IFRS	-	International Financial Reporting Standards
IPSAS	-	International Public Sector Accounting Standards
KAA	-	Kenya Airports Authority
KES	-	Kenya Shillings
KPC	-	Kenya Pipeline Company

KVB	-	Kenya Veterinary Board
KWS	-	Kenya Wildlife Service
LTD	-	Limited
MD	-	Managing Director
MOU	-	Memorandum of Understanding
M.P.	-	Member of Parliament
NBA	-	National Biosafety Authority
NDMA	-	National Drought Management Authority
NGO	-	Non-Governmental Organization
NIB	-	National Irrigation Board
OAG	-	Office of the Auditor General
PIC	-	Public Investments Committee
PPAD	-	Public Procurement and Asset Disposal Act
PPCB	-	Pest Products Control Board
PPDA	-	Public Procurement and Disposal Act
PS	-	Principal Secretary
SASRA	-	Sacco Societies Regulatory Authority
SEKU	-	South Eastern Kenya University
USD	-	United States Dollar
WIP	-	Work in Progress

CHAIRPERSON'S FOREWORD

Mr. Speaker Sir, the Public Investments Committee is one of the three Watchdog Committees in the twelfth Parliament that examines reports of the Auditor-General laid before the National Assembly to ensure probity, efficiency and effectiveness in the use of public funds. The Committee is established pursuant to Standing Order 206 to examine the working of public investments on the basis of their audited reports and accounts. This ensures implementation of *Article 229(8*) of the Constitution of Kenya, 2010 on reports laid before the House by the Auditor-General which provides that *"Within three months after receiving an audit report, Parliament shall debate and consider the report and take appropriate action"*.

Mr. Speaker Sir, currently, there are more than two hundred and fifty (250) state corporations undertaking different mandates in their respective sectors. Due to this large number, previous Public Investments Committees have been unable to conclude examination of the accounts of the Auditor General of these state corporations.

Considering this backlog, the Committee resolved to examine all the reports of the Auditor General on the accounts of State Corporations with a deliberate effort made to begin with state corporations that have the highest turnover.

Mr. Speaker Sir, in examining the accounts of the Auditor General, the Committee invited accounting officers in each of the state corporations under review to adduce evidence before it.

Mr. Speaker Sir, this report contains observations, findings and recommendations arising from examination of reports of the Auditor-General for forty-eight state corporations for different financial years. The report is structured as follows:

i) general observations arising from recurring and cross-cutting audit queries;

ii) recommendations to each the cross-cutting queries;

iii) audit queries identified by the Auditor General in his audit reports of each state corporation;

iv) management responses to each of the queries;

v) committee observations/ findings on each query, and

vi) Recommendations of the committee to each query raised.

Mr. Speaker Sir, you will note that in this report, the Committee makes policy recommendations and at the same time recommends specific actions against specific officers. It further recommends further investigations of certain matters by competent investigative agencies such as the EACC and the DCI. All these is geared towards ensuring prudence use of public resources and hold all that have misappropriated public funds accoutable.

Mr. Speaker Sir, the Committee had resolved to omit a few audit reservations from this report. Such queries include the Food Security Project in Galana Kulalu implemented by the NIB; Green Field Project implemented by the Kenya Airports Authority and the construction of Kenya Maritime Authority's Head Quarters implemented by the Kenya Maritime Authority. The decision to exclude them from the report was to allow the Committee to meet all the players that were involved in the projects before compiling its report. The Committee's program was affected by the covid -19 pandemic and therefore could not meet all meet witnesses.

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

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

On behalf of the Public Investments Committee, and pursuant to National Assembly Standing Order 199(6), it is my pleasant duty and honour to present to this 23rd Report of the Public Investments Committee report on Audited Financial Statements for four (4) state corporations.

HON. ABDULLSWAMAD SHARRIF NASSIR, MP
CHAIRMAN, PUBLIC INVESTMENTS COMMITTEE

01/07/2020

EXECUTIVE SUMMARY

The 23rd Annual Report of the Public Investments Committee (PIC) contains the Committee's examination of audited financial statements of **forty-eight** state corporations that began in February 2019 and ended in June 2019.

In its examination and scrutiny of the audited financial statements of the various State Corporations, the Committee's primary approach was to elicit background information as to why particular course of financial and/or management actions were or were not taken. This was done with the relevant public financial management principles in mind, including, the public finance management regulations, public procurement and asset disposal legislations, Public Procurement & Asset Disposal Regulations, International Public Sector Accounting Standards (IPSAS) and International Financial Reporting Standards (IFRS) relevant for commercial state corporations.

The preface of the report contains preliminaries on the establishment of the Committee; its membership and Secretariat; mandate; and the guidlining principles while undertaking its mandate.

Part two of this report contains the Committee's General observations / findings on cross cutting issues; and their recommendations.

Part three of this report contains the specific state corporations whose financial statements were examined; the finacial years considered in each state corporation; the specific audit reservations raised by the Auditor General in each Financial Year; Management Response to each audit reservation raised by the Auditor General; Committee Observations/ Findings after considering each audit reservation; and finally Committee recommendations on each audit query.

Committee's General Observations / Findings and Recommendations

The following is a summary of the Committee's general observations and recommendations as per the findings on the audited financial statements of the twenty- one (21) State Corporations:

Ownership of Property, Land and Equipment

The committee noted with concern that several State Corporations did not possess title documents for land and buildings in their occupation. The Kenya Wildlife Service, which has two hundred and twenty-two (222) pieces of land spread across the country had title documents for only forty-five (45) parcels of land.

Similarly, South Eastern Kenya University had seven pieces of the university's land which were not registered under its name. The same challenge recurs in properties belonging to Kenya National Highways Authority, Kenya Airports Authority, National Housing Corporation and Kenya Pipeline Company.

In the case of New Kenya Cooperative Creameries Five (5) acres out 32.94 acres (13.33ha) on which Miritini factory is located was encroached upon by squatters some of whom have already put up permanent structures thereby exposing the Company to likely loss of vital property.

Although the matter was mentioned in previous PIC reports (Twenty First and Twenty Second reports), not much progress was achieved as far as registration was concerned. Under such circumstances, it was not possible to ascertain the ownership and security of the assets. Further, this has led to delays in implementation of the corporation's development project since it is not feasible to undertake a project on property whose ownership is uncertain.

Committee Recommendations

The Committee recommends that -

(i) The accounting officers to liaise with relevant government agencies such as the Ministry of Lands and the National Land Commission, among others, to ensure that they secure ownership documents for all Corporation land.

(ii) The Cabinet Secretary for Land, Housing and Urban Development and the Chairman, National Land Commission should put caveats on all the parcels of State Corporations' land that are in private hands.

(iii) The National Land Commission should prioritize and expedite resolving ownership issues surrounding parcels of land belonging to State Corporations.

(iv) The Judiciary should consider prioritizing and expediting conclusion of cases involving illegal acquisition of public land with the view of restoring the land back to the public.

Procurement Processes and Management of Contracts

The Committee noted with concern that some State Corporations undertook procurement process irregularly contrary to the provisions of the Public Procurement and Assets Disposal Act, regulations and government circulars leading to inflated costs of projects. Additionally, some contracts were managed poorly leading to delays in completion and thus escalation of costs. For instance, the Kenya National Highways Authority for instance initially awarded M/s Talewa Road Construction Ltd tender for maintenance of Mombasa- Miritini Road in the 2014/2015 at a contract sum of Kshs. 341,180,245 but the contract was terminated due to poor performance after having paid the contractor Kshs. 144,146,778.76 (42.25% of the contract sum).

The Authority (KeNHA) went ahead, repackaged and awarded M/s S.S. Mehta the contract through direct procurement at a contract sum of Kshs. 292,656,590 contrary to section 50 of the Public Procurement and Disposal Act, 2005. That brought the total contract expenditure to Kshs. 436,803,368, an increase of Kshs. 95,623,123 or approximately 28% from the original contract sum of Kshs. 341,180,245. This was in breach of law and resulted in wasteful expenditure.

This was also the challenge for a number of projects implemented by the Kenya Airports Authority. Various contracts were terminated after significant amounts of the contract sum were paid, e.g. the contract for Ukunda Airstrip and Embakasi Estate fencing which were terminated due to land disputes and failure to obtain relevant approvals respectively. The contractor for the Ukunda Airstrip fencing was paid Kshs. 8.9 Million as compensation for idle equipment and personnel yet no works were undertaken. The contracts for the construction of fire station at Wilson Airport as well as relocation of Mkwakwani primary school by KAA were also terminated for various reasons.

Other projects took inordinately long periods of time to complete due to inadequate budgetary allocations. An example is the construction of the New Mitihani House, that had been ongoing since 1989. The delay in the project completion resulted in escalation of costs of the project in addition to amounts of money that continue to be paid out as rent for the offices currently occupied. The current total costs of the New Mitihani House stood 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.

The Committee noted that this resulted in loss of public funds due to escalation of costs and payment of interests on delayed payments. Under such circumstance, realization of value for money was doubtful.

Committee Recommendations

The Committee recommends that -

(i) The Chief Executive of Officers/ Managing Directors of State Corporations should ensure that proper planning of projects is undertaken with credible feasibility studies done to reduce variations during contract implementation.

(ii) The Chief Executive officers who exceed the maximum contract variation of 25% provided for under Section 139(4)(e) of the Public Procurement and Asset Disposal Act 2015 should be surcharged for the variation in price incurred by their respective corporations over and above the allowed threshold in law.

Matters pending in Court

The Committee observed that a number of litigation cases concerning ownership of land of State Corporations and other legal matters had been pending before the courts of law for inordinately long despite resolution of the House through previous PIC reports calling for the expeditious conclusion of the cases. a case in point is the matter concerning a parcel of land belonging to South Eastern Kenya University in Nairobi's Upper Hill area which has been pending in court since 2009. Similarly, the arbitration matter between Kenya Pipeline Company and Kenol/Kobil has been pending determination for over fifteen years. This has consequently translated into uncertainty on the statement of assets of the corporations, delayed implementation of projects as well as colossal expenditure of funds on legal fees.

The matter of New KCC land in Miritini Mombasa which has been encroached upon by squatters was filed in Mombasa ELC case No.183 of 2015 (New Kenya Co-operative Creameries Limited (NKCC) vs Hassan Ali Mboga and Others) seeking the removal of squatters and stoppage of any other developments on the land was yet to be determined.

The KRA has not been able to recover kshs. 2,690,975,749 tax arrears from Karuturi due to a pending case filed way back in 2013 by the employees.

Committee Recommendations

The Committee recommends that -

(i) Chief Executive Officers/ Managing Directors of State Corporations with pending Court cases should endeavor to conclude such cases within a reasonable time.

(ii) Chief Executives Officers/ Managing Directors should strive to embrace alternative dispute resolution Mechanisms in resolution of disputes before going to Court.

Delay in appointments of Accounting Officers

The Committee observed that some State Corporations were operating without substantive accounting officers (Chief Executive Officers/Managing Directors). This is contrary to PIC recommendations in the Twenty Second Report that the position of Chief Executive Officers and Managers of State Corporations should not be left vacant for more than twelve months. For instance, the CEO for KNEC and the Executive Director of KURA have been serving in an acting capacity for three years. Further, the Kenya Veterinary Board had an acting CEO from 2012 to October 2016 when the position was substantively filled. The Managing Director for the NHIF has been acting for more than a year now and there are no indications that the process of filling the position substantively is underway. This is not an appropriate management practice as it impedes on the independence of the CEO to make binding decisions.

Committee Recommendation

The Committee recommends that the appointing authority should appoint substantive accounting officers within six months of such positions falling vacant.

Financial Performance and Sustainability of Corporations

Examination of accounts revealed weak financial position of some State Corporations. This raised questions about the sustainability of State Corporations as well as their ability to meet their obligations in the long run if the trends persisted. SASRA for example realized deficits of Kshs 23 Million in 2014/15 and Kshs 48 Million in 2015/16 (the situation changed however in 2016/17). Further, it was observed that State Corporations over-relied on government grants for continued operations, other than enhancing internally generated funds, raising doubts on their capabilities as going-concern in the absence of support from the National Treasury. The South Eastern Kenya University for instance did not carry out development projects worth Kshs 55,595,449 in the FY 2015/16, as these were grants budgeted for but not received from the government.

The Kenya Wildlife Service in the year 2016/17 recorded a deficit of KShs. 680,519,000 bringing the accumulated deficit to Kshs. 4,428,098,000 because the internal revenues and government support were not adequate to cater for the operating costs and personal emoluments. The continued sustainability of the Service thus depended on regular government support, creditors and development partners support.

In the financial year 2015/16 the Kenya Veterinary Board made a loss of Kshs. 12,941,456. The loss for the year was attributed to a decline in government grants by Kshs. 7,474,218 against increased in expenditure during the year under review. The Kenya Nuclear Power and Energy Agency also experienced a similar challenge.

Committee Recommendation

The Committee recommends that the heads of state corporations should develop and run models that maximizes on returns as well as servicing the public.

Delay in availing documents to the Auditor- General

The Committee observed that some accounting officers did not avail complete and reconciled financial and accounting records/documentation in time for audit review and verification during the audit exercise leading to unnecessary queries. This is contrary to the provisions of Section 68(2) of the PFM Act 2012 that the financial and accounting records are presented within three (3) months after the close of the financial year pursuant to the provisions of *Article 229* of the Constitution of Kenya 2010. Section 62 of the public Audit Act of 2015 obligates accounting officers to provide required documents for audit failure to which it they be charged. This was notable for most audit queries raised during the consideration of financial statements of the National Drought Management Authority, National Biosafety Authority, the National Irrigation Board and Kenya Revenue Authority among others.

Committee Recommendations

The Committee recommends that -

(i) Accounting officers should comply with the provisions of Section 68(2) of the Public Finance Management Act of 2012 by submitting all the required documents for audit within the stipulated timelines

(ii) The DCI should charge any accounting officer that failed to provide required documents for audit should be charged pursuant to Section 62 of the Public Audit Act of 2015

Unqualified Opinion

The Committee commended the State Corporations that were issued with unqualified audit opinion by the Auditor General due to prudent financial management practices. These corporations include the Public Procurement Regulatory Authority, Kenya Universities and Colleges Central Placement Services, Engineers Board of Kenya, Kenya Urban Roads Authority, Kenya Medical Practitioners and Dentists Board, Kenya Accountants and Secretaries National Examination Board, SACCO Societies Regulatory Authority the National Communications Secretariat and the Council for Legal Education.

Special Audits

In the process of examining accounts of State Corporations, matters incidental thereto were encountered necessitating the Committee to request for Special Audits from the OAG. Such matters included procurement of Hydrant Bit Valve s by the Kenya Pipeline Corporation; purchase of maize by the National Cereals and Produce Board in the 2018; alleged disappearance of goods destined for other countries as managed by KRA; award and implementation of linda mama contracts by the NHIF and tendering process and award of transportation contract of cargo through the SGR by Kenya Railways. With all these requests, the Committee noted that the Office of the Auditor General was taking inordinately long time to conclude the assignments for reasons attributed to capacity challenges in the Office of the Auditor General.

Committee Recommendations

The Committee recommends that

(i) **The Office of the Auditor General should expedite the completion of the requested Special Audits to enable the Committee to conclude the examination of audited accounts of the respective State Corporations.**

(ii) **The National Assembly should allocate adequate resources to the Office of the Auditor to recruit enough staff capable of completing assigned responsibilities in time.**

Implementation of Committee Recommendations

The Committee observed that a number of recommendations of the previous committees had not been implemented. A case in point is the recommendation to appoint a substantive Managing Trustee of NSSF that has been pending for the last four years (though he has since been confirmed); allocation of resources to complete mtihani house; Investigating agencies taking ages before conclusion of investigations; and accounting officer's obligation to submit documents to the Auditor General for audit within the required timelines among others. This led to some audit queries subsisting for several financial years.

Aware that following up of National Assembly recommendations is within the province of Implementation Committee by dint of Standing Order 209, the Public Investments Committee is basically fantus officio.

Committee Recommendation

The Committee recommends that the national Asembly takes stun actions as provided in the law and Standing Orders against officers who have failed to comply with past House resolutions (adopted Committee reports).

Interest due to delayed payments

The Committee observed with concern the huge gugatory payments made by state corporations in the form of interest on delayed payments due to contractors. Some of the explanations advanced occasioning such delays were attributable to the late Exchequer releases and Court cases. KeNHA was ntotrious on this regard as particularised below.

KeNHA paid Kshs. 194M to the contractor for Thua Bridge construction due to the delayed payments ostensibly due to late exchequer releases.

Another example in which huge interest has accrued ralate hazina trade centre. On 31st May 2017, the contractor had raised a claim of Kshs 6.88 billion which was assessed to Kshs. 871 million by the Department of Public Works and the decision communicated to the NSSF on 12th April 2020. The Contract prescribes that delay in settlement of claims will earn interest at 3% above the average CBK rate. On 10th July 2019, the contrctor calimed Kshs 234 million interest on delayed payments. This fugure continues to increase as the claim remained unpaid as at 26th June 2020.

Committee Recommendations

The Committee recommends that -

i. **The accounting officers and Boards of State Corporations should always honour their contractual obligations and settle claims as and when they fall due**

ii. **The National Treasury should release Funds meant for claim settlement to avoid nugatory expenditures in the form of interst payments**
iii. **Accounting officers or Board Members that unreasonably delay payments when due occasioning accrual of intrest should be held reponsible for the loss of public money**

1.0 PREFACE

1.1 Establishment and Mandate of the Committee

1. The Public Investments Committee is established under the National Assembly Standing Order (S.O.) 206 and is responsible for the examination of the working of public investments on the basis of their audited reports and accounts. It is mandated to-
    i. examine the reports and accounts of the public investments;
    ii. examine the reports, if any, of the Auditor General on the public investments; and
    iii. examine, in the context of the autonomy and efficiency of the public investments, whether the affairs of the public investments, are being managed in accordance with sound financial or business principles and prudent commercial practices;
2. The Committee in considering the Audited accounts of state corporations is guided by the Constitution of Kenya and the following statutes and codes/regulations in carrying out its mandate: -
    a. ;
    b. ;
    c. the National Assembly (Powers and Privileges) Act (Cap. 6);
    d. the State Corporations Act (Cap. 446);
    e. the Public Procurement and Disposal Act, 2005;
    f. the Public Procurement and Disposal Regulations, 2006;
    g. the Public Procurement and Assets Disposal Act, 2015
    h. the Public Finance Management Act, 2012;
    i. the Public Audit Act 2003, and
    j. the Public Audit Act, 2015 among others.
    k. The National Assembly Standing Orders

1.2 Committee Membership

3. The Committee on Public Investments constituted by the House in December 2017 comprises of the following Members: -

Name of Member	Constituency	Party
Hon. Abdullswamad Sharrif Nassir, MP **Chairperson**	Mvita	ODM
Hon. Ahmed Abdisalan Ibrahim, MP **Vice- Chairperson**	Wajir North	ODM
Hon. (Dr.) Chrisantus Wamalwa Wakhungu C.B.S, MP	Kiminini	Ford Kenya
Hon. Raphael Bitta Sauti Wanjala, MP	Budalangi	ODM
Hon. Justus Kizito Mugali, MP	Shinyalu	ODM
Hon. Gladys Nyasuna Wanga, MP	Homa-Bay County	ODM
Hon. John Muchiri Nyaga, MP	Manyatta	JP
Hon. (Prof.) Mohamud Sheikh Mohammed, MP	Wajir South	JP
Hon. Babu Owino Paul Ongili, MP	Embakasi East	ODM
Hon. James Githua Kamau Wamacukuru, MP	Kabete	JP
Hon. Joash Nyamache Nyamoko, HSC, MP	North Mugirango	JP
Hon. Mary Wamaua Waithira Njoroge, MP	Maragwa	JP
Hon. Mohamed Hire Garane, MP	Lagdera	KANU
Hon. Omar Mohamed Maalim Hassan, MP	Mandera East	EFP

Hon. Paul Kahindi Katana, MP	Kaloleni	ODM
Hon. Purity Wangui Ngirici, MP	Kirinyaga County	JP
Hon. Rashid Kassim Amin, MP	Wajir East	WDM-K
Hon. Zachary Kwenya Thuku, MP	Kinangop	JP

1.3 Committee Secretariat

4. The secretariat facilitating the Committee comprises -

Evans Oanda - Senior Clerk Assistant

Mohamed Boru - Clerk Assistant II

Marlene Ayiro - Senior Legal Counsel

Thomas Ogwel - Fiscal Analyst II

Erick Kariuki - Research Officer II

Noelle Chelagat - Media Relations Officer III

John Mungai - Audio Recording Officer

Alex Mutuku - Senior Sergeant-at-Arms

1.3 Committee proceedings

5. The Committee held ninety sittings in which it closely examined the audited financial statements of forty eight (48) State Corporations and the Reports therein by the Auditor General.
6. In its inquiry into whether or not the affairs of the public investments are managed in accordance with sound business principles and prudent commercial practices, the Committee heard and received both oral and written evidence from Chief Executive Officers (Accounting Officers) of various State Corporations and other relevant witnesses.
7. The recommendations on the issues raised by the Auditor General for the various State Corporations are found under appropriate sections of the report for each of the State Corporations covered.
8. These observations and recommendations, if taken into account and implemented, will enhance accountability, effectiveness, transparency, efficiency, prudent management, commercial viability and value for money in State Corporations and the public investments sector as a whole.
9. The records of evidence adduced, documents and notes received by the Committee formed the basis of the observations and recommendations as outlined in the Report and can be obtained in the Minutes of the Committee proceedings hereto annexed as Volume II.

2.0 CONSIDERATION OF THE REPORTS OF THE AUDITOR GENERAL ON THE AUDITED FINANCIAL STATEMENTS OF STATE CORPORATIONS

2.1 KENYA AIRPORTS AUTHORITY (KAA): FY 2012/2013 - 2015/2016

EVIDENCE ON THE REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF KENYA AIRPORTS AUTHORITY FOR THE FINANCIAL YEARS 2012/2013 TO 2015/2016

Mr. Johnny Andersen, the Managing Director of the Kenya Airports Authority accompanied by Mr. Alex Gitari (General Manager, Finance), Mr. Samson Kimilu (General Manager, Internal Audit), Ms. Katherine Kisila (Corporation Secretary), Mr. Patrick Chonde (Finance Manager), Irene Keri (Ministry of Transport), Jonah Biwott (Legal Clerk), Mr. Antony Rotich (Business Department), Mr. Fred Odawo (Ag GM P&S), Grace Odhimbo (Media Officer) and Mr. Rashid Abdullahi (Manager Planning) appeared before the Committee to adduce evidence on the report of the Auditor General on the financial statements of the Authority for the financial years 2012/13 to 2015/2016

Operating Lease 2012/2013, 2013/2014, 2014/2015 and 2015/2016

10. As was reported in the previous year (2011/2012), the non-current assets balance of Kshs. 29,699,428,000 as at 30 June 2013 included an amount of Kshs. 5,799,624,000 described as operating lease. The operating lease amount however, excluded plot LR 9042/668 measuring 3.29 acres in Embakasi village which was not valued for inclusion in the financial statements as at 30th June 2013, as its ownership was apparently in dispute. A further examination of the lease balance revealed the following other unsatisfactory observations.

(i) An unregistered parcel of land under Re.KAA-D1-D4 measuring 0.867 acres and valued at Kshs.4, 335,000 was, as similarly reported in the previous year, excluded from the operating lease balance of Kshs.5, 799, 624,000.

(ii) An undetermined value of land at Lokichoggio Airport was also excluded from the balance.

(iii) The figure of Kshs.5, 729,624,000 included two parcels of land under plots Nos. LR 13512 and 14231 at Jomo Kenyatta International Airport both of which were allocated to third parties.

(iv) Wilson Airport Land LR No. 209/144443 of undetermined size and value was registered in favour of the Authority on 29 July 2003. However, two plaintiffs filed a civil case in the High Court of Kenya claiming ownership of the land. On 25 October 2006, the high court ruled in favour of the Authority. The court ruled that this was public land and belonged to the Authority which was irregularly allocated to one of the 'plaintiffs'. However, despite the court ruling, no efforts were made to take the possession of the land.

(v) The figure of Kshs. 5,869,334,000 further included a portion of Malindi Airport land under LR No. 7669 and measuring 0.8925 hectares, allocated to a church organization, but on the other hand, excluded land LR No. 8540 measuring 5912. 5sq.ft at the airport, allocated to a petroleum company.

11. Under the circumstances, the Committee heard that the Authority's land was at risk and it was not possible to confirm that the non-current assets balance of Kshs. 23,897,495,000 as at 30 June 2013; Kshs. 36,446,554,000 as at 30 June 2014; KShs. 44,138,5217,000 as at 30 June 2015 and Kshs. 52,539,103,000 were fairly stated in the respective financial years.

Management response

12. The Management informed the Committee that the Authority physically surrendered L.R. No. 9042/668 for construction of Embakasi Police Station. This parcel was not in dispute, and the Authority had plans to transfer the title to the National Police Service.
13. The subject parcel of land (D1-D4) located within Embakasi Village measures 0.3696 Ha (0.9133Acres) according to the Part Development Plan No. 296 of 15/8/2002 for the existing KAA staff Housing at Embakasi Village. At the time of the audit, the operating lease amount excluded the value of the plot as the Authority was not issued with a letter of allotment or grant by the Government.
14. The National Land Commission (hereinafter referred to as "NLC") in a letter Ref: CF. 4135/7 dated 25 September, 2017 issued a letter of allotment measuring 0.1794 Ha (0.443

acres) with respect to D1-D4 (Now L.R. No. 9042/1049). The Authority had since accepted the Letter of Offer and made the requisite payments to the NLC to facilitate issuance of title.

15. In a letter ref. KAA/5/19/1/2VOL.1 (24) dated 10th February 2016, the Authority informed the NLC of the variance in acreage between the Part Development Plan and the letter of allotment and requested the Commission to institute investigations into the illegal excision of a portion of D1-D4 measuring 0.1902 Ha (0.47 Acres). The Chairman of the NLC vide letter Ref. NLC/CHAIRMAN/VOL.VIX /163 of 19 February, 2016 instructed the Director of Legal and Enforcement to investigate the irregular allocation. The Authority wrote to NLC seeking an update on investigations.
16. In view of the above, the impugned parcel of land could not be included in the Financial Statements as at the time of reporting the Authority had no title document for the parcel and part of the land was irregularly allocated to a private party.
17. With regard to the Lokichoggio Airport land, the Committee was informed that the said land was excluded in the Financial Statements because the Authority did not have proof of ownership. The Authority had since obtained a title and would include the land in the 2017/18 financial statements.
18. With regard to the Authority's position in the LR No. 13512 and No. 14231, the Committee heard that the said parcels were within the JKIA title LR No. 21919, which was the basis for incorporation in the Financial Statements.
19. With regard to Wilson Airport Land LR No. 209/144443, the management informed the Committee that the Authority sought intervention of the NLC on review of grant and whose officials visited Wilson Airport on 19th October 2017. The Authority's prayers to NLC as communicated vide a Letter from Authority dated 24th October, 2017 included inter alia:

(i) That NLC issues eviction notices to private persons' titles within land reserved as Aerodrome Reserve.

(ii) That NLC issues eviction notices to private person's unlawfully occupying public land and for the Registrar to revoke titles for such references.

(iii) That NLC investigates allocation of titles to private persons whose activities impede/or would be a potential impediment on the safe and secure operations of

Wilson Airport. In addition, that upon legally or regularly acquiring the land, the said land be allocated to KAA to safeguard safety and security of the Airport.

(iv) NLC favours KAA with a valuation report of the subject parcels of land to enable exchange of land with the University of Nairobi.

20. Regarding the Malindi Airport Land, the Committee was informed that the Baptist Convention of Kenya land, LR No. 7669, fell within Malindi Airport title LR. No. 10688, hence inclusion in the Financial Statements. Further, the Government in a letter Ref. 16 June, 1988 allocated portion No. 8540 measuring 0.0450 Ha located within Malindi Airport to Kenya Oil Company for oil depot and aviation facilities. This land was not included in the Financial Statements as the Government issued Kenya Oil the grant prior to the Malindi Airport title.
21. Through KAA's letter ref. KAA/5/19/Vol.2 of 24th December 2010, the Authority appealed to the Principal Secretary, Ministry of Lands to revoke title to LR. No 8540, which was within Malindi Airport land. Further, the National Land Commission visited the site on 27/2/2017 to review the grant. The Authority intended to expand the Airport through land acquisition and invited the NLC to undertake the process.
22. The Committee finally heard from the management that the Authority had fully accounted for its land in respect of which title documents were issued. The land whose titles were under process of registration would be accounted for upon completion.

<u>Committee Observations</u>

23. Having examined the accounts and heard from the management, the Committee observed the following with regard to matters raised in the operating lease:

    i) **The 19th PIC report addressed this matter. The then Committee observed that the Authority portrayed lack of interest in protecting public property. The Committee recommended that the Managing Director should ensure that all Authority's properties had ownership documents.**

ii) **On the transfer of part of Embakasi Land to the National Police Service, there was no formal process undertaken to transfer the piece of land in question to the National Police Service. The Authority made no effort to transfer the land formally to the National Police Service despite repeat audit queries made by the Auditor General on the matter.**

iii) **On the unregistered piece of land under Re.KAA-D1-D4, there was a variance between the size of the land as captured in the Part Development Plan and the letter of Allotment. Further, the part of the land under LR. No. 9042/940 measuring 0.1902 Ha was illegally excised from the existing land without due regard to the approved development plan and allocated to one Julian Wanjiku Kariuki as indicated on survey plan F/R No. 514/47. Despite the KAA's request to the NLC to institute investigations into the matter with a view to safeguard the parcel of land, NLC was complicit and had done nothing so far.**

iv) **The KAA Board had not discussed any matter to do with the Authority's land in the last four and a half years and the Board had not carried out re-allocation of any land belonging to the Authority.**

v) **Finally, the Authority had accepted the allotment letter despite the variance in size to secure the available land while following up on the illegally excised land.**

vi) **On land allocated to third parties at JKIA, the matter was in court for determination.**

vii) **With regard to the dispute surrounding the Wilson Airport land, the KAA was complicit by failing to follow up and reposes the land after the High Court had ruled in KAA's favour. It took KAA eleven years to follow up on documentation of the impugned land. Currently the land is used as a vehicle show room.**

viii) **With regard to the Lokichoggio Airport Land, the Authority secured the Title Deed dated 30th August 2016 and therefore it should be incorporated in the financial statements.**

ix) The title deeds for Manda Airstrip were missing from KAA's records yet the KAA had not reported the loss to the police up to the point of appearing before the Committee.

x) Management and security of records at the KAA left a lot to be desired when it emerged that at one point the title deed for Kisumu Airport was missing only to be found within a few days.

xi) The title deeds for Wilson and Eldoret airports were held by lawyers acting on behalf of the Authority.

xii) The lawyers were using the titles to register sub-leases under the respective Airport land. This was a dangerous precedence.

24. **Committee recommendations The Committee recommends that -**

i) The Managing Director for the Kenya Airports Authority should ensure that all Authority's properties have ownership documents within six months after adoption of this report.

ii) The Managing Director of the KAA should expedite all Court cases, that have taken inordinately long time, touching on KAA land such as the land allocated to third parties in Embakasi.

iii) The Judiciary should consider expediting matters touching on public land

iv) The then Managging Director of the KAA, Mr. Stephen Gichuki, should be reprimanded for not repossessing the grabbed Wilson Airport land despite the Court ruling awarding the said land to KAA.

v) The Board and management of Kenya Airports Authority should reposse the KAA land at Wilson Airport within three months of adoption of this report.

vi) **The Management of the Kenya Airports Authority should always ensure safe custody of the KAA documents to avoid arbitrary loss akin to the temporary loss of the Kisumu Airport title.**

vii) **The DCI should investigate the circumstances under which the Kisumu Airport title deed disappeared only to be found a few days later with a view to prosecuting those found culpable.**

viii) **The DCI should investigate the circumstances under which the Manda Airport title deed disappeared only to be found a few days later with a view to prosecuting those found culpable.**

ix) **The DCI should investigate the circumstances under which the LR. No. 9042/940 measuring 0.1902 Ha was illegally excised from the existing land without due regard to the approved development plan and allocated to one Julian Wanjiku Kariuki and the investigation should include NLC who were reluctant in responding to the said quiery with a view to charging those found culpable.**

x) **The NLC should within thirty days of adoption of this report confirm that the title to Kisumu and Manda airports have not been charged.**

Stalled Projects (FYs 2012/2013, 2013/2014, 2014/2015 and 2015/2016)

25. The Committee heard that the Embakasi Estate Fencing project valued at Kshs 24.5 million in the year 2009 and Ukunda Airstrip Fencing project valued at Kshs.24.8 million in the year 2006 had stalled. The contract for Ukunda airstrip fencing took too long at the tender committee and was terminated after which the contractor placed a claim of Kshs. 8.9 million as compensation which the management had opposed and the same was apparently awaiting some clarification from the Project Engineer. No further correspondence was availed for audit verification.
26. In addition, the Embakasi Estate Fencing works never commenced and the contract was never terminated and no reasons were given for this anomaly. As a result of the foregoing,

the Authority risked payment of damages should the contractors proceed to sue the authority in a court of law.

Management Response

27. With regards to the concerns raised on the fencing of Ukunda airport, the management informed the Committee that the contract was terminated due to land disputes, which took too long to resolve. The contractor was paid Kshs. 8.9 million as compensation for the idle equipment and personnel and the matter was closed.
28. Under Embakasi fencing, the management averred that the contract could not be performed and it was since terminated. The Contractor did not lodge any claim post termination of contract.

Committee Observations

29. **This matter was considered in the 19th report of PIC's with a recommendation that the then Managing Director of the KAA, Mr. Stephen Gichuki be held personally responsible for paying monies for works that were never done at Embakasi Fencing Project.**

Ukunda fencing

1) **It was irregular for KAA to enter into a contract to fence the land whose subject matter was in dispute.**
2) **It was a misuse of public resources to pay the contractor Kshs. 8.9M for the work that was never undertaken at Ukunda Airstrip**

Embakasi fencing

1) The KAA was reckless in entering into a contract before getting the requisite approvals from the Nairobi City Council.
2) The Authority's letter terminating the contract was written in March 2016, seven years after the contract was signed (i.e. in 2009).
3) The Authority discovered the fraudulent acts on the part of the contractor after it had agreed to pay the Kshs. 2,000,000 compensations. The Authority was also willing to pay

the compensation despite the project lacking the relevant approvals from the Nairobi City Council.

4) There were no court cases instituted against the KAA with regard to the Embakasi fencing project.

<u>**Committee recommendations**</u>

30. **The Committee recommends that -**

(i) **The then Managing Director of the KAA, Mr. Stephen Gichuki be held personally responsible for paying monies for works that were never done at Embakasi Fencing Project.**

(ii) **The then Managing Director of the KAA, Mr. Stephen Gichuki be held personally responsible for awarding contracts for the works without relevant approval processes.**

<u>**Disputed Land (FYs 2012/2013, 2013/2014, 2014/2015 and 2015/2016)**</u>

31. The Committee heard that the property, plant and equipment balance of Kshs. 23,897,495,000 included freehold land balance of Kshs.249, 265,000 as at 30 June 2013. As similarly reported in the previous year, this figure included land LR.No.21919 measuring 4,674.60 Hectares in Nairobi where Jomo Kenyatta International Airport is situated. This land was compulsorily acquired by the Government of Kenya on 26th April 1971 vide legal Notice No.1105/1106 for development of the Airport currently known as Jomo Kenyatta Airport. Kenya Airports Authority acquired title deed for the land on 26th July 1996.

32. As previously reported, around the year 2002, Kenya Airports Authority discovered that a group of people had purportedly obtained title documents for the above-mentioned land. The Authority moved to court and instituted two cases against the groups vide HCCC No. 206 of 2004 and HCCC No 489 of 2004 respectively, where it got temporary court orders to restrain the defendants from dealing with the said parcel of land. But despite the court orders to maintain status quo, the defendants continued to sell, sub-divide and develop the land falling under the contentious area.

33. In November 2011, the Kenya Airports Authority demolished houses belonging to private developers on the disputed land. The private developers sued the Authority and both the Authority’s and the private developer’s cases were yet to be determined.

34. As at the time of completing the audit, no valuation report was availed for audit verification and the Authority did not make any provision for any contingent liabilities likely to arise from these disputes. In the circumstances, it was not possible to confirm that the Authority's freehold land balances of kshs.249, 265,000 as at 30 June 2013 was fairly stated.

Management response

35. Management informed the Committee that the parcels of land (being, LR No. 14231 in the name of Uungani Settlement Self Help Group and; LR No. 13512 in the name of Mlolongo Brothers Association) were within Jomo Kenyatta International Airport land (L.R. No. 21919) and were valued for inclusion in the Financial Statements.
36. No contingent liabilities were recorded with respect to the demolition claims since, in the opinion of the Authority, the developers had encroached on KAA's land.

Committee Observations

(i) **This matter was addressed in PIC's 19th report in which it was recommended that KAA liaise with the NLC for the purposes of getting the ownership documents. It further recommended that the EACC investigates the circumstances under which the authority's land was allocated to private individuals.**

(ii) **Though the Committee is functus officio in this as it is now within the province of Implementation Committee, there was nothing to show that the EACC and the NLC had completed investigating the matter.**

Committee Recommendation

37. **The Committee recommends that the EACC and the NLC expeditiously investigates the matter within six months of the of adoption of this report with a view to preferring charges of the parties found culpable and eviction of the encroachers.**

38. **Tseikuru Airstrip (FY 2013/2014, 2014/2015 and 2015/2016)**

39. The Committee heard that evidence available indicated that a memorandum of understanding was entered into between National Youth Service (NYS) and Kenya Airports Authority (KAA) on 20th November 2012 for the Construction of Tseikuru Airstrip. The scope of

works for phase 1 was for bush clearing and top soil stripping, cut and fills formation including drainage, as well as gravel sub-base and base construction. It was noted that as at 30th June 2014, both parties had not signed the above Memorandum.

40. In addition, an advance of Kshs.50, 000,000 was paid to the National Youth Service on 16 July 2012 despite the fact that the Memorandum of understanding was not signed and there was no contract between the two parties. Further, although management had explained that the overall progress of works for phase 1 was at 85% as at 30 June 2013, no evidence of progress reports was availed for review and it was not satisfactorily explained why the work had taken such a long time when the same was expected to be complete.
41. A review of the project in 2015/2016 revealed that no progress was made despite an allocation of Kshs. 117,993,000, Kshs. 25,000,000 and Kshs. 85,000,000 in 2013/2014, 2014/2015 and 2015/2016 respectively. Management had also not explained how the funds allocated in the above three financial years totalling to Kshs.227, 993,000 were utilized.

Management response

42. The Management informed the Committee that the memorandum of understanding was not executed. The basis of engagement between the NYS and the Authority was the correspondence between the Principal Secretary, Ministry of Transport and the Director General, NYS.
43. Management provided a progress report on the project showing 85% completion. Further, the Committee heard that the delay in completion of the project was attributed to non-receipt of additional funds from the Ministry of Transport.

Committee observations

44. The Committee observed that -

(i) The project was conceptualized in 2006 and was to be implemented at a cost of Kshs. 190 million.

(ii) The explanation given on the cause of the delayed implementation of the project was contradictory. In the 2013/2014, it was attributed to late disbursement of funds while in the 2014/2015 land compensation issues were cited as the cause of delay. Further, there was no evidence to corroborate any of these explanations. In any case, land issues should be addressed as a matter of priority before commencement of any project.

(iii) The report provided as a progress report was not one in its strict sense. A progress report provides an analysis of the extent to which the BQs have been implemented.

(iv) The MoU between the NYS and the KAA had not been signed by the date of appearance of KAA before the committee.

(v) As at the date KAA appeared before the Committee, the Authority did not have the title deed for the land where the project was implemented. This was occasioned by the need for more land (the Authority already had 78 acres but needed a further 24 acres). This indicated poor planning by KAA.

(vi) There was no evidence to support the assertion that 85% of the works were completed.

(vii) The KAA has so far allocated a total of Kshs. 227M despite the fact the project was supposed to cost Kshs 200M. Out of this amount, Ksh.50M was paid to NYS leaving a balance of Kshs. 177M within the KAA account. KAA could not explain the reason of the annual allocations to the project despite the fact that it had stalled.

__**Committee Recommendations**__

45. **The Committee recommends that -**

(i) KAA should before implementing any project undertake a feasibility study;

(ii) Considering that there was no evidence to buttress the KAA's assertion that the project was 85% complete by way of progress reports, the EACC should investigate the matter on the exact status of the project and whether there were irregularities in its implementation. This investigation should be done within six months of adoption of this report.

(iii) The Department of Public works should assess the progress of the project and report back to Parliament within three months of adoption of this report.

(iv) The KCAA should assess viability of the project and report within three months of adoption of this report.

(v) The KAA should undertake the feasibility study of the project to determine its viability.

46. **Special Accounts Statements Reconciliation FY 2013/2014**

47. The Committee heard that the Northern Corridor Transport Improvement Project (IDA Credit No. 3930/4571-KE) statement of receipts and payments for the year ended 30 June 2014 reflected a loan from external development partner of Kshs.537, 596,000. However, the special account statement prepared and submitted by the National Treasury reflected Kshs. 317,472,939.80 disbursed. This resulted into a variance of Kshs.220, 123,060.80 which was not reconciled or explained. In the circumstances, it was not possible to confirm the accuracy and correctness of total receipts of Kshs.544, 790,000 reflected in the project's statement of receipts and payments for the year ended 30 June 2014.

48. The Committee further heard that the Kenya Transport Sector Support Project (IDA Credit No. 5410-KE) statement of receipts and payments for the year ended 30th June 2014 reflected a loan from external development partners of Kshs.37, 000,000 while the special account statement prepared and submitted by the National Treasury reflected Kshs.87, 982,128. This resulted into a variance of Kshs.50, 982,128

49. In the circumstances, it was not possible to confirm the correctness and accuracy of the project's total receipts of Kshs.38, 464,000 for the year ended 30th June 2014.

<u>Management response</u>

50. Management informed the Committee that in the financial year 2013/2014, Kenya Airports Authority received a total of Kshs. 537,596,143.58 from World Bank through the Ministry of Transport and Infrastructure. The difference of Kshs. 220,123,060.80 as per the issue raised, mainly related to direct payments to contractors, outstanding receipts for MoTI as analyzed below of Kshs. 20,224,168.80 and amounts received in different financial years but relating to the year under audit.

Particular	Amount(Kshs)	Amount(Kshs)	Amount(Kshs)
Special Account as per National Treasury			317,472,939.80
Add			
Direct payments to CATIC	96,365,352.40		
Reimbursement to KAA	283,804,010.15		
Sub-Total		379,969,362.55	

Disbursement for 2012/2013		57,850,950.00	
Less			
Disbursement received and accounted in 2014/2015		(197,472,940.00)	
Undisbursed funds not yet received from MOTI		(20,224,168.80	
Rounding off difference		(142.95)	
Sub-Total			220,123,060.80
Balance as per KAA Books			537,596,000.60
Add: KAA Counterpart funding			7,194,000.00
Total Receipts			544,790,000.00

51. Management further informed the committee that the said balance of Kshs.50, 982,128 was not received as at close of the financial year 30 June 2014 from MOTI. The Ministry later transferred Kshs, 47,981,501 on 25 September, 2015 to the Authority.

Committee Observation

52. The Committee observed that reconciliations were later done and the matter resolved.

Committee Recommendations

53. **The Committee recommends that KAA should reconcile its books in time to avoid such unnecessary queries**

Proposed construction of fire station at Wilson Airport (FYs 2014/2015& 2015/2016)

54. The Committee heard that the contract was awarded to M/s Columbia Developers (K) Ltd for a contract sum of Kshs. 21,477,746.80. The contract was signed on 16th August 2012 to commence on 24th September 2012 and be completed on 9th September 2013. The scope of work consisted of demolition of existing fire offices; construction to completion of fire station offices; associated plumbing and drainage works; associated electrical, telephone services, computer services and other associated works and associated external works.

55. However, evidence available indicated that as per the progress report dated 1st August 2013, there was poor workmanship with several demolitions and reconstruction of works. A tender committee sitting on 13th March 2014 through Tender Committee Minute No. 302 requested for termination of contracts due to failure by the contractor to proceed with the works, which were 60% complete. However, as at 30th June 2015, there was no evidence of termination of the contract by management and the contractor had been paid Kshs. 10,618,825.56. In the circumstances, it was not possible to confirm whether the Authority got value for money in incurring Kshs. 10,618,825.56. Further, the status of the project could not be confirmed.

Management response

56. The payment of Kshs.10, 618,825.56 was for approved works only and not for demolished work that was due to poor workmanship. Following lapse of the Columbia Ltd contract, a new one was awarded to Quadd Limited for completion of the remaining work. The new contractor started from where Columbia had reached and proceeded to complete the work.

Committee Observations

57. **The committee observed that -**

(i) It was common within the KAA to initiate project only to be terminated along the way. This brings to the fore the incapacity within the Authority in project planning and implementation.

(ii) The project was re-tendered and completed at a cost of Kshs.10, 883,131 bringing the total cost at Kshs. 21,501,956.5. Therefore, no money was lost in the process.

Committee recommendation

58. **The Committee recommends that KAA should undertake due diligence of the contractors before awarding them contracts to avoid underperformance.**

Proposed relocation of Mkwakwani Primary School (Phase I-Proposed classroom and associated blocks) (FYs 2014/2015 and 2015/2016)

59. The Committee heard that the contract was awarded to a company for a contract sum of Kshs. 48,065,021 and commenced on 11th June 2014 with the expected completion date of

18th June 2015. The contract period was extended several times with the last extension period that ended on 31st December 2015 with only 20% progress achieved and an expenditure of Kshs. 6,285,756.50 incurred. Evidence available indicated that the tender committee approved termination of the contract and process of procuring another contract commenced. However, it was not possible to confirm that the Authority obtained value for money in incurring Kshs. 6,285,756.50.

Management response

60. The Committee heard that the M/S Levite Agencies Ltd constructed the administration, pre-school and library buildings up to lintel level. The contractor was unable to complete the work due to under-pricing of the rates, leading to termination of the contract for non-performance. The contractor had been paid Kshs. 6,285,756.50 for work certified as at the time of termination.

61. Following a competitive bidding process, M/S Associated Electrical & Hardware Suppliers Limited was awarded completion contract at a sum of Kshs. 69,734,668.61. The new contractor continued from where the previous one left off. The work executed by Levite Agencies and paid for was excluded from the second contractor's scope of work. The work was completed and the school would be handed over to the community.

Committee Observations

62. The Committee observed that -

(i) It was common within the KAA to initiate a project only to terminate along the way. This brings to the fore the incapacity within the Authority in project planning and implementation. Furthermore, the project was varied by Ksh. 28 Million.

(ii) Handing over of the school to the Community was scheduled for 28th June 2018.

(iii) It was proper to award a tender to a contractor who had under-quoted by more than 15% of the Engineer's estimate.

Committee Recommendation

63. **The Committee recommends that -**

i) The performance bond should be more firm going forward.

ii) **The KAA management should always undertake proper due diligence before awarding any contract.**

Construction of Security Offices and Wash Rooms at Wilson Airport KAA/ES/WAP/844/B FY 2014/2015 and 2015/2016

64. The Committee heard that the contract was awarded to a local firm at a contract sum of Kshs. 8,929,097.10 and commenced on 30th July 2014 to be completed on 24th December 2014. The scope of work consisted of Construction of duty office and washroom block; associated mechanical and electrical works; and associated external works.
65. It was noted that on 11th December 2014, the Engineer in charge of the project prescribed a paper No.3750 to the Tender Committee seeking termination of the project which was approved two weeks before the completion date and a sum of Kshs. 3,111,792.80 having been incurred as payment owing to the contractor. Evidence available further indicated that a letter of termination Ref: KAA/ES/WAP/844/B was sent to the contractor on 8th January 2015 but there was no evidence that the contractor had accepted the termination without damages to the Authority.
66. In addition, there was no value for money in incurring the total expenditure of Kshs. 3,111,792.80.

<u>Management response</u>

67. Management informed the Committee that the contractor signed the final account dated 18th February, 2015 after a joint site measurement and accounting for work done. The contractor was paid the balance due, as per the final account and had not raised any issues. The work done by the contractor was valued and paid for as per the contract.

<u>Committee Observations</u>

68. The committee observed that -

(i) Most of the projects initiated by the KAA were terminated due to poor project planning and implementation pointing to poor and ineffective management. For instance, in this case, the project had been done up to the lintel stage. This shows a deliberate trend that should be arrested

(ii) According to the tender Committee minutes of the 354th sitting held on 11th December 2014, the project was terminated to create room for construction of the Business Park. This reason was at variance with the one given by management i.e. non-performance of the contractor.

(iii) By terminating the contact two weeks to the completion time, it indicated poor project management by the KAA. If termination was necessary, it should have been done earlier.

(iv) The contractor was likely to sue the Authority for damages due to termination of the contract.

Committee Recommendations

69. **The Committee recommends that -**

(i) KAA should undertake proper feasibility study before implementing any project to avoid unnecessary terminations and variations akin to this project.

(ii) The then managing director and the Project Engineer should be held responsible and for waiting until the last two weeks on which the contract should be completed to recommend termination of the contract resulting into loss of public funds.

(iii) The KAA should always do due diligence on contractors to ascertain their capacity to implement contracts before awarding

Budgetary Controls on Legal Expenses - FY 2014/2015 and 2015/2016

70. During the year under audit, the Authority incurred an expenditure totalling Kshs 252,876,000 on legal expenses against approved budget of Kshs 50,000,000 thereby resulting to an over expenditure of Kshs 202,876,000. This was contrary to section 12 of the State Corporation Act, cap 446 which states that no State Corporation shall, without the prior approval in writing of the Minister and the Treasury, incur any expenditure for which provision has not been made in an annual estimate prepared and approved in accordance with the provisions of the Act. The Authority therefore breached the law.

Management response

71. Management informed the Committee that the approved budget of Kshs. 50 million for 2014/15 was revised to Kshs. 150 million. The total expenditure for legal expenses was

Kshs. 252,876,000, which included a provision for legal fees of Kshs. 135,500,000. However, the amount paid during the period under audit was Kshs. 117,376,000, which was well within the revised budget of Kshs. 150 million.

<u>Committee Observation</u>

72. **The Committee recoemnd that the revised approved budget was provided for verification and the matter was settled.**

<u>Committee Recommendation</u>

73. **The Committee recommends that the KAA should always work within the law regarding budgets and execution.**

<u>Contingent liability</u>

74. The Committee heard that Note 52 (contingency) to the financial statements stated that relief and mission had pending invoices for apron buses amounting to Kshs. 35,431,272 after termination of the contract in public interest for which the Authority was served with a claim for unpaid concession fees and damages. In addition, there was also an amount of Kshs. 290, 000,000 that related to legal suits involving *KAA vs the Diplomatic Duty Free Ltd/ World Duty Free.*
75. There was also an amount of Kshs. 538,993,815 for Kenya Civil Aviation Authority stated as 15% proceeds from external journeys that was still under negotiations. Although management explained that as per Kenya Gazette Supplement of 24th November 2014, all proceeds of Air Passenger Service Charge should be apportioned between Kenya Airports Authority and Kenya Civil Aviation Authority in the ratio of 85% and 15% respectively for external journeys, no satisfactory explanation was given for failure to remit the same to Kenya Civil Aviation Authority.
76. The note also included World Duty Free case arbitration award of Kshs.4 billion (USD$ 49,000,000) for which the Authority appealed against the arbitration award and stated that no provision was required in the financial statements.
77. Although in all the cases the Authority stated that the liabilities would not crystalize, this remained high risk until the cases were heard and determined.

<u>Management response</u>

78. The Committee heard that the Authority was established pursuant to enactment of Chapter 395, Kenya Airports Authority Act in 1991. Prior to this date, public aerodromes were administered by the Department of Aerodromes. On 27th April, 1989, the Government of Kenya entered into an Agreement with House of Perfume stating that the Government would grant House of Perfume a lease for space at JKIA and Moi International Airport, Mombasa (MIA). In May 1990, the agreement was amended to substitute House of Perfume with World Duty Free Company Limited (World Duty Free).
79. Upon enactment of the Kenya Airports Authority Act and further by way of the Vesting Order under Legal Notice No. 201 of 7th June, 1994, all property previously administered by the Department of Aerodromes was vested and transferred to the Authority. Pursuant to the Agreement of 1989, on or about 25th August, 1995, the Authority entered into a lease agreement with World Duty Free to operate duty free shops at JKIA and MIA for a period of ten (10) years. On or about 29th January, 2003, the lease of 1995 was renewed by three lease Agreements for a further period of ten (10) years from 10th January, 2002 in respect of duty free shops at JKIA and MIA – two lease agreements for JKIA and one agreement for MIA.
80. In 2000, a dispute arose between the Government of Kenya and World Duty Free. On 16th June, 2000, World Duty Free claimed that the Government had breached the 1989 Agreement and sought the intervention of the International Centre for Settlement of Investment Disputes (ICSID) in Washington DC seeking payment of full compensation in the event of breach of contract. The ICSID Arbitral Tribunal issued an award dismissing the claim by World Duty Free on the grounds that the 1989 Agreement and subsequent leases were procured on the basis of corruption and bribery which was contrary to domestic laws, public and international policy. Further, that the Claimant was not legally entitled to maintain any claim as pleaded.
81. Following assertion by World Duty Free that the 2003 lease agreements were valid, the matter was reported as a dispute to the Chief Justice in 2008. The Chief Justice, on 22nd September, 2008, appointed Hon. Justice (Rtd) E. Togbor as sole arbitrator. Justice Torgbor in his award dated 5th December, 2012 stated that the Authority had breached the 1989 Agreement and directed the Authority to make payment of USD 49,796,456 to World Duty Free Company Limited.

82. On 20th February, 2013, the Authority filed an Application to challenge the above Award through HCCC Miscellaneous Civil Application No. 67 of 2013 on the ground that the same was against public policy.
83. The ruling in respect of the above matter was delivered on 5th October, 2018 and the Court set aside the Arbitral Award of Justice (Rtd) Torgbor (Arbitrator) dated 5th December, 2012 which required the Authority to make payment of for breach of contract. Justice Tuiyot while setting aside the award of Justice Torgbor stated that the same was contrary to public policy. That the Arbitrator disregarded the findings of the International Centre for Settlement of Investment Disputes (ICSID) in World Duty Free Company Limited VS. The Government of the Republic of Kenya. The court found that the decisions of the ICSID have binding force of a final Judgment of a Court in Kenya.
84. The import of the Ruling was that the World Duty Free Company Limited had no exclusive rights to operate duty free shops in JKIA and MIA which brought to closure all disputes between the Authority and the said company. World Duty Free Company Limited being aggrieved by the Ruling filed a Notice of Appeal.
85. The Authority had since moved to court and filed the Affidavits in support of various, albeit similar Applications, to be filed seeking interlocutory determination of the pending suits pursuant to the ICSID Award in World Duty Free Company Limited vs. The Government of the Republic of Kenya and Judgment delivered in HCCC Misc. Application 67 of 2013, Kenya Airports Authority vs World Duty Free Company Ltd T/a Kenya Duty Free Complex. The Applications sought to bring to the attention of the Court/Tribunal the findings in stated decisions and further have the court dismiss the respective matters instead of undergoing full trial with a view of bringing all duty free matters to a close.

<u>**Committee Observations**</u>

86. **The Committee observed that -**

(i) **The matter of the KCAA was resolved by the KAA regularly remitting the required amount to KCAA.**

(ii) **The dispute between KAA and World Duty Free Company Ltd is currently life in the Court of appeal. It had began by the World Duty Free Company ltd filing an**

arbitration in Washington and lost; then filed an application in the High Court and again lost against KAA promting the appeal that is currently at the Court of appeal.

Committee Recommendations

87. **The Committee recommends that -**

(i) The KAA should follow the law and regularly remit the money due to KCAA to avoid unnecessary conflicts between the two entities;

(ii) The KAA should always undertake proper feasibility studies before engaging in contracts to avoid termination and loss;

(iii) KAA should apply for expeditious hearing and determination on the appeal pending in Court.

Demolition of existing arrivals hall, baggage area and Multi-Storey office block at JKIA – Contract No. KAA/ES/JKIA/908/C (FY 2015/2016)

88. The Committee heard that this contract was awarded to Machiri Ltd at a contract sum of Kshs.326, 695,830. The works had a contract period of 6 months which commenced on 9th July 2014 and was to end on 16th January 2015. There were three extensions of time approved for this contract which brought the revised completion date to 14th August 2015.

89. In accordance with the awarded bill of quantities, the contract was to provide temporary offices, stores and other facilities at a cost of Kshs.23, 624,978.66. However, there was no evidence of such facilities having been provided during the contract period.

90. The bill of quantity No. 1 item 106 had a provision for engineer vehicle at a cost of Kshs.6, 000,000. However, there was no evidence that a vehicle was provided during the contract period.

91. In the circumstances, it was not possible to confirm the propriety of the total expenditure of Kshs.29, 624,978.66 (that is, Kshs.23, 624,978.66+6,000,000)

Management response

92. The Committee heard that an inspection team verified the temporary offices, stores and other facilities. Through an addendum dated 10th April 2014, the vehicle (item 106) was removed from the tender document thus did not form part of the contract. Therefore, the expenditure

relating to the temporary offices, stores and other facilities was properly incurred while the Kshs. 6,000,000 initially proposed for the motor vehicle was never incurred.

Committee Observations

93. The Committee observed that -

(i) Although the management insisted that there were temporary offices (one next to Hilton Hotel and another within the Airport,) the auditors confirmed to the Committee that there were no such offices. Further, it was inconceivable to have a site office as far a place as Hilton when the work was at the JKIA.

(ii) Kshs. 23,624,978.66 spent on temporary offices was a lot of money to be spent on the project.

(iii) The contractor's letter to the KAA dated 27th January 2017, reveals that there were various EOTs, others approved by the KAA while others were not. In the said letter, the outstanding claim amounted to Kshs. 340 Million as at 27th January 2017. KAA however never responded to the demand letter. Interest continued to accrue on this amount.

(iv) It its brief to the Committee of 20th May 2020, KAA did not confirm ever responding to the contractor's demand letter. It however indicated that the contractor had sued KAA over the claims in which he was claiming Kshs. 340,012,145 as at January 2017; but the authorty's valuation of the claim due to the contractor was Kshs. 956,086.88. KAA further indicated that it had so far paid the contrctor Kshs.292,846,591

(v) The explanation regarding the Kshs. 6 million for vehicle was confirmed to be satisfactory by the Auditors

Committee recommendations

94. **The Committee recommends that -**

(i) **The DCI and EACC should investigate the circumstances under which Kshs. 23,624,978.66 was paid for no work done and prosecute the concerned parties.**

(ii) **The Managing Director for the KAA should seek legal advice from the attorney general on the issues relating to extension of time.**

Construction of offices above parking garage at JKIA (FY 2015/2016)

95. The Committee heard that this contract was awarded to Dickways Construction Ltd at a contract sum of Kshs.185, 777,218.99 which was later revised to Kshs.196, 011,279.79. Works commenced on 27th March 2014 and was to be completed by 18th December 2014, the contract period being 8 Months. The completion date was later revised to 6th February 2015.

a. <u>Utilization of Contingency</u>

96. The project was completed and handed over on 6th February 2015. However, in a memo Ref: KAA/ES/JKIN856/B dated 17th June, 2016 the Evaluation Committee wrote to the Ag. Managing Director recommending approval for utilization of contingency balance amounting to Kshs.7, 273,929 excluding VAT and the Ag. Managing Director approved this request on the same date. It was not clear how contingency sum could be utilized more than a year after completion of the project when even the defects and liability period had elapsed.

<u>Management response</u>

97. The utilization of contingency was based on a re-measurement exercise and preparation of the final account and was approved by the Accounting Officer.

<u>Committee Observation</u>

98. Contingency funds are supposed to be utilized during the project implementation period and not more 16 months after completion of the project. Therefore, the explanation provided on the utilization of the money could not be justified.

<u>Committee Recommendations</u>

99. **The Committee recommends that -**

(i) The DCI should investigate the then tender evaluation Committee Members for authoring a memo Ref: KAA/ES/JKIN856/B dated 17th June, 2016 requesting the accounting office to approve utilization of contingency fund way after the completion of the project.

(ii) The then Ag. Managing director, the then director of finance, the then procurement director should be investigated for approving an illegality.

a. <u>Payment for Valuation Done after Project Handover</u>

100. **The Committee heard that this contract was completed and handed over to the employer on 6th February 2015. The defects and liability period for 6 months ended on 6 August 2015 and contractor's retention monies totaling Kshs.18, 557,720 released vide certificate No.7 and No.8. However, a review of payment vouchers showed another amount of Kshs. 10,434,060 was paid to the contractor vide Certificate No. 9 dated 5 July 2016 after the end of defects liability period and after the project was handed over.**

101. **In the circumstances, the propriety of Kshs. 10,434,060 incurred long after the end of defects liability period and after the project was handed over could not be confirmed.**

Management response

102. The amount paid under Certificate No. 9 was determined after a re-measurement exercise and the final account was prepared.

Committee Observation

103. **The Ciommittee observed that the explanation provided about re-measurements of the works way after completion of the project could not justify the payment of Kshs.10, 434,060.**

Committee Recommendations

104. **The Committee recommends that -**

(i) **The DCI should investigate the then tender evaluation Committee Members for authoring a memo Ref: KAA/ES/JKIN856/B dated 17th June, 2016 requesting accounting office to approve utilization of contingency fund way after the completion of the project.**

(ii) **The then Ag. Managing director, the then director of finance, the then procurement director should be investigated for approving an illegality**

Proposed rehabilitation of runway, apron and car park at Nanyuki Airstrip (FY 2015/2016)

105. The Committee heard that this contract was awarded to Doch Company on 3 September, 2014 at a contract sum of Ksh. 398, 950,970. The works under the contract commenced on 24th November 2014 and was to be completed by 23rd November, 2015 the contract period

being 12 Months. A review of the project file and other related records however revealed the following matters:

a. Slow Progress

106. The initial contract period was 12 months with a completion date of 23rd November, 2015. The tender committee sitting on 12th November 2015 approved a nine months' extension of time which brought the revised completion date to 22nd August, 2016. A review of the last progress report dated 31st July 2016 showed that the overall progress was at 42% with less than a month left to the end of the revised contract period, an indication that the project was behind schedule.

Management response

107. The Committee heard that the slow progress of the work was caused by non-performance of the contractor hence the termination of the contract vide a letter dated 22nd August 2016.

Committee Observations

108. The Committee observed that -

(i) Most of the Projects initiated by the KAA were terminated due to non-performance. This raises concern about the capacity of the Authority to plan and implement projects.

(ii) Termination of the project 2 weeks to the completion time was doubtful and an indictment on the project management team for not acting in time yet it was clear that the project was not progressing according to schedule.

(iii) The contractor did not reply to the termination letter but rather moved to court. The contractor raised a claim of Kshs. 950 Million against KAA for works not done over and above the Kshs. 142M the contractor had been paid.

(iv) As per the KAA's brief to the Committee of 20th May 2020, the KAA had proposed settlement of a dispute at Kshs. 955,275,371.82 less Kshs. 7.5 million being the value of the project vehilcle. The contractor had gone to court seeking enforcement of the claim only to lose and referred to arbitration in a ruling of February 2020. The arbitrator is yet to be appointed.

Committee Recommendations

109. **The Committee recommends that the KAA should always undertake due diligence of contractors before awarding them contracts to avoid non-performance akin to this contract.**

a. **Missing Progress Report**

110. The project file availed for audit verification had only one progress report dated 31st July, 2016. It was therefore not possible to authenticate the availed progress report or evaluate the progress of the project over time.

Management response

111. The MD submitted a summary of the status of the project implementation as outlined in the table below:

Month	**Key Activity Done**	**Percentage % of works done**
November 2014	Site Clearance	1.0%
December 2014	Mobilization of machinery & construction of site office	2.1%
January 2015	Mobilization of machinery & construction of site office	3.5%
February 2015	Construction of site office	4%
March 2015	Temporary runway and preliminary works (site office, sign boards)	10%
April 2015	Temporary runway and preliminary works (site office, sign boards)	15%
May 2015	Temporary runway and preliminary works (site office, sign boards)	15%
June 2015	Temporary runway	15%
July 2015	Temporary runway	18%
August 2015	Completion of temporary runway and appropriate markings	18%

September 2015	Excavation of the main works	19%
October 2015	Excavation of the main works	19%
November 2015	Excavation of the main works	19.5%
December 2015	Acquisition of 4WD Toyota Land Cruiser Excavation and stockpiling of main works	22%
April 2016	Excavation, rock fill and stockpiling of main works	36%
June 2016	Excavation, rock fill and stockpiling of main works	42%

Committee Observations

112. The Committee observed that -

(i) There were Inspection Committee Reports dated 17th September 2015. One of the reports had four signatures while the other had three. Ms. Margaret Muraya, the secretary of the Committee and representative of the procurement department had not signed one of the reports. The project manager (Eng. Julius Wagai) could not satisfactorily explain the existence and the authenticity of the two reports.

(ii) It was also inconceivable that progress reports with glaring errors were used for payments.

Committee Recommendation

113. **The Committee recommends that the department of Public works should investigate the authenticity of the progress reports provided within three months of adoption of this report.**

a. Temporary Runway/Unapproved Variation of Scope

114. **The** Committee heard that the scope under the contract as per the tender documents and signed agreement was as follows;

- Runway: 1500M Long and 23M wide
- Apron: Approximately 11,250M²

- Access: Road: Approximate 2,500M²
- Carpark: Approximately 2,500M²

115. In a consultative meeting held on 12th November, 2016, it was concluded that phasing out works on the runway would pose as safety challenges and recommended for construction of a temporary runway to allow runway rehabilitation works to proceed without interference on the Airside operations. However, site instructions for construction of the temporary runway and its cost estimation were not seen in the project file. Further, the employer did not respond to contractor's letter that requested for applicable rates for this work as the rates used in the contract sum could not apply since this was a new scope of works. There was also no evidence in the file to show whether the additional scope was presented to the Tender Committee for approval or how the concerns of the contractor on the applicable rates were addressed.

Management response

116. The temporary runway was not a variation, but part of enabling works as captured in the Bills of Quantities in the contract document. The existing carriageway was supposed to be extended both ends so that at any particular time at least 800m of the runway was available for landing. Due to a risk assessment that was carried out by KAA, KCAA and the airline operators, it was agreed that the temporary runway was the best option.

Committee Observations

117. **The Committee observed that -**

(i) **The planning of the whole project was illegal from the onset. KAA should have sought the advice of the Kenya Civil Aviation Authority on the risk assessment before awarding the contract. This raises concerns about capacity challenges of KAA to plan projects diligently.**

(ii) **Although the Project manager indicated that these were no new works, the Committee was of the contrary opinion. In this case, retendering should have been done.**

(iii) **The Airstrip had been running on a temporary runway since 2015.**

(iv) By dint of the letter dated 28th January 2015 (error corrected for January 28th 2014), the Project Engineer gave the contractor the leeway to do the works and get paid so long it was within 15% of the contract sum.

(v) There was no evidence of approval of the temporary works.

(vi) Per KAA's brief of 20th May 2020, there were no BQs for the temporary runway which makes it hard to determine what was to be paid and for what.

(vii) The new contract for the rehahabilitation of Nanyuki Airstrip was awarded in March 2020 at a contract sum of Kshs. 329, 853, 680.94

Committee Recommendations

118. **The Committee recommends that -**

(i) The KAA should always adhere to the procurement law.

(ii) The DCI and EACC should investigate the procurement and implementation of the project with intent to prosecute the then managing director, the head of finance, and the then head of procurement, the then project engineer and any other person related to the project.

Lack of inspection Report

119. The contractor gave a notice of completion of temporary runway in a letter ref. KAA/ES/NANYUKI/931/C dated 15th June 2015 indicating that a part of the runway was to be handed over for use on 17th June, 2015 and the remaining section was to be completed on 30th July, 2015. There was however no correspondence in the project file showing if the temporary runway was completed or if it was inspected and approved for use. Further, a letter dated 29th February, 2016 from Ag. General Manager (Engineering Services) to the contractor indicated that the temporary runway was in bad state and needed repair. This notwithstanding, an amount of Kshs.142, 697,377.73 was paid to the contractor by 24th June, 2016.

Management response

120. The temporary runway was done to marram standards and required periodic maintenance through day works rates; the contractor was to carry out repairs by light grading and

compaction until the main works on the 1400m runway were complete. The amount of Kshs.142, 697,377.73 included both items in preliminary mobilization, site office, vehicle, temporary runway and ongoing works on the main runway as per the inspection and acceptance reports.

Committee observation

121. There was no inspection report that could be relied on.

Committee recommendation

122. **The Committee recommends that the DCI and EACC should investigate the procurement and implementation of the contract with intent to prosecute the then managing director, the head of finance, and the then head of procurement, the then project engineer and any other person related to the project.**

a. Contractor's claim on temporary runway

123. The Contractor through their advocates Zed Achoki and Company placed a demand of Kshs. 120,610,875.52 for the temporary runway. This amount was about 30% of the awarded contract sum which was over and above the authorized limit for variation. In the circumstances, it was not possible to confirm whether the Authority obtained value for money in the above project.

Management response

124. The Authority through a letter dated 28th January 2015 and Ref: KAA/ES/NANYUKI/931/C/SM/12 disputed the contractor's claim and provided a basis for determining the amounts payable in respect of the temporary runway.

Committee Observations

The Committee observed that -

(i) The contractor raised a claim of Kshs. 950 M against KAA for works not done over and above the Kshs. 142M already paid. Furthermore, the Contractor sued the KAA for illegal termination of the contract. This matter is waiting for an arbitrator to be appointed.

(ii) KAA stood to lose a substantive amount of money if the Contractor won the case.

(iii) KAA did not provide documentation on how they intended to dispute the claim sought by the Contractor.

Committee Recommendations

125. The Committee recommends that the DCI and EACC should investigate with intent to prosecute the then managing director, the head of finance, and the then head of procurement, the then project engineer and any other person related to the project

Overpayment on materials shed for the proposed construction of terminal building at Isiolo Airport (FY 2015/2016)

126. The Committee heard that the work under this project was awarded to Northern Construction Co. Ltd on 19th November, 2012 at a sum of Kshs.963, 051,933 (including provision sum for electrical and mechanical). The contract period was 28 months. Works commenced on 11th March, 2013 and were to be completed by 11th July 2015 but this was later revised to 7th November, 2015. There were two subcontractors under this project for electrical (Central Electrical Ltd) and mechanical (CEMTEC Engineering) works with contract sums of Kshs.107, 256,031 and Kshs.159, 821,137 respectively. A review of the payment certificates showed that a recovery of Kshs. 15, 688,681.31 was made from contractor's certificate No. 10. This recovery was for overpayment on material shed in a previous certificate and was based on the internal audit report. The contractor disputed this recovery and refused to accept reduced amount on above certificate.

127. Subsequently, the management wrote to the parent ministry requesting for independent valuation of the material shed. A team was appointed by the Ministry which carried out the valuation of the shed after facilitation from the Authority and gave a value of Kshs.2, 942,351 as communicated in a letter ref. QD/General/75 from Chief Quantity Surveyor. However, in the same letter the Chief Quantity Surveyor recommended that the contractor should not be paid based on the value of the shed (Kshs. 2,942,351) but as per the amount in the bill of quantities as awarded (Kshs. 15,688,681.31) since the contractor had fulfilled his duties in accordance with the contract.

128. In the circumstances, the Authority did not get value for money in incurring further cost of Kshs.12, 746,330.31 over and above the value of materials shed.

Management response

129. Management informed the Committee that the Kshs. 15,688,681.31 was part of preliminary items under the contract. Of this amount, the Authority paid Kshs. 2,942,351 leaving the balance of Kshs. 12, 746,330.31 to be determined through a process of negotiation.

Committee Observations

130. The Committee observed that -

(i) Through its brief to the Committee of 20th May 2020, the KAA confirmed that it had settled all the principle amount in July 2019. This means that KAA paid the balance of Kshs. 12, 746, 330.31 making a total of Khs. 15,688,681.31 for the work assessed to be worth Kshs. 2,942,351. This was a blatant lose of public money.

(ii) The contract was vaguely drawn i.e. did not have specific BQs of the shed, indicating professional negligence on the part of the KAA's Quantity Surveyors.

(iii) There were lapses in project management, otherwise KAA would have detected in time that the shed under construction did not meet their standards.

(iv) The team set up to negotiate the amount due to the contractor recommended full payment of the contested balance because the sum was in the contract. The team did not consider value for money.

(v) The remaining balance due to the contractor continued to accrue interest thus exposing KAA to further losses.

Committee Recommendation

131. The Committee recommends that officers that drew the contract without specific BQs in the Shed should be held responsible and surcharged for any amount that was paid to the contractor over and above the valued figure of Kshs. 2,942,351.

Contract variation for the runway strengthening & widening, parallel taxiway and cargo apron at Kisumu Airport – Contract No. KAA/ES/KSM/690/C (FY 2015/2016)

132. The Committee heard that the contract was awarded to China Overseas Construction Group Co. Ltd (COVEC) at a contract sum of Kshs.1, 708,295,391.23 inclusive of 16% VAT. Works commenced in March 2012. The scope of work was scaled down in October 2013 due to inadequate provision of funds from the Ministry and consequently divided into two stages:

Stage 1- Construction of parallel taxiway, cargo apron and public car park;

Stage 2- Runway strengthening and widening.

133. The Contractor completed construction of parallel taxiway, cargo apron and public car park in February 2014 at a cost of Kshs. 1, 375,117,326.36 inclusive of 16% VAT. The works under this contract were originally awarded to China Overseas Construction Group Co. Ltd (COVEC) at contract sum of Ksh. 1, 708,295,391.23. Due to financial constraints, the works completed by February 2014 were valued at Ksh. 1, 375,117,326.36 and treated as phase one. The Contractor was issued with a completion certificate for phase 1 and his retention monies paid. An amount of Kshs.333, 118,064.87 remained from the original contract sum to be utilized for phase 2 works. Further, on 19th August 2015, the employer and the contractor entered into an addendum for the remaining works packaged at a contract of Kshs. 436,067,579.87 thereby revising original contract sum by Kshs. 102,949,515 (from 1,708,295,391.23 to Ksh. 1,811,244,906).

Management response

134. Management informed the Committee that the original Contract Sum was Kshs.1, 708,295,391.23 was va``ried by a figure of Kshs. 102,949,515 through Addendum 1 Ref: CL/125/2011, dated 19th August 2015. The variation resulted to a revised contract sum of Kshs. 1,811,244,906.

Committee observations

135. **The variation was about 10% meaning it was within the 25% threashold allowed in law.**

Committee Recommendation

The matter was resolved

a. **Issue Raised**

136. The Committee heard that Phase 2 works were to be executed in 28 months. On 24th May 2016, and before the works started, another addendum was drawn and signed by the two parties which revised the initial contract sum further by an amount of Kshs.143, 532,199.66. This second addendum brought the total variation to Ksh. 246,481,714.66 (14.5%) with the revised contract sum being Kshs.1, 954,777,105.89.

Management response

137. The Committee heard that the negotiated variation of Kshs.246, 481,714.66 (inclusive of VAT) superseded the earlier variation and was to cover additional works as follows:

- Landside and aircraft ground lighting works and associated civil works
- Construction of access road to cargo facilities
- Laboratory equipment
- Provision for variation of prices (VOP) due to delay in completion of project occasioned by the suspension of works

138. The aggregate of the Kshs. 246,481,714.66 variations and the balance of Kshs.333, 118,064.87 from the original contract was Kshs. 579,599,779.53. The bill of quantities in amendment to addendum 1 supported the detailed scope of works covering these variations and the balance of Kshs.333, 118,064.87 from the original contract.

Committee Observations

139. The Committee observed that -

(i) There was no justification for the variation, as this ought to have been included in the original BQs.

(ii) The new works should have been retendered.

Committee Recommendation

140. **The Committee recommends that -**

i. The KAA should always adhere to the procurement law when executing contracts.

ii. The then heads of procurement and engineering should be repremanded by the Managing Director for not including BQs in the contract.

a. Issue raised

141. The Tender committee that approved this variation pointed out there was erroneous omission of Kshs.190, 156,845 in computation of the first variation and occasioned by failure to consider the VAT component on the amount paid in phase 1 works, but this could not be supported. Management did not explain what occasioned the contract sum variation above or the logic behind Kshs.190, 156,845 omission as approved by the Tender Committee as the original contract was inclusive of 16% VAT.

Committee Observation

142. The Committeee observed that the original contract sum was inclusive of VAT. It was fraudulent to justify the error on the basis of VAT which now the management acknowledged

Committee Recommendation

143. As much as there was no loss of funds, the Kenya Airports Authority committee that approved the contract in the first place should be reprimanded.

a. Issues raised

144. Despite the revised contract sum as pointed above, there was a reduction in the initial contract scope. A review of paragraph 6 of the addendum above showed that heavy duty manhole covers valued at Kshs. 17,933,117 were excluded from the revised scope.

Management Response

145. The exclusion of manhole covers was done after a re-evaluation of the project's priorities so as to accommodate the revised project scope within the allowable threshold for variations.

Committee Observation

146. The Committee observed that the scope of the works was revised downwards to accommodate the 15% variation allowed in law. As a result, vital components of the project like the Heavy Duty Manhole were omitted which was too risky for safe operations.

Committee Recommendations

147. The Committee recommends that -

(i) All those involved in revision of the scope of work thereby compromising the quality of work should be invesstigated by the DCI and the EACC with a view of preferring charges against those found culpable.

(ii) The Heavy-duty man holes should be installed at the airport as a matter of urgency.

2.2 KENYA PIPELINE CORPORATION (FY 2015/2016-2016/2017)

EVIDENCE ON THE REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF THE KENYA PIPELINE CORPORATION (KPC) FOR THE FY 2015/2016 TO 2016/17

Mr. Joe Sang, the former Managing Director of the Kenya Pipeline Corporation (KPC) accompanied by Mr. Samuel Odoyo, General Manager, Finance; Mr. Vincent Cheruyiot, General Manager, Supply Chain and Ms. Gloria Khafafa, Corporation Secretary appeared before the Committee to adduce evidence on the report of the Auditor General on the financial statements of the KPC for the financial years 2015/2016 and 2016/2017.

Trade and other receivables FY 2015/2016 and 2016/2017

148. The Committee heard that Trade and other receivables balance of Kshs. 8,407,859,000 in the statement of financial position as at 30th June, 2016 included an amount of Kshs. 4,200,000,000 (2015 Kshs. 4,138,178,176,816) due from an Oil Marketing Company (OMC) that was in dispute since 2014/2015 and had been subjected to an arbitrator. The arbitrator had since made a ruling in favour of the OMC with an award of US$19,758,594.7 equivalent to Kshs. 1,987,714,627 at the prevailing exchange rate. Management indicated that they contested the ruling in court and were awaiting its determination. This contingent liability was not recognized in the financial statements.

From the foregoing, it was not possible to confirm when the Company would be able to recover the Kshs. 4.2 billion debt. Any provision that would have been necessary in relation to this uncertainty was not incorporated in the financial statements.

Management Response

Management informed the Committee that a dispute arose between KPC and Kenol/Kobil Limited (K/K) following a government-authorized increase in KOSF tariff from USD 2 to USD 3 in 2005. In December 2005, Kenol|Kobil sought and obtained an injunction against KPC when the company threatened to suspend further services due to K/K's persistent non-payment of charges for services rendered. K/K refused to pay the revised tariff and withheld monies on a regular basis on alleged claims for demurrage. The parties referred the dispute for arbitration and subsequently escalated the dispute to the High Court.

KPC claim of Kshs 4.2 billion against of K|K was based on the Transportation and Storage Agreement (TSA) which was the governing contract between the parties. The total claim by K|K in which KPC had appealed against was USD 19,758,594.70 which was premised on damages for loss of business as well as demurrage charges, none of which were contained in the TSA. Further, both the High Court and the Court of Appeal held that KPC was not liable for demurrage charges or loss of business by K|K.

The Court of Appeal upheld the High Court's decision to set aside the Arbitral award. The parties appeared before the arbitrator for re-assessment of damages. The claims by the parties were the same as the initial arbitration, i.e. K|K claiming loss and damages while KPC claimed USD 5,380,206.20 and Kshs 133,505,216.60 due for services rendered to K|K under the Transportation and Storage Agreement.

Both KK and KPC completed their submissions on 4th August 2014, and the Arbitrator published his Ruling on 26th May 2016 in which he awarded the claimants against KPC the net sum of USD 20,891,651.45 minus Kshs. 113,985,513.40, (equivalent of USD 1,133,056.80) making a net award of USD 19,758,594.70 to the claimants.

KPC appealed against the award as published in June 2016. The Appeal under Misc. Application No. 380 of 2016 KPC –VS- KK was pending before the court.

K|K remains a going concern that still trades with KPC. As at 7th March, 2018, KPC had in custody a total of 35,946m^3 of loadable petroleum products and was actively involved in trading.

KPC therefore remained reluctant to make a provision in respect of the amount lest the same be deemed by the courts to be KPC's acknowledgement of liability.

Status as at the time the management appeared before the committee

The matter remained unresolved since it was said to be pending in court awaiting its determination.

<u>Committee Observations</u>

The Committee observed that -

i) **This matter has been pending for the last 15 years, which is a long period.**

ii) **This matter was handled in PIC's 21st report which recommended expeditious conclusion of the arbitration process. However, this process has taken inordinately long to conclude translating into colossal expenditures in terms of legal fees.**

iii) **All the other oil marketers, including K|K had agreed and purchased oil from KPC at USD 3 on TSA terms. It was therefore, not clear why K|K wanted to pursue the matter if it agreed to these terms.**

<u>Committee recommendation</u>

The committee recommends that Kenya Pipeline Corporation Managing director should apply for speedy conclusion of matter.

149. **<u>Property Plant and Equipment – Leasehold FY 2015/2016 and 2016/2017 (The audit query is repeated word for word in the two FYs)</u>**

The Committee heard that reported in the prior year's audit, parcels of leasehold land valued at Kshs. 1,928,677,778 which the Company acquired did not have title documents. Information availed during the audit indicated that Plots Nos. LR.9042/225 and 114/113/114 where Embakasi and Mombasa Depots sat and carried in the books at Kshs. 869,759,420 and Kshs. 130,257,924 respectively had their title deeds issued to Kenya Airports Authority, a distinct entity. Whereas allotment letters had been issued to the company with respect to the two land parcels, the situation was indicative of significant impairment of the properties as the ownership was not conclusively in its name.

Consequently, the carrying values as stated in the financial statements could not be confirmed to reflect the fair values of the property as at 30th June, 2016.

Management Response

Management informed the Committee that the leasehold land referred to related to the KPC depots at Jomo Kenyatta International Airport (JKIA), Embakasi and the Moi International Airport (MIA), Mombasa whose titles were held under the Kenya Airports Authority. KPC occupied the two parcels of land for over 3 decades and was allocated the same to put up the Jet fuel depots.

KPC's efforts to follow up on the title deeds through Ministry of Lands and the National Land Commission had not been successful. As far as KPC was concerned, the parcels of land were not in ownership dispute with Kenya Airport Authority (KAA) unless KAA stated otherwise.

Based on prior communications held between the two parastatals, KAA had expressly acknowledged that the land belonged to KPC and they had all along promised to facilitate the excision of the portion of land from the main KAA-JKIA title deed in favour of KPC. Further, the chairman, NLC urged the KAA to surrender the title and facilitate the separation of their title and KPC's titles.

Current Status

The matter was unresolved as KAA had not made any effort to facilitate transfer of this land to KPC.

Committee Observation

The Committee observed that KAA had on numerous occasions, in its appearance before the Committee, averred that the JKIA and MIA belonged to KAA contrary to KPC's assertions.

Committee Recommendation

The Committee recommends that the Ownership of this property should be settled at the cabinet level. The Head of Public Service should withing three moths of adoption of this report present this matter to the Cabinet for final resolution.

OTHER MATTER

150. **Procurement of Hydrant Pit Valves FY 2015/2016 and 2016/2017**

The Committee heard that during the financial year 2014/15, the Company awarded a contract valued at USD 6,409,492 (Kshs. 655,880,009) for the supply of hydrant pit valves, C/W isolation valves and 2year operational spares to a Company through direct procurement contrary to the requirements of the Public Procurement and Asset Disposal Act, 2005. A Company based in the United States of America which had been invited to bid, having been indicated as the original equipment manufacturer, did not provide documentary evidence nor information to support the claim and subsequent tender award. There was no justification on the need to procure operational spares to cover a two-year period. The spares which were delivered to the Company on 14th July, 2015, had not been inspected or formally received for use.

Management Response

Management informed the Committee that Kenya Pipeline Company initiated a procurement process in October 2014, to replace sixty (60) Hydrant Pit Valves at JKIA that were not compliant with the Third Edition of API 584, JIG/IATA requirements. These valves were not fitted with the Under Hydrant Shut-off Valve which enables the fuel flow to be isolated from the hydrant system to allow for repairs/replacement whenever a pit valve fails. Aero Dispenser Valves Ltd had dealt with KPC before, through supply of 10 Cla-Val pit valves and spares in 2013 and 2014 respectively. The procurement of the two lots largely followed the same process.

Vendor price analysis done to compare the prices of the valves and related spares for the deliveries made in 2013, 2014 and 2015, was an increase of 12%, between 2013 and 2015. Over the last two years, Kenya Pipeline Company (KPC) continued to engage and appeal to EACC to hasten their investigations to close the matter. KPC also sought the help of the Ministry of Energy & Petroleum on the same through various correspondences.

On 9th January 2018 at the request of EACC, a joint stock take was done to confirm the physical presence of the items that were partially delivered to KPC by Aero Dispenser (Vendor). The outcome of the exercise confirmed 100% physical presence of all the items that had been delivered. Arising from this, EACC granted KPC the authority to utilize the procured items to avoid possible loss of public funds as they continued with investigations. The matter remained unresolved.

Committee Observations

The Committee observed that -

i) **As per the KPC's update to the Committee dated 20th May 2020, the matter was pending in Court under Nairobi HCCC No. 224 of 2017 – Aero Dispenser Valves Vs KPC in which the claim against KPC was USD 3,845, 695.13 being the balance of the cost of items.**

ii) **This matter had been addressed in the 21st PIC report in which the Committee recommended for expeditious investigation by the EACC. However, the KPC's brief to the Committee of 20th May 2020 did not indicate the satus of the said investigations. One wonders why EACC had failed to conclude investigations that commenced three years ago.**

iii) **The justification provided for direct procurement was not satisfactory since the company that ended up supplying the valves was a Kenyan local company, and not Cla-Val Automatic Control Valves Co. Ltd.**

iv) **Aero and Dispenser Co. Ltd had supplied some products to KPC in 2013 therefore it was a company well known to the KPC. The said company was associated with one of the employees of the KPC.**

v) **KPC paid Aero Dispenser Company ltd an initial amount of 40% of the contact sum. The company took KPC to court seeking to be paid the remainder of 60%.**

<u>Committee Recommendation</u>

The Committee recommends that -

i. **The KPC should apply for expeditious hearing and determination of the case HCCC No. 224 of 2017**
ii. **In the event the M/S Aero Valves Dispenser is found culpable in HCCC No. 224 of 2017, the PPRA should comence debarment proceedings against it.**
iii. **The EACC should conclude investigating this matter within three months of adoption of this report and prefer charges against those found culpable. Failure to which the Chairman and the CEO of the EACC be held in contempt of Parliament**.

EXAMINATION OF AUDITED ACCOUNTS OF THE KENYA PIPELINE CORPORATION FOR THE FINANCIAL YEAR 2017/18

Mr. Hudson Andambi, Ag. Managing Director General of the Kenya Pipeline Corporation accompanied by Joshua Mutea, Laban Koasu, TM Ngira, Maureen Mwenje, Pius

Mwendwa, J. Ladeen, Pamela Odongo, Beatrice Orgut, Diterius Nyandika, Paul Njuguna and Samson Soirrio appeared before the Committee to adduce evidence on the audited accounts of the Authority for FY 2017/18.

151. **<u>Unrecognized Contingent Liability Under Trade and Other Receivables (FY 2017/18)</u>**

The Committee heard that the statement of financial position for the year under review reflected trade and other receivables amounting to Kshs. 14,390,380,116 (2017: Kshs. 12,048,271,443). As reported in 2016/17 and included in this amount is Kshs. 4,293,949,798 (2017: Kshs. 4,314,146,056) due from an Oil Marketing Company (OMC) which, however, the OMC has disputed. The arbitrator appointed to help resolve the dispute ruled against the Company in 2016 and awarded the OMC US$19,758,595, equivalent to Kshs. 1,996,606,025 at the exchange rate ruling on 30 June 2018. Thereafter, the Company lodged a Court appeal against the arbitrator's decision. Determination of the appeal was pending at the time of finalizing this audit. However, the contingent liability resulting from the arbitrator's ruling had not been recognized in the financial statements and further, no provision had been made by the Company in relation to the doubtful debt owed by the OMC.

In view of these omissions, the trade and other receivables balance of Kshs.14,390380,116 may had be overstated by Kshs. 4,292,949,798. Further, the decision that the Court would make on the Company's appeal would determine whether the contingent liability amounting to US$19,758,595 (Kshs. 1,996,606,025) resulting from the award made by the arbitrator to the OMC would materialize.

<u>Management Response</u>

Management informed the Committee that a dispute arose between KPC and Kenol/Kobil Limited (hereinafter referred to as K|K) following a government-authorized increase in KOSF tariff from USD 2 to USD 3 in 2005. In December 2005, Kenol|Kobil sought and obtained an injunction against KPC when the company threatened to suspend further services due to K|K's persistent non-payment of charges for services rendered. K|K refused to pay the revised tariff and withheld monies on a regular basis on alleged claims for demurrage. The parties referred the dispute for arbitration and subsequently escalated the matter to the High Court in *<u>Civil Appeal</u>*

No. 13 of 2010 KPC -vs- Kenol Kobil Ltd. In its Judgment delivered on 26th January 2012, the High Court referred the matter back to the Arbitrator for re-assessment of damages.

The Arbitrator published the Award on 26th May 2016 where he awarded K/K the sum of **USD 19,758,594.70.** KPC had appealed against this award, which is premised on damages for loss of business as well as demurrage charges, none of which were contained in the TSA. The status of the cases between KPC and Kenol Kobil was as follows:

i. *In the matter of an arbitration between KPC and Kenya Oil Company & Kobil Petroleum Ltd (K|K); Assessment of damages by the Arbitrator*

Following the Court of Appeal's Ruling upholding the High Court's decision to set aside the Arbitral award, the parties appeared before the arbitrator for assessment of damages. The claims by the parties were the same as the initial arbitration, i.e. K|K claiming loss and damages while KPC claims of USD 5,380,206.20 and Kshs 133,505,216.60 due for services rendered to KK under the Transportation and storage agreement.

The Arbitrator published his Ruing on 26th May 2016 in which he awarded the Claimants against KPC the net sum of USD 20,891,651.45 minus Kshs. 113,985,513.4, which after conversion in accordance with the CBK rates adds to USD 1,133,056.80 making a net award of the Claimants of USD 19,758,594.70

KPC appealed against the Award as published in May 2016. The Appeal under Misc. Application No. 380 of 2016 KPC –vs- KK is pending before court. The matter came up for mention on 19th September 2019, for an update on the Consultations between the Respondent and the new owners of KK. A new hearing date was to be taken at the Registry.

In the meantime, KPC sought and was granted the extension of the Orders restraining the Respondent from taking steps to enforce the award.

(ii) *High Court Commercial & Tax Division -Nairobi Civil Case No. 695 of 2010; KPC – vs- Kenol |Kobil Ltd*

KPC's claim was for approximately USD 15,842,295.75 and Kshs. 652,723,509.58 being the amount accrued to KPC by Kenol/Kobil arising out of services that KPC rendered in terms of transportation and storage of oil products for which K|K did not pay. This was for the period ranging between June 2009 (after conclusion of the arbitration hearing) and December 2010 (when the arbitral award was delivered.) The matter was pending before court and shall be mentioned on 21st October 2019.

The Management had made a provision for bad and doubtful debts in FY 2018-2019 annual financial accounts of the entire amount of Kshs. 4.3 billion. However, KPC remained optimistic that the ruling by the court will be in its favor.

Committee Observations

The Committee observed that -

- **i) This case had taken inordinately long time to conclude (ten years).**
- **ii) KPC was not opposed to resolving this matter out of Court. KPC had had a meeting with the litigants to resolve the matter out of court.**
- **iii) By the actions of management providing for bad and doubtful debts for Kshs 4.3 billion in the 2019/2020, one could conclude that KPC had thrown in the towel and wanted to settle the award. This amount did not include a contingent liability.**
- **iv) Per the KPC's policy on bad and dountful debts submitted to the Committee on 20th May 2020, any debt above kshs. 100,000 should be approved by the cabinet secretary for the National Treasury having provided proof of irrecoverability of the debt. No material placed before the Committee to show communications between the KPC and the National Treasury.**

Committee Recommendations

The Committee recommends that -

- **(i) The KPC management should apply for expeditious determination of the case.**
- **(ii) The KPC should reflect the debt in its books up and until the matter is determined in Court and directions given.**

152. **Incomplete Budgeting System Project (FY 2017/18)**

The Committee heard that the Property, Plant and Equipment balance of 104,869,093,834 (2017 98,091,185,918) reflected in the statement of financial position as at 30th June 2018 included Kshs. 3,822,570,903 (2017 Kshs. 54,559,440,075) under capital work-in-progress which in turn included a sum of Kshs. 26,498,339 (Euros 227,338) paid in advance to a vendor for supply, implementation and commissioning of an electronic budgeting system in 2015. The payment represented 51% of the contract sum. The contract's delivery timeline was six (6) months. However, as at the time of finalizing the audit, the system had not been supplied although 33 (thirty-three) months had lapsed since the signing of the contract. Further, in spite of the system having not been completed or put to use, the Company had paid the vendor annual software, maintenance and user training fees totaling Euros 35,361, or Kshs. 4,132,188 at the exchange rate ruling on 30th June 2018.

The Company had since terminated the contract with the vendor. However, no provision or write-off had been made against the budgeting system as it was still recognized as capital work-in-progress in the financial statements of the Company. In addition, it was not clear why annual software licence and maintenance fees as well as training costs were paid to the vendor before the whole system was supplied and commissioned. Further, the option of recovering the amounts advanced to the vendor by recalling the contract's performance bond was no longer available to the Company as the bond expired in November 2015. From the foregoing, value-for-money and propriety of expenditures totaling Kshs.30,588,934 incurred on the budgeting system could not be confirmed.

<u>Management Response</u>

Management informed the Committee that the payment of Euros 227,338, or Kshs. 26,566,082 based on the ruling exchange rate as of 30 June 2018 (51% of contract price Euros 444,442) was not advance payment but rather based on milestones that were delivered. The payments done include;

It was standard practice to pay for software licenses and maintenance costs before obtaining the rights to install a software in a client environment. Software maintenance is paid from the onset of an installation in order to access manufacturer support within the project and wherever there is need for code corrections/patches/security updates on the software system. The Company stopped paying for Annual Maintenance immediately the project was terminated.

On Professional Implementation Services, Implementation involves gathering of user requirements, Installation and configuration of the system to meet user requirements. Several workshops were held between KPC teams and the Implementation Consultant resulting in a signed Blueprint (capturing user requirements). Attached a few workshop details, signed Blueprint, User Acceptance Testing readiness and implementation status report.

On training - 4No. KPC Staff were trained in Lucca, Italy and other local training. This was done within the project implementation cycle in order to enhance knowledge transfer.

Table 1- Payments based on Milestones

No.	Details	Delivered	Contract Amount€	Amount Paid €	Retention €	Balance €
1	Software costs - Process and licenses fees	YES	107,500	96,750	10,750	-
2	Annual software maintenance cost	YES	21,500	9,675	1,075	10,750
3	Professional Implementation Service	Partly	225,600	60,912	6,768	157,920
4	Training	YES	28,540	25,686	2,854	-
5	VAT		61,302	34,315		26,987
	Total		**444,442**	**227,338**	**21,447**	**195,657**

A request was made to the bidder to renew performance bond – Final Notice to the Consultant indicated the need to extend the performance bond. However, the Consultant did not renew the performance bond which was one of the basis of termination of the project.

Current Status

As observed by the auditor, Tender Committee terminated the contract to M/s Doorsun Consulting (The implementation consultant) due to the consultant non-performance, failure to renew the performance bond and effluxion of time. The Company has further made provision for the entire costs incurred for the incomplete system in FY 2018-2019 financial statements.

The company has also written a recommendation to Director of Public Procurement Regulatory Authority (PPRA) to debar the Consultant from participating in future public procurement and was in the process of taking legal action against the Consultant to recover the costs paid (Letter to PPRA was tabled.)

Committee Observations

The Committee observed that -

i) **Due diligence on the company was not done or if it was done, it was shoddy;**
ii) **The manufacturer is an Italian Company but the vendor was a local company;**
iii) **KPC continued paying the company even after expiry of the performance bond;**
iv) **The contract was signed between the KPC and the Kenyan Company and not the Italian Company;**
v) **The KPC never foolowed on renewal of a performance bond immediately before expiry indicating complacence from KPC;**
vi) **There was no termination letter of the vendor. Termination was done on 23rd December 2017**
vii) **Payment of 51% for a system upfront without any security left KPC exposed to loss**
viii) **The KPC ICT manager confirmed that the software was not in use currently and that the software can only be used after upgrade which will have to be a new contract. This software was functionally obsolete**
ix) **There was no any legal action taken by the KPC on the two companies apart from writing to PPRA asking them to debar the companies from tendering.**

x) **The MD indicated that KPC has had problems in contract management especially on leaving contracts to expire and not renewed before expiry. Such contracts include early oil projects**

Committee Recommendations

The Committee recommends that -

(i) **The EACC and the DCI should investigate the whole tendering process with a view to preferring charges against those that may have been negligent.**
(ii) **The then Managing Director, Joe Sang, should be held responsible for any loss that the KPC made through the impugned procurement.**
(iii) **The Public Procurement Regulatory Board should commence debarring proceedings against the firm that was contracted but failed to deliver pursuant to Section 42 of the Public Procurement and Asset Disposal Act, 2015**

153. **Land without Title Deeds**

The Committee heard that as reported in the report for 2016/17, the leasehold land balance of Kshs. 4,999,883,570 (2017 Kshs. 5,167,287,314) disclosed under Note 17, includes parcels of land valued at Kshs. 1,928,677,778 which have no title deeds. Available information indicates that Plots No.LR.9042/225 and 114/113/114 carried in the books at Kshs. 869,759,420 and Kshs.130,257,924 respectively and in which the Company's Embakasi and Mombasa depots are situated, are issued in the name of Kenya Airports Authority (KAA) who are the legal owners of the larger piece of land from which the two parcels were hived-off. Although, management have explained that, the National Lands Commission (NLC) has written to KAA to surrender the original title to facilitate the issuance of sub-titles to the two parcels, the titles have not been surrendered as yet.

In the circumstances, it was not possible to confirm that the Company owns the two parcels of land in its possession, and whether indeed the carrying value of the two parcels stated in the financial statements as at 30 June 2018 were correct.

Management Response

Management informed the Committee that the leasehold land referred above related to the KPC depots at Jomo Kenyatta International Airport (JKIA) Embakasi and the Moi International Airport (MIA), Mombasa whose titles are held under the Kenya Airports Authority. KPC had occupied the two parcels of land for over 3 decades and was allocated the same to put up the Jet fuel depots.

KPC had over the years been following up the title deeds with Ministry of Lands and the National Land Commission (NLC) and wrote to The Ministry of Lands on 11th April 2013 and the National Land Commission (NLC) on 9th March 2015 and 25th May 2015 seeking its intervention on the matter.

As far as KPC is concerned, the parcels of land were not in ownership dispute with Kenya Airport Authority (KAA) unless KAA states otherwise which they have never done. Based on prior communications held between the two parastatals, KAA has expressly acknowledged that the land belongs to KPC and they have all along promised to facilitate the excision of the portion of land from the main KAA-JKIA title deed in favour of KPC. Further, the chairman of the NLC urged the KAA to surrender the title and facilitate the separation of their title and KPC's titles.

Current status

KPC was still waiting for response from KAA on the matter following the intervention from NLC. KPC also remains focused on this issue and will continue pursuing the Title deeds for these parcels of land which for all intent and purposes belong to KPC.

Committee Observation

The Committeee observed that this matter was handled in the last financial year and the status had not changed.

Committee Recommendations

The Committee recommends that the Ownership of the property should be settled at the cabinet level. The Head of Public Service should withing three moths of adoption of this report present this matter to the Cabinet for final resolution.

154. **Pending Contract Variation Claims**

The Committee heard that Property, Plant and Equipment balance amounting to Kshs. 104,869,093, 834 reflected in the statement of financial position as at 30th June 2018 and analyzed in note 16 to the financial statements included an amount of Kshs. 51,416,165,547 incurred on cost of works on a new Mombasa-Nairobi Oil Pipeline commonly referred to as Line 5. The balance was transferred from work-in-progress during the year under review.

Construction of Line 5 started on 1 July 2014, following the award of the tender at a cost of US$484,502,887 equivalent to Kshs. 48,474,513,784 at the ruling exchange rate of 30 June 2018. As 30 June 2018, the project engineer had submitted eight (8) variations orders totaling to US$38,109,717 (Kshs. 3,812,877,186). The variation orders were reported to have resulted from change of design specifications and omission of works in the initial contract. Of the aggregate variation amount, a sum of US$17,445,639 (Kshs. 1,745,436,145) was approved for payment.

In addition, the contractor submitted five (5) Extension of Time (EoT) claims amounting to US$204,511,827 (Kshs. 20,461,408,302). However, the claims were contested by the Project Engineer resulting in the appointment of an independent expert scheduler to verify the claims. As at 30 June 2018, the expert scheduler had assessed the total amount payable to the contractor for the four EoTs to be US$189,290,732 (Kshs.18,938,537,727). The fifth EoT claim of US$15,221,095 (Kshs.1,522,870,576) had not been reviewed by the expert scheduler.

Construction of the pipeline (Line 5) was completed and the line commissioned during the year under review. Until the matters related to the contract variation and extension of time are resolved, it was not possible to confirm that the carrying value of the pipeline reflected in the financial statements as at 30 June 2018 is true and fair.

Management Response

(a) Variations

The variation orders eight (8No) totaled USD 20,199,065.77. These variations were progressed through the Tender Committee and for cases where the Tender committee could not approve due to works having been executed, the variations were handled administratively, and approval granted following legal advice from the Attorney General. Variations were allowable under

Section 47 of the Public Procurement and Disposal Act, 2005 as read together with Regulation 31 of the Public Procurement and disposal regulations 2006. The act allows for total cumulative variations of 25% of the contract sum made up of variations of works (15%) and goods supplied (10%). Variations 1 to 8 amounted to 4.13% of the total contract sum.

(b) EOT Claims

For the EOT claims, an Expert Scheduler, M/s Nyara Consults was appointed to evaluate, and the scope covered assessment of EOT 1 – EOT 4 amounting to USD 189,290,731.90 that comprised of Prolongation costs, Standby personnel and equipment, Head office overheads & profits and Notification of compensation (Variations).

The Expert Scheduler assessed the four EOT claims and from the amount of USD 189,290,731.90 determined USD. 44,019,024.64 (Inc. of vat) comprising of:

- Prolongation costs- USD 33,081,809.47 9 (Incl. of 16% vat)- USD 28,518,801.27 (excl. of VAT)
- Notices of compensation (Variations)-USD 10,937,215.16(incl. of 16 vat)

The Notices for Compensation were variations already approved by the Tender committee (TC) as explained in item (a) and did not qualify as EOT claims.

In his findings, the Expert Scheduler made a significant reduction in the contractor's claim, totaling USD 112,417,640.44. Only Prolongation costs were considered, and all the claims presented under Stand by personnel and equipment, Head Office Overheads and Profits totaling USD 33,507,793.27 were rejected.

EOT 5 claim amounting to USD 15,221,095 was submitted by the Contractor after the Expert Scheduler had been engaged and is not yet evaluated.

Currently, the KPC is awaiting approvals from the key Government agencies for further action. The matter is also under DCI investigations and the company awaits the outcome. In the meantime, the Company intends to disclose this as a contingent liability in its financial statements for 2018/19 as per good accounting practice.

Committee Observation

The OAG had done a special audit on this matter and its report tabled in the House

Committee Recommendation

The committee will consider this matter at the time of considering the special audit report

Considering that the Auditor General had done a special audit on the matter, the Committee will consider it there.

155. **Irregular Supply of Hydrant Pit Valves (2017/18)**

The Committee heard that as reported in my report for 2016/2017, the Company awarded a USD.6,409,492 (Kshs.647,679,167) contract for the supply of hydrant pit valves - C/W isolation valves and spare parts for two years' operations to a vendor through direct procurement, contrary to the requirements of the Public Procurement and Asset Disposal Act, 2015. Although the management had indicated that the United States of America-based vendor was invited to bid for the tender on account of being the original manufacturer of the equipment, no evidence has been made available to validate this assertion. Therefore, the basis for the award of the tender to the vendor could not be confirmed. In addition, no plausible explanation had been provided by management for procurement of spare parts to cover two years of operations. At the time of concluding this audit, the matter was under prosecution in Court after investigation by the Ethics and Anti-Corruption Commission.

In the circumstances, the auditor could not confirm the Company's compliance with the procurement procedures, and whether it obtained value-for-money on the contract sum of Kshs.655,880,009 paid to the vendor for supply of the hydrant pit valves.

Committee Observations

This matter had been reported in the last three financial years. The Auditor General had also done a special audit report on the same.

156. **Unutilized New Kisumu Oil Jetty (2017/18)**

The Committee heard that the statement of financial position as at 30th June 2018, reflected Property Plant and Equipment with a net book value of Kshs.104,869,093,834. The balance included assets valued at Kshs.1,937,515,726 being construction costs for the Kisumu Oil Jetty transferred from work-in-progress during the year under review. Construction works on the jetty were executed from May 2017 to March 2018 when they were completed and handed over to the Company by the contractor. The assets were thereafter capitalized and depreciated by Kshs.11,037,699 for the year under review. The jetty was constructed under the Northern Corridor Integration Projects portfolio of the East African Community with a view to improve the distribution of refined petroleum products to Uganda and other neighboring countries. However, it had remained unutilized due to lack of infrastructure for receipt and storage of the products in Uganda. Although management had indicated that some progress had been made in construction of one of the two planned similar jetties on Uganda side, it was not certain when all the facilities due for construction in Uganda would be completed and operationalized.

Management Response

Management informed the Committee that the KPC aimed at improving its throughput to the neighboring countries in investing in the Kisumu Oil Jetty. The project was completed, tested and handed over to KPC ready for operation. It was largely dependent on completion of a complimentary receiving facility with storage and barges for ferrying of the oil products on the Uganda side. It had been estimated that by the time the jetty was completed on the Kenyan side, the facilities in Uganda would be ready. However, the Kisumu Oil Jetty was completed ahead of the Ugandan side which was still under construction.

KPC together with an inter-ministerial team from Kenya went to Uganda during the month of December 2018 to assess the progress on development of the Jetty facilities. It was observed that the main jetty facility in Bukasa Entebbe, being developed by a private investor (Mahathi Infra E A. Ltd) was at 35% completion rate.

As at the time of appearance before the Committee, the Ugandan facility was still under construction in Entebbe. In the meantime, KPC was looking at using other OMC's to leverage on the facility to increase its throughput and that the project remained a viable investment for the Company and could not be impaired.

Committee observations

The Committee observed that -

i) **The matter was in court in which the DCI charged the KPC officers for alleged procurement irregularities. However this was not picked by the Auditor General**
ii) **The Ugandan facility was 65% complete as at June, 2019**
iii) **The project implementation timelines between the Kenyan side and the Ugandan side was not coordinated.**

Committee recommendations

The committee recommends that -

(i) **The KPC management should implore upon the Ugandan counterparts to expedite completion of the Ugandan facility so as to operationalize the facility.**
(ii) **Uganda being one of kenya's leading trading partner, there is need for improved cordination and networking between the two countries.**
(iii) **The DCI should apply for expeditious determination of the matter.**

157. **Irregular payment to a contractor.**

The Committee heard that during the year under review, a payment of Kshs. 24,651,296 in excess of the contract sum was made to a firm contracted to carry out environmental clean-up works along the Company's oil pipeline. The payments were for additional invoices raised by the firm for the months of March to June 2017 which period was, however, within the original contract timeline. According to the contract agreement, the contractor was to undertake the works for 18 months at a revised contract sum of Kshs. 147,129,771. However, the contractor invoiced the Company after the full contract sum was paid in March 2017 thus resulting in the nugatory payments totaling Kshs.24,651,296.

Management Response

Management informed the Committee that KPC undertook the clean-up at Thange under a restoration order from NEMA. A tender was awarded based on SGS environmental assessment and hydrogeological study, which gave the recommended clean up strategy. At the time of going to tender, it was estimated that the clean-up would take 12 months. The 12 months was the basis for the bid documents and subsequently the letter of award. On consultation with NEMA, it was agreed that the contract period of 12months was not a sufficient period for the clean-up. KPC indicated that a timeline was needed for purposes of going to tender, but that continuous monitoring of the contract would be done throughout the clean-up period. The contract period was therefore indicated as 18 months, but the financial payment milestones remained as 12 months given that the letter of award had been signed.

The clean-up commenced in March 2016. During the contract period environmental sampling and testing was being undertaken by SGS on-a-monthly basis in order to confirm progress on clean up. After 12 months of clean up, KPC wrote to NEMA seeking a way forward as per the restoration order. The sampling and testing results at the time still indicated presence of product in the clean-up site. Based on these results and after engaging the contractor, it was determined that more work was still required to be done and given the urgency and nature of the works, withdrawal of the contractor from the site was not prudent.

As KPC awaited NEMA's response, the clean-up was still on-going. NEMA's response was received at end of May 2017 detailing the areas that required further works. In the period between March and June 2017 the clean-up was progressing as per reports from the site. The amount of Kshs. 24,651,296 was therefore payment for the months of March 2017 to June 2017 at the contract's stipulated monthly rate.

Committee Observations

The committee observed that -

i) **KPC had paid a total of Kshs. 147 million plus Kshs. 24 million and Kshs. 47 million (new contract). All these indicate there was no proper planning.**

ii) **KPC did not provide the NEMA report. It however provided the SGS report in its brief to the Committee dated 20th May 2020 dated June 2017 that found presence of hydrocarbons in River Thange and surrounding areas. The hydrocarbomns in the soil were however within the soil clean up levels fro agricutural soils**

iii) **The response did not address the issue raised in the audit- the Kshs 24 million was paid based on an invoice and that that the contract of Kshs 147 million was still running (was to end in June 2017).**

Committee Recommendations

The confirmation from NEMA to extend by two months was within the law hence query resolved.

158. **Irregular Purchase of motor vehicle accessories (FY 2017/18)**

The Committee heard that Motor Vehicle expenditure of Kshs. 72,872,587, included Kshs. 9,096,935 spent on purchases of motor vehicle accessories which included chevrons, car mats, stripes, reflectors, life savers and key tags. The items were purchased as low-value procurements through petty cash payments and reimbursement claims lodged by the Company's staff. Since the purchases occurred on a regular basis, the total value of the items for the year exceeded the threshold for low value procurement, set out in Section 107 of the Public Procurement and Disposal Act, 2015. Further, the quantities of the accessories purchased exceeded the Company's fleet requirements and in addition, were bought at prices that exceeded, by as much as 350% similar purchases made during the year under review.

Further, only a small number of the items were confirmed to have been issued for use in the Company's fleet of vehicles and none could be found in the Company's stores.

In the circumstances, the purchases were made irregularly and receipt and use of the majority of the items for the Company's benefit could not be confirmed.

Management Response

Management informed the Committee that the items cited above were non-stock items which were procured directly. Management noted the gap in procurement of these items through petty cash as low value items and therefore put in place the following controls:

a) Procurement of motor vehicles through Procurement Department

b) Activation of a module in SAP- ERP system that monitors the usage and procurement of all vehicle accessories.
c) Restriction of procurement of items through petty cash.

The staff involved in the purchase and approval of the cited cases were issued with show-cause letters requiring them to account for the items bought failure to which the amounts would be recovered from them. Analysis of the responses from the concerned are on-going with a view to determining the appropriate disciplinary action for the staff if found culpable.

Committee Observations

The Committee observed that -

i) The alleged show cause letters were issued in February 2019 but nothing had happened so far as at the time of appearing before the Committee indicating ineptness at the KPC.

ii) Nothing justifies an excuse that analysis of the responses was being done since April 2019.

Committee recommendations

The committee recommends that -

(i) All officers that did such purchases should be punished according to the law

(ii) Officers that had been procrastinating on analysis of the responses should be punished by the Managing Director.

(iii) The KPC should always carry out needs assessment with proper priority ranking of needs before doing any purchase

159. **Irregular Payment of overtime allowances (FY 2017/18)**

The Committee heard that the staff costs reflected an amount Kshs. 5,841,187,761 for the year ended 30th June 2018 which included overtime allowance payments of Kshs.306,955,912 paid to 1,080 staff members. Of this amount, Kshs. 97,661,089 was paid contrary to the Company's Staff Rules and Regulations to 231 staff who were earning responsibility allowances. In addition, overtime allowance payments totaling Kshs. 171,919,296 made to 164 employees exceeded 25% of their respective annual gross salaries. In some instances, the annual overtime allowances in excess of their annual salaries. In some instances, the annual overtime allowances paid were as high as 250% of annual gross salaries payable, implying that the claimants worked for more days than were available in the financial year.

In the circumstances, it was possible to confirm the regularity and probity of Kshs. 269,580,385 incurred on the allowances.

Management Response

Management informed the Committee that staff earning responsibility allowances were paid overtime on exceptional cases due to need to work extra hours on urgent projects with very tight delivery timelines. These projects included the line Line 5, Additional storage Tanks and Kisumu Oil Jetty. Supervising of pigging and sleeving works during emergencies was done on a continuous basis requiring staff to be on site 24 hours. Exceptional management approval was granted in 2015 for payment of overtimes on emergencies and exceptional cases to management staff.

A total of 230 staff who earned responsibility allowance were paid overtime. Fifty-one (51) out of the 230 employees were paid overtime more than 25% of their basic pay totaling to Kshs 71,152,554.74 with eight (8) of the staff members drawing overtime between 100% and 162%. No staff earning responsibility allowance earned overtime more than 162%.

With the completion of the critical and urgent projects management, had since stopped payment of overtime to staff earning responsibility allowance and staff rules and regulations were under review to adequately compensate management staff working extra hours on company duties/engagements.

Committee Observations

The committee observed that -

i) **Officers earning responsibility allowances should not have earned overtime allowance**
ii) **Being paid more than 250% indicated that one worked overtime more than the normal working hours**

iii) **There was no material placed before the Committee to show that the board had approved payment of such allowances. The only document available was a Memo done by Mr. T. M. Ngira (HRM) Ref: HR/CI/4/2 dated 21st October 2015 ostensibly saying that officers can be paid under emergency and clarifying HR rules. This memo may have been misused.**

iv) **The monies paid irregularly had not been recovered as at the time of KPC's appearance before the Committee. The Ag. MD undertook to recover it. However, KPC's brief to the Committee on 20th May 2020 by the new MD Dr. Macharia Irungu indicated neither recoveries nor efforts made on recovery despite his predicessor's undertaking to do the same.**

Committee recommendation

The Committee recommends that -

i) **Officers that earned responsibility allowances and at the same time paid overtime allowances should be surcharged.**

ii) **Mr. Ngira should be reprimanded**

iii) **The parent ministry should conduct an HR audit on payments of allowance at KPC and the resultant report presented to the Auditor General for inclusion in the 2020/2021 audit report.**

160. **Non-adherence to SRC guidelines on subsistence allowances (FY 2017/18)**

The Committee heard that the subsistence allowance payments totaling Kshs. 509,631,611 made to travelling Company staff during the year under review were based on identical rates across towns for various job cadres contrary to rules issued by the Salaries and Remuneration Commission (SRC). The rules prescribe a three-cluster town classification system applicable for daily allowance payments to both national and county government employees. Since no approvals were granted by the Commission for the identical allowance rates paid to staff by management, the resultant payments were irregular.

Management Response

Management informed the Committee that whereas SRC had provided generic guidelines as provided for in the Circular under reference by the Auditors, KPC and owing to its unique nature and spread of activities used the same rates of pay for each Job group. This was in line with respective approvals and “no objections” issued by the very SRC after every CBA negotiations as they reviewed all agreements before the same are registered in the Employment & Labour Relations Court for implementation e.g. during the last CBA 2017/2020 the same uniform rates for Unionisable staff were approved by SRC. SRC’s recent letter of no objection to the proposed Subsistence Allowance rates and Unionisable Staff (CBA) and Management Staff was given.

Committee Observations

The matter was adequately addressed and therefore the query resolved.

2.3 KENYA ACCOUNTANTS AND SECRETARIES NATIONAL EXAMINATION BOARD (FY 2015/16 AND 2016/2017)

EVIDENCE ON THE REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF KENYA ACCOUNTANTS AND SECRETARIES NATIONAL EXAMINATION BOARD (KASNEB) FOR THE FINANCIAL YEARS 2015/16 AND 2016/17

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 (KASNEB) for the financial years 2015/16 and 2016/17.

161. **UNQUALIFIED OPINION (FY 2015/2016 & 2016/17)**

The Committee heard that the Board’s account for the financial years 2015/2016 and 2016/17 were unqualified.

Committee Recommendation

The management of KASNEB should continue ensuring financial prudence

2.4 KENYA MEDICAL PRACTITIONERS AND DENTISTS BOARD (FY 2013/14 - 2016/17)

EVIDENCE ON THE REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF KENYA MEDICAL PRACTITIONERS AND DENTISTS BOARD FOR THE FINANCIAL YEARS 2013/14 TO 2016/17

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.

162. **UNQUALIFIED OPINION (FYS 2013/14 TO 2013/14)**

The Committee heard that the Board received unqualified report from the Auditor General for the FYs 2013/14 to 2016/17

Committee Recommendation

The management should continue ensuring financial prudence.

2.5 LAPSSET CORRIDOR DEVELOPMENT AUTHORITY (FY 2013/14 -2015/16)

EVIDENCE ON THE REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF LAPSSET CORRIDOR DEVELOPMENT AUTHORITY FOR FY 2013/14 TO 2015/16

Mr. Silvester Kasuku, the Chief Executive Officer of LAPSSET 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 Authority for FY 2013/14 to FY 2015/16.

163. **Examination of audited accounts for FY 2013/14**

The Committee heard that the Board received unqualified report from the Auditor General for the FY 2013/14.

Committee Recommendation

The management should continue ensuring financial prudence.

164. **Emphasis of matter: Irregular procurement of air transport services FY 2014/15**

The Committee heard that although LAPSSET 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. This is contrary to Section 75 of the Public Procurement and Disposal Act 2005, which prohibited 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 Observation

The explanation offered was satisfactory and therefore the matter resolved

165. **LAPSSET Youth Scholarship Programme -FY 2015/16**

The Committee heard that 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 related to LAPSSET Presidential Youth

Scholarship Program under which one thousand students from Lamu County were 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 were non-residents of Lamu County. In the circumstances, the proprietary of the expenditure of Kshs. 1,807,232 could not be verified.

Management Response

The CEO informed the Committee that 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 had other districts as District of birth. LAPSSET Presidential Scholarship selection committee based in Lamu County did selection of youth for placement under the Program. The committee membership was 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.

The ten youths were bonafide Lamu county residents though their Districts of birth reflected on their ID's might depend on the physical locality/address where one was born which might not be his/her home county.

Committee Observations

The Committee observed -

i) **The Program targeted Lamu as it was the starting point of the LAPSSET project. The Authority had recommended implementation of the scholarship in other counties where LAPSSET traverses.**

ii) **The beneficiaries may bear names of other districts but they were in fact residents of Lamu and hence should not be discriminated against.**

iii) **The matter was considered adequately addressed**

166. **<u>Consultancy Services for Development of Institutional Framework Organization Structure FY 2015/16</u>**

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 4th 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 was however not made available for audit review.

<u>Management Response</u>

The CEO stated that 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 should 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 in line with 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 were agreeable to both parties. Hence, the Authority adhered to the law in the procurement process.

<u>Committee Observation</u>

The Committee observed that -

i) **The auditors referred to Public Procurement and Asset Disposal Act 2015 instead of the Public Procurement and Disposal Act of 2005**
ii) **The Committee treated the query as resolved.**

167. **<u>Consultancy services for Strategic Environmental Assessment for the LAPSSET Infrastructure Corridor Kshs. 80,738,320</u>**

The Committee heard that the Authority awarded a contract for strategic environmental assessment to a local firm at Kshs. 80,738,320 on 28th 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 services contracts procured for a total contract sum of Kshs. 94,537,970.

<u>Management Response</u>

Management informed the Committee that the tender was advertised on 13th August 2015. Tender evaluation was done and thereafter, the tender committee adjudicated and awarded it on 18th 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 were agreeable to both parties. Hence, the Authority adhered to the law in the procurement process.

Committee Observations

The Committee observed that -

i) **The commencnement period of the Public Procurement and Asset Disposal Act 2015 was on 7th January 2016**
ii) **The auditors referred to Public Procurement and Asset Disposal Act 2015 instead of the Public Procurement and Disposal Act of 2005**
iii) **The Committee treated the query as resolved.**

168. **Actual expenditure differences - FY 2015/16**

The Committee heard that actual expenditure reflected in the statement of financial performance differed with the actual amount reflected in the statement of comparison of budget and actual amounts for the year ended 30th June 2016 as follows:

Item	**Statement of Financial Performance (Kshs)**	**Statement of Comparison of Budget & 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

<u>Management Response</u>

The CEO concurred with the audit observation that 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.

The difference in amounts reflected in the two statements arose due to the accounting method that was used. Statement of performance was 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 tallied 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.

<u>Committee Observations</u>

The Committee recommends that -

i) **The difference came about as a result of use of different reporting standards;**
ii) **Reconciliation was done after the Treasury Circular of 30th June 2018;**
iii) **The query was resolved.**

<u>Committee Recommendation</u>

The Committee recommends that Government entities should always use the accounting standards prescribed by the Public Sector Accounting Standard provided for under Section 194 of the PFM Act of 2012 and communicated by the National Treasury to avoid unnecessary queries

2.6 NATIONAL COMMUNICATION SECRETARIAT (FY 2008/09 -2016/17)

EVIDENCE ON THE REPORT OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF NATIONAL COMMUNICATION SECRETARIAT FOR THE FY 2008/09 TO 2016/17

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.

169. **Unqaulified Opinion (FYs 2008/9 to 2016/17)**

The Committee heard that the Secretariat's audited accounts for the financial yearS 2008/2009 through to 2016/17 were unqualified.

170. **Other Matter - FY 2016/17**

The Committee heard that a review of the Secretariat's staff composition revealed that one ethnic community accounted for 44% of the total staff. Therefore, the Secretariat contravened *Article 232 (1) (h)* of the Constitution 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. Further, it states that no public establishment shall have more than a third of its staff coming from one ethnic community. Consequently, the management was in breach of law.

Management Response

Management informed the Committee that the recruitment of staff at the top positions 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

The Committee observed

i) **Two officers recently recruited were not from the tribes already overrepresented at the Secretariat.**

ii) **The mother ministry was still hiring for them despite being a state corporation**

Committee recommendations

The Committee recommends that -

i) **The National Cohesion and Integration Commission should follow up on the matter as it fell within its mandate and the report to the House within three moths of adoption of this report.**

ii) **The secretariat should adhere to Section 7 of the National Cohesion and Integration Cohesion Act whenever recruitment of staff happens.**

iii) **The Mother Minsitry should desist from micromaging state corporations**

2.7 KENYA URBAN ROADS AUTHORITY (FYS 2014/15 - 2016/17)

EVIDENCE ON THE REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF KENYA URBAN ROADS AUTHORITY (KURA) FOR FY 2014/15 TO FY 2016/17

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 financial years 2014/15 to FY 2016/17.

171. **Unqaulified Opinion (FYs 2014/15 to 2016/17)**

The Committee heard that the Authority's audited accounts for the financial years 2014/15 through to 2016/17 were unqualified.

Committee Observation

Though the auditor general did not raise any reservations on KURA, information in the public dormain indicated contrary.

Committee Recommendations

The Committee recommends that the the Auditor General should, within thirty days of adoption of this report, revist the audit reports and revert back to the Committee together with the internal audit reports and management letter

2.8 KENYA NATIONAL EXAMINATIONS COUNCIL (FY 2015/16 to 2016/17)

EVIDENCE ON THE REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF KENYA NATIONAL EXAMINATIONS COUNCIL FOR FY 2015/16 AND 2016/17

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.

172. **New Mitihani House (FY 2015/16 and FY 2016/17)**

The Committee heard that as reported in the previous years, the Council staff continued to be housed at five (5) different sites because the new building (Mitihani House) was not completed as anticipated. The project was only 60% complete despite the fact that the work had been going on for the last twenty-nine (29) years. Physical visit to the project on 21st February 2017 revealed that Tower C was partly completed and occupied by the Council staff. According to the engineer's estimates dated 24th March 2017, the project required 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 was 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 indicated that the project was allocated Kshs.60, 000,000 under the Ministry of Education, Science and Technology. This amount however, was not adequate to complete the project as estimated by the engineer's valuation of Kshs.1, 685,281,385 to completion.

It appeared the Ministry was not desirous to complete the project and as a result the project would continue incurring additional escalation costs. The total costs of the projects stood 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 accounting officer submitted that 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 remained as 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. It comprised of the following scope:

(i) 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;

(ii) A printing plant for printing all the Council's Examination Papers;

(iii) 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 remained incomplete and was implemented through the following eight contracts:

In February 1986 the initial contract was awarded to Mavji Construction Company Ltd as the main contractor at 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 in 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 was the funding Ministry. The project was mutually wound up and the site handed over to the Ministry of Works, Housing and Physical Planning on the 31st December 1998.

The project was then placed under the stock of stalled projects in 2003 and was implemented in five phases as follows:

- **Phase I:** 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.
- **Phase II**: 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.
- **Phase III:** consists of completion works to basement and ground floor. It 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 Phase V Contractor.

- **Phase IV**: Comprised first to sixth floors 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 led to six contract extension periods resulting to a variation of the contract sum to Kshs.1.085 Billion. The Contractor had billed the Ministry of Land, Housing & Urban development for Kshs.151, 409,920.33 as final account. This pending bill was being assessed before settlement by the Ministry of Land, Housing and Urban Development directly to the Contractor.

Phase V: Comprised internal partitions, services, finishes, road works and landscaping of the office block which commenced on 30th May 2013. The contract of Kshs. 1.5 billion was awarded to Ongata Works Ltd. The contract for the supply and installation of four Lifts was 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.27million. The works were 60% complete with two lifts installed and serving Towers B and C.

The cause of the delay and escalation in the costs of the project was attributed to challenges that related 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 Ministry of Education and the National Treasury.

The accounting officer reiterated the need for all the project stakeholders to have a meeting and find a way in which the above issues could be resolved. The Council was also in consultation with the Parent Ministry regarding the budgetary allocations and timely remittances of the same.

<u>Committee Observations</u>

The committee observed that -

(i) **The matter was deliberated in the 21st Report of the Public Investments Committee on the audited accounts of State Corporations. The Committee observed slow progress in the implementation of the project due to inadequate budgetary** allocation and recommended for provision of adequate budgetary allocation to enable completion of the project. However, meagre resources were allocated towards this project

(ii) The CEO wrote to and visited the National Treasury to seek solutions to the matter without success.

Committee Recommendations

The Commettee recommends that the Auditor General should carry out a special audit detailing interests paid contractors, variation of both scope of works and contract amounts and report to the House within 6 months of adoption of this report.

2.9 PUBLIC PROCUREMENT REGULATORY AUTHORITY (FY 2014/15 - 2016/17)

EVIDENCE ON THE REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF THE PUBLIC PROCUREMENT REGULATORY AUTHORITY FOR FY 2014/15 TO 2016/17

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 statements of the accounts of the Authority for the financial year 2014/15 to financial year 2016/17.

173. **Unqualified Opinion (Fys 2014/15 to 2016/17)**

The Committee heard that the Authority's audited accounts for the financial years 2014/2015

Committee Recommendation

The authority should continue with prudent financial management

2.10 KENYA WILDLIFE SERVICE (FY 2012/13 – 2016/17)

EVIDENCE ON THE REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF THE KENYA WILDLIFE SERVICE FOR FY 2014/15 TO 2016/17

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.

174. **Property, Plant & Equipment FY 2012/13 to FY 2016/17**

The Committee heard that Property, Plant and Equipment balance of Kshs. 8,202,884,000 as at 30th June 2013 (Kshs. 5,749,119,000 as at 30th June 2017) excluded as similarly reported in the previous years, the value of various parcels of land across the country without title documents on which the Service had put up various developments including buildings. The parcels of land without title documents comprised 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 was not possible in the circumstances, to ascertain the completeness and accuracy of the property, plants and equipment balance of Kshs. 8,202,884,000 as at 30th June 2013.

Management Response

The Director General of the KWS informed the Committee that the Service developed structures and occupied land which housed the National Parks, Reserves, Sanctuaries and Stations without the pre-requisite ownership documents as reported in that years' audit. However, the Service was in the process of acquiring title deeds and had since undertaken various activities to accelerate the process of titling. This included physical planning, surveying and forwarding deed plans for resolution of land disputes by NLC. As at the date of appearance before the Committee, the organization had 222 parcels of land. Of these, 45 had been issued with titles and the remaining were at various stages of titling process.

The Director General further informed the Committee that the parcels of land were located in vast areas across the country and as such it was an expensive exercise to carry out valuation. It was worth noting that the last assets valuation exercise was carried out in 2008. Management appreciated the need to value and incorporate those assets in the financial statements and as such, negotiations were at an advanced stage in securing funding towards valuation of all the assets including the titled land. Considering the mechanisms already put in place, management anticipated that the valuation exercise would be carried out in 2018-2019 financial year.

The Committee further heard that the annual depreciation of Kshs. 1,082,485,000 was the charge for year 2016/2017. It was calculated based on the brought forward balances, excluding fully depreciated assets and adding new acquisitions during the year. KWS finance department used accounting system (Sun system) for the financials. The system incorporated general ledger only. This meant that depreciation was calculated manually through excel worksheets. However, the Service was in the process of upgrading the subsystem to incorporate among others, acquisition of assets module, which would 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 asset was 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 organization’s area of coverage, the Service realized a lot of delay which affected the financials as payments were almost real time. This resulted in timing difference between payments and register update. To address this shortcoming, the organization was in the process of upgrading the financial system having broad a consultant on board. The new system would incorporate an assets module thus do away with manual calculation of depreciation.

Committee Observations

The committee observed that -

(i) The value of KWS property, plant and equipment depreciated from Kshs. 8,202,884,000 as at 30th June 2013 to Kshs. 5,749,119,000 as at 30th June 2017 due to depreciation of vehicles. Land retained its value from the previous years. However, valuation of the Service's property and land was long overdue. Per KWS's brief to the Committee on 22nd May 2020, only vehicles had been valued. Other assets remained due for valuation due to budget constraints.

(ii) KWS had 222 properties across the country out of which only 45 had title deeds. Furthermore, twenty-one of these properties had land disputes and were under adjudication.

(iii) National Reserves under the Service were trust lands vested in County Governments. It was therefore the responsibility of counties to obtain the title deeds for such lands.

(iv) Per KWS brief to the Committee dated 22nd May 2020, 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 amonthers.

(v) The Service was working with the Ministry of Tourism and Wildlife to expedite the issuance of the title deeds.

Committee Recommendations

The Committee recommends that -

(i) The KWS should expedite securing of titles for the remaining properties.

(ii) All the KWS properties should be valued and the exercise concluded within the 2020/2021 financial year.

175. **Irregular Inter-Vote Transfer FY 2012/13**

The Committee heard that 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. The amount included Kshs. 897,214,130 that 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 was 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

The Director General appraised the Committee that out of the total Kshs. 1,208,200,000 allocated for development, KWS received a total of Kshs.1, 190,200,000. The variance of Kshs.118, 000,000 was not 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
e) 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 were classified as recurrent costs. But in the printed estimates they were captured as development expenditure. Hence, the variance Kshs.112, 679,768 between the actual developments funds of 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) amounted to Kshs. 202,251,448. These funds were utilized in the day-to-day operations of the organization.

Further, the Service did not utilize fully the development funds as a result of shortfall in the approved revenue budget. KWS projected to collect Kshs. 5.29 billion as internal revenues. However, Kshs. 4.36 billion was realized, translating to a shortfall of Kshs. 930million. This necessitated 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 that situation. To this end substantial amounts were also spent both on procurement of security equipment's and fence construction. The approved revised budget reflected those changes.

Committee Observations

The Committee obseerrved that the routine maintenance and rehabilitation of roads, buildings and maintenance of plant and equipment were classified as recurrent costs within the KWS. However, the same was captured as development expenditure in the printed estimates. This was a reconciliation issue that should have been explained properly at the time of audit.

Committee Recommendation

The Committee recommends that KWS should prepare its books of accounts using the IPSAS and explain any query to the auditors properly before the exit meeting.

176. **Account Payables – KSHS. 1,042,626,000**

The Committee heard that payables balance of Kshs. 1,042,626,000 as at 30th June 2014 included outstanding accrued expenses of 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 30th June 2014

Management Response

The DG stated that accrued expenses account was a temporary account that was used to consolidate all KWS outstanding obligations emanating from non-regular suppliers and to account for unpaid leave as at 30th June every year. The Service cleared the amount during the first quarter of the subsequent financial year. The figure quoted outstanding amount of Kshs.

138,680,329 represented unpaid leave days for the staff who had outstanding leave balance as at 30th June 2014. The KWS leave calendar runs from 1st January to 31st December every year, therefore the Kshs. 138,538,564 represented half year unutilized. Consequently, as at 30th June when accounts were prepared, half year expenditure on leave was not recognized thus leading to the accrual.

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

Committee Observations

The Committee observed that -

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

Committee recommendation

The matter was sufficiently explained and therefore resolved

177. **Endowment Fund FY 2013/14 to FY 2016/17**

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

Consequently, it was not possible to establish whether the fund was meeting its intended objectives.

Management Response

The Committee heard that the initial policy as prepared 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 on going 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 recognized Endowment fund; its operationalization and managed through a board of trustees. The Service wrote to the National Treasury for regularization.

Committee Observations

The Committee observed that -

(i) **The Fund was set up to provide long term financial security for the Kenya Wildlife Service.**

(ii) **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.**

(iii) **Amendments to the Wildlife Conservation Management Act (2013) was passed by Parliament in 2019 to enable operationalization of the Fund. In the new amendment, His Excellency the President was made the appointing authority. He has not made the required appointments as of 22nd May 2020 when the KWS sent a brief to the Committee.**

(iv) **As of the date of appearance before the committee, the Endowment Fund had accumulated Kshs. 3,800,000,000 since inception and accrued interest of Kshs. 400,000,000.**

(v) **The amounts accumulated in the Fund could not be utilized as the Cabinet Secretary for Tourism and Wildlife had not appointed a Board to administer the Fund.**

Committee Recommendation

The Committee recommends that the appointing authority should appoint Board Members to the Fund as a matter of urgency to operationalize the Fund as envisaged in the Wildlife Conservation Management Act (2013).

178. **Loss from accident on KWS Bell Helicopter FY 2013/14**

The Committee heard that 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 fueling from 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 could 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 represented 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 was provided as to 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

Management informed the Committee that 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 was not settled due to challenges on contractual documentation to third parties' usage of Aircraft to support KWS revenue loss claim.

Committee Observations

The Committee observed that -

(i) **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.**

(ii) **The contractual agreement between the two parties were drawn to the disadvantage of the KWS as it did not contain a clause on compensation from economic loss. This pointed to the professional negligence of officers that drafted the contract.**

Committee Recommendation

The Committee recommends that in future, when drawing similar contracts , the KWS should include clauses in the contract that covers for economic loss

179. **Accuracy and completeness of the financial statements FY 2014/15**

The Committee heard that the financial statements for the year 2014/2015 contained 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 DG informed the Committee that the profit and loss, assets and reserves misstatements in the 2014/2015 financial statements were adjusted in the subsequent year.

Committee Observations

The committee observed that -

(i) **Some financial entries were not included in the financial statements.**

(ii) **The audit of the Service's accounts had been outsourced to PriceWaterhouse Coopers for the financial years 2013/14 and 2014/15.**

(iii) **The inaccurate entries should have been noted and corrected during the audit process.**

(iv) **Financial statements for year 2015/2016 were reviewed for adjustments.**

Committee Recommendations

The committee recommends that -

(i) **The Auditor General should not outsource the audit of the KWS accounts.**

(ii) **The KWS should recruit enough and competent finance personnel capable of preparing financial statements as required under IPSAS**

180. **Inventories FY 2014/15**

The Committee heard that inventories balance of Kshs. 465,946,000 as at 30th 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 were 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

The Director General stated that KWS undertook annual stock take exercise at the end of every financial year. However, both the stocktaking exercise and the stores management systems were manual. This made the exercise cumbersome and subjective. The Service was in the process of upgrading the accounting systems where one of the deliverables included procurement module which incorporated stores management system. This would 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 was easier to administer given the service's manual systems and also taking cognizance that KWS was not a trading entity.

Committee Observation

Departure of stocktaking method from FIFO to LILO indicated inconsistency of KWS in stock taking.

Committee Recommendations

The Committee recommends that -

(i) The KWS should standardize their stocktaking method in accordance with the OAG recommendation

(ii) KWS should expedite installation of an automation system for use in future stocktaking

181. **Financial performance and service sustainability FY 2014/15 to FY 2016/17**

The Committee heard that 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 was therefore dependent on the regular government support, creditors and or development partners' support. This scenario was untenable considering the vital importance of Wildlife Conservation for the present and future generations as envisioned in the Constitution of Kenya.

Management Response

The Director General submitted to the Committee that KWS was established with the overall mandate of conservation and management of wildlife. Since inception in 1989, the Service relied on GOK subvention to supplement its internal revenues to discharge its mandate. The Service had a deficit because the combined internal revenues and Government support was not adequate to cater for the operating costs and personnel emoluments. Further, KWS was categorized as a Service parastatal and its mandate extended even to areas where no revenues were generated. Internal revenues which KWS relied on were mainly dependent on international tourism which had been declining over the recent years due to the slump in the tourism industry.

The Service's mandate covered 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 were able to breakeven. The rest were cost centres and hardly generated any revenues. The Service's budget comprised of 41% internal revenues, 13% donation and grants and heavily relied on GOK at 44% to meet its vast mandate.

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

Committee Observations

The Committee observed that -

(i) **KWS had an accumulated deficit to Kshs. 4,428,098,000 as at 30th June, 2017.**
(ii) **The Kenya Wildlife Service made deficits because the combined internal revenues and Government support was not adequate to cater for the operating costs and personnel emoluments.**
(iii) **KWS was also dependent on international tourism which had been declining over the recent years due to the slump in the tourism industry.**

Committee Recommendations

The Committee recommends that -

(i) **The appointing authority should urgently appoint board members to the Endowment Fund to ensure its immediate operationalization;**
(ii) **The Ministry of Tourism should aggressively market Kenya as one of the best game tourist destination to boost tourism numbers;**

(iii) **The KWS should come up with new ideas of generating revenue**

(iv) **The KWS should enhance revenue collection efficiency at their gates at national parks**

(v) **The kws should consider relooking at its agreements with conservancies.**

182. **Other matter - Weak Internal Information Technology Control**

The Committee heard that during the period under review, some users of the system who had either retired or resigned had active accounts. Staff who transferred during the period had their old accounts active. Further, one vendor account which was activated was not monitored. In addition, password parameters were not enabled as per the ICT policy providing room for abuse of user access rights. Consequently, the Service was operating a weak information system that cast doubt on the integrity of the financial information from the system.

Management Response

Management informed the Committee that KWS Finance department used a financial system called Sunsystem of accounting. The system was structured in such a way that different users were assigned different levels of user rights depending on the function of each staff.

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

Committee Observation

The financial system that KWS was using was susceptible to abuse. This could lead to loss of credible data or even resources if it continued to be used

Committee Recommendation

KWS Management should urgently upgrade its financial system with enhanced security to avoid manipulation

2.11 SACCOS SOCIETIES REGULATORY AUTHORITY (2014/15 – 2016/17)

EVIDENCE ON THE REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF THE SACCOS SOCIETIES REGULATORY AUTHORITY (SASRA) FOR THE FINANCIAL YEARS 2014/15 TO 2016/17

Mr. John Mwaka, the Chief Executive Officer of the Sacco's 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.

183. **Examination of Audited Accounts of Sacco Societies Regulatory Authority for FY 2014/15**

The Committee heard that the Authority's audited accounts for the financial year 2014/2015 was unqualified.

Other matter

184. **Financial Performance and Service Sustainability FY 2014/15**

The Committee heard that 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 continued existence of the Authority and service sustainability was therefore dependent on continued Government financial support.

Management Response

The CEO stated that the Authority did not realize 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 to fund its operations.

185. **Examination of audited accounts of Sacco Societies Regulatory Authority for FY 2015/16**

The Committee heard that the Authority's audited accounts for the financial year 2015/2016 was unqualified.

186. **Emphasis of a 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) decreased by Kshs.34,674,708 leading to approximately 11.4% decrease. This situation if not checked could lead to the Authority being in a precarious financial position.

Management Response

The CEO stated that in view of the response given under financial year 2014/15, the Authority did not realize any deficit in the years 2016/17 and draft report for 2017/18 towards ensuring increased funding of its operations moving forward.

187. **Examination of audited accounts of Sacco Societies Regulatory Authority for FY 2016/17**

The Committee heard that the Authority's audited accounts for the financial year 2016/2017 was unqualified.

Committee Observations

The Committee commended the management for their efforts in improving the performance of the Authority to profitability.

Committee Recommendation

The Committee recommends that the Authority embraces prudent financial management to ensure sustainability of the institution.

2.12 SOUTH EASTERN KENYA UNIVERSITY (FY 2013/14 -2016/17)

EVIDENCE ON THE REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF THE SOUTH EASTERN KENYA UNIVERSITY FOR THE FINANCIAL YEARS 2012/13 TO 2016/17

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 Musilivi (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.

188. **<u>Property, Plant and Equipment for FY 2012/13 to FY 2016/17</u>**

The Committee heard that 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 was registered under the name of the University.

Further, included in the above balance for property, plant and equipment was an amount of Kshs. 8, 228,852 for work-in-progress projects which stalled during the year. Note 17 to the financial statements did not present the work-in-progress in the correct format.

Motor vehicles valued at Kshs. 47, 088,710 were depreciated to nil at the beginning of the period but were still in use during the year under review. The management had not put in place a revaluation policy to ascertain if the motor vehicles carry any nominal value that was 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.

<u>Management Response</u>

Historical Background on the South Eastern Kenya University Land

(a) The University inherited three parcels of land which comprised 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 were:-

  (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.

  (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.

  (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.

(c) Under the Articles and Memorandum of Association of UKAI, the trustees were the only persons authorized to deal with the properties of UKAI.

(d) 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.

(e) 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.

(f) There were several cases pending in court relating to the ownership of the parcels of land. The University Management and lawyers were making efforts to have the said parcels of land registered in the name of the University.

The status of the various parcels of land

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.

(iii) After the ruling, the plaintiff filed a Notice of Appeal.

(iv) This matter came up for hearing before Honorable Justice Obaga on 24th January, 2019. The hearing commenced with the Plaintiff's witness, Steven Ndambuki Muli being examined in chief after which the defendant conducted part of their cross-examination.

(v) The matter was slated for further hearing on 7th May, 2019.

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 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.

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 petitioner in this petition sought a declaration that their right to property and fair administrative action had been denied, violated or infringed by the Registrar of Titles. A declaration by the Registrar of Titles threatened cancellation of the entry of Legal Notice No. 102 of 2008 of Kenya Gazette Supplement No. 54 of 18th July, 2008 against Title No. I.R. 52199.

(ii) Justice Majanja, on 29th March, 2012, gave a ruling in the matter restraining the Registrar of Titles from issuing any provisional title with respect to L.R. No. 209/10350 and the orders were extended by consent of both parties on 17th July, 2012 pending determination of suit No. 136 of 2009.

d) High Court Civil Suit No. 172 of 2012 – Dubai Bank Ltd. vs Ukamba Agricultural Institute

(i) The suit was filed by Dubai Bank Ltd Directors before the High Court for orders to compel UKAI to complete the purported sale of L.R. No. 209/10350.

(ii) On 28th November, 2012 the court granted leave to the plaintiff to file an application for Mandamus to compel the Registrar to register the title in Dubai Bank's name.

(iii) The University's advocates made an application to be enjoined in the suit as an interested party and the same was allowed.

(iv) On 18th December, 2017 a ruling was delivered in which Ukamba Agricultural Institute's Application dated 5th October 2016 was dismissed.

(v) On 28th March 2018, SEKU lawyers filed a Notice of Motion in the Court of appeal seeking that the Notice of Appeal dated 21st December 2017 be struck out for being defective as it was not served within the seven days period, and Ukamba Agricultural Institute did not apply for certified typed court proceedings within 30 days as provided for in the court of Appeal Rules.

e) CMCC No. 571 OF 2015 - Ukamba Agricultural Institute Vs National Bank of Kenya Ltd

(i) The suit was filed by UKAI to seek orders to have title documents for L.R. No. 209/10350 released to its directors.

(ii) The court issued an order dated 7th July, 2015 directing the bank to release the title to the purported directors of UKAI.

(iii) The University instructed its advocates to proceed and get enjoined in the suit for purposes of protecting the University's interests upon discovering the ploy by

UKAI. In addition, the University Management met with the National Bank of Kenya for purposes of preventing the release of the title due to the frivolous nature of the orders. The bank refused to grant the same.

(iv) University advocates were able to get orders to be enjoined in the suit and also obtained further orders staying the execution of the order dated 7th July, 2015.

(v) However, by the time the orders were served on the bank, the representatives of UKAI had already taken custody of the title documents.

(vi) University advocates proceeded to file a Certificate of Urgency on 8th July, 2015 that sought to have the title to L.R. No. 209/10350 produced in court by UKAI.

(vii) However, the orders were not granted and the University's advocates proceeded to file Appeal No. 465 of 2015 at the High Court.

f) **HCCA No. 465 of 2015 - South Eastern Kenya University vs. Ukambani Agricultural Institute Ltd & Anor**

(i) This Appeal was filed following the dismissal of university's application to have the orders dated 7th July 2015, set aside.

(ii) The court ruled on 29th September 2016 that the title be returned to National Bank of Kenya for safe custody and issued an injunction order stopping the registration of any documents against the title.

(iii) The University's advocates registered the court orders against the title.

(iv) In addition, SEKU filed an application in court seeking to have the directors of UKAI and the persons who collected the title documents be committed to civil jail for contempt of court. The hearing of the application was slated for 28th September, 2017.

(v) The court delivered its ruling on 17th October 2018 by allowing the university's application dated 13th February, 2017. The Court found the Directors of the Respondent, Mr. Stephen Ndambuki Muli (Chairman) and Mr. Eric Mutinda Mutisya (Treasurer) to be in contempt of the court order that was issued on 26th September 2016. Following an application by the Respondents' advocates, the court granted them a stay of execution of the ruling for 14 days.

Correspondence from National Land Commission

(i) The University wrote to the National Land Commission on 13th February 2015 requesting for assistance to 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 to request 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 its behalf via letter dated 2nd November 2016.

(v) The advocates filed the necessary submissions via letter dated 24th November 2016.

(vi) Public hearing was conducted on 27th January 2017 by the National Land Commission.

(vii) University's advocates via letter dated 31st July 2017 informed the management that the National Land Commission had declared the title as legally held by the University.

(viii) The University wrote to the Director, Land Administration of National Land Commission to request for information concerning the processing of titles for Kitui and Emali Land.

(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 that related 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**.** The University wrote to the Chairperson National Land Commission to relay its intention to seek compensation in case the government proceeds and compulsorily acquires the said parcel of land.

(Bb) Gazette Notice No. 5696 that issued a corrigenda that retracted the earlier decision of the National Land Commission to vest L.R. No. 209/10350 to the University.

The University wrote to the National Land Commission to seek clarification concerning the same. In addition, the University wrote to Kilonzo and Co. Advocates to verify the authenticity of the gazette notice and update on the correct status relating to Judicial Review No. 57 of 2017 given that they had informed management via their letter dated 31st July, 2018 that they intended to file an application for dismissal for want of prosecution.

g) Memorandum of Appeal No. 32 of 2017

(i) UKAI 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 set aside.

(ii) They were yet to file the record of proceedings with regard to the appeal

(iii) The university instructed Kilonzo & Co. advocates to defend the interests of the University in that 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 it's 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 honor the summons, the Appellant requested the Court to issue warrants of arrest against them but the Deputy Registrar fixed the matter for mention before a Judge to enable the counsel make his application.

(ix) The matter was mentioned in 25th January, 2019.

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 filed submissions and were waiting for the ruling.

(v) Matter was last mentioned on 31st July, 2018. SEKU lawyers intended to file an application for dismissal of the matter for want of prosecution once one year lapses.

<u>Emali Land – L.R. No. 12970</u>

(i) The University received an email communication dated 8th January, 2016 from the Secretary Makueni County Land Management Board that forwarded a petition by a group called "Kwitu Kinyoo Community Association."

(ii) The University responded through a letter dated 13th January, 2016 indicating that the said land belonged to SEKU and that it shall resist any move to illegally alienate the land.

(iii) The Secretary Makueni County Land Management Board wrote a letter dated 27th January, 2016 to request for copies of ownership documents.

(iv) SEKU wrote to the National Land Commission on 8th July, 2016 to alert them of the plot to illegally grab University land.

(v) The National Land Commission wrote a letter Ref: CLMB/MKN/CORP.4 VOL.1/-53 dated 27th January, 2016 concurring with the university's concerns but requested for additional information to be provided.

(vi) The University 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 that established SEKU.

(vii) A letter Ref: SEKU/VC/LEG-2/22/VOL.4.4/21 dated 1st August, 2016 that requested the National Land Commission to issue a title in favour of SEKU for the Emali and Kitui Land was done.

(viii) The Governor for Makueni County, in a letter dated 11th August 2016 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 was consensus on the matter. The University was invited to appear before the National Land Commission on 8th November 2016 together with all the interested parties.

(ix) The University 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.

(x) The University team was represented by Kethi Kilonzo of Kilonzo & Co. Advocates, the Chairman of Council, Vice-Chancellor and former trustees of UKAI.

(xi) The University's lawyer made a presentation to the National Land Commission. The Chairman directed the County Government of Machakos to submit their written submissions in two weeks and to serve the University's advocates with the same.

(xii) The University was awaiting invitation from the National Land Commission and had written to them to request that the case be finalized.

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 to request the National Land Commission to issue the university with a title to enable it implement a public private partnership 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.

c) The University's legal officer was 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.

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.

Civil Appeal No. 6 of 2017 Maingi Mbinzu & 314 other–vs- County Council of Kitui and Another

(i) 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.

(ii) 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.

(iii) The University's 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.

(iv) The University's submissions dated 1st August 2017 were filed in court on 2nd August 2017.

(v) Appeal by the appellants was dismissed with costs to the university. The University requested its lawyers to follow up on the costs on its behalf**.**

Kitui Town Land -2 Acres

(i) The University in a letter dated 17th February, 2011 wrote to the Municipal Council of Kitui to request for land to set up a campus.

(ii) 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.

(iii) 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.

(iv) 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

(v) 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.

(vi) 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 was approved.

(vii) The Chief Officer, Ministry of Lands, Infrastructure & Urban Development responded via letter dated 14th July, 2016 and stated that the PDP had not been approved as certain requirements for the approval of the plan were yet to be fulfilled.

(viii) The University vide 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.

(ix) The Chief Officer forwarded the documents to the Director, Physical Planning for approval.

(x) The University was following up with the Director of Physical Planning to establish whether the documents forwarded to his office relating to the Kitui town land had been approved.

(xi) The Vice-chancellor and the Legal officer visited the officers of the Director of Physical Planning on 29th January, 2018 to ascertain whether approval had been granted.

(xii) 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.

(xiii) The PDP was approved.

(xiv) The University wrote to the Chief Officer, to request 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.

Wote Town Land - 30 Acres

(i) The University received, via a 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.

(ii) The University wrote 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.

(iv) The National Land Commission, via their letter Ref NLC/CHAIRMAN/VOLVIXII/207, directed the Director Land Administration to process title for the 30 acres of land in Wote. The University followed up with the Director of Physical Planning to establish whether the documents forwarded to his office relating to the Wote land had 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.

Land in Mtito-Andei – Plot No. 3756

(i) The University was processing ownership documents for plot number 3756 measuring 20 acres of land.

(ii) A certificate of ownership dated 29th July, 2013 for plot No.3756 Mang'elete Settlement signed by the District Land Adjudication and Settlement Officer, Ministry of Lands, and Kibwezi District was attached.

(iii) The University was working on ensuring that the documents were forwarded to the Director of Physical planning for purposes of obtaining the approved PDP.

MWINGI /NZELUNI/1970 AND MWINGI/MWINGI/5713

(i) The University had 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 were attached.

(iii) The university wrote 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.

(iv) The University had not yet received a response to its letter dated 26th April, 2018. Recognition of these parcels of land would be made in the 2018/19 financial year after valuation.

Committee Observations

Most of the parcels of the impugned land was in various stages in court. Some have taken inordinately long to conclude.

Committee Recommendations

The University should apply for expeditious conclusion pending cases in Court in the interest of justice.

189. **Cash and cash equivalents FY 2013/14**

The Committee heard that cash and cash equivalence balance of Kshs. 33,886,653 as at 30th June 2014 included Kshs. 19,718,415 (Note 19) for development account whose cash book balance was Kshs. 20,265,960 resulting to 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 not be confirmed.

Management Response

The Vice Chancellor stated that the difference of Kshs. 1,547,545 was attributable to previous year's figures brought forward. Great effort was invested to agree the cash book postings to the bank statement entries and this was adjusted in the FY 2014/2015.

Committee Observation

This was a reconciliation matter that was later done and the matter resolved.

190. **Prior year adjustment FY 2013/14**

The Committee heard that the capital fund balance of Kshs.1, 644,011,579 as at 30th June 2014 included unexplained adjustment on the main account balance of Kshs.7, 264,497. Further, no disclosure was given in the financial statements to explain the inclusion of this adjustment. As a result, it was not 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 Vice Chancellor submitted that 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 unpresented 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 were cleared, Kshs. 4,231,514 were cancelled and Kshs. 109,716 were stale in the FY 2012/2013.

Consequently, they were written back to the cashbook to reflect the true opening balance in the FY 2013/2014 and an adjustment to the capital fund was done.

Committee Observation

This was a reconciliation issue that was later done and the matter resolved.

191. **Trade and other payables from exchange transactions FY 2013/14**

The Committee heard that the statement of financial position reflected 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 showed Kshs. 60,206,617. The resulting difference of Kshs.342, 693 was not 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 a 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 was reconciled with the ledger and trial balance showing the same balance in the FY 2014/2015.

Committee Observation

This was a reconciliation matter that was later done and the matter resolved.

Committee Recommendation

The university should reconcile its books in a prompt and continuous to avoid unnecessary queries.

192. **Budgetary control and performance -FY 2015/16**

The Committee heard that during the year under review, the University had an approved budget of Kshs.1, 234,068,000 comprising 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), 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 indicated below: -

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 needed to enhance internal revenue collection to support its service delivery goal and objectives.

Management Response

The Vice Chancellor concurred that financial discipline is vital for prudent financial management. Prudence concept prohibits overestimating the amount of revenues recognized to be factored in a budget.

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 Observation

The reasons advanced for under-collection of revenue could not be foreseen by the University. This query was adequately addressed and therefore resolved.

Committee recommendation

The university should come up with innovative ways of raising revenue beyond the traditional exchequer

Recurrent Expenditure- FY 2015/16

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 reflected an overall under expenditure of Kshs.69, 631,160 in the recurrent budget.

Management Response

The VC stated that the University recorded expense transaction or liability 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.

Committee Observations

The Query was satisfactorily responded to and the matter resolved.

Committee Recommendation

The university should always prepare a realistic budget that can be implemented without significant deviation.

193. **Development Budget- FY 2015/16**

The Committee heard that 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 VC submitted that the Government reduced capital grants through supplementary budgets of Financial Year 2015/2016. By the end of the period, Kshs.55, 595,449 allocated in the year had not been received from the exchequer**.**

Committee Observation

Revision of the budget through supplementary budgets affected the programmes of MDAs. This indicates that the National Treasury's revenue collection forecast was in doubt.

Committee Recommendation

The National Treasury should sparingly use supplementary budget to avoid affecting budget implementation challenges akin to this one.

2.13 PEST CONTROL PRODUCTS BOARD (FY 2013/14 -2016/17)

EXAMINATION OF THE REPORTS OF THE AUDITOR GENERAL ON THE AUDITED 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.

194. **Examination of the audited accounts of Pest Control Products Board for FY 2013/2014**

The Committee heard the Board was issued with unqualified opinion.

195. **Presentation of financial statements and disclosures- FY 2014/2015**

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. 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 appeared 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 was indicated as falling under note 23 which did 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 did not feature independently in the statement of financial position. Note 10 comprised the above items among others.

The financial statement was revised and re-submitted and the audited set had notes up to note 19. The revised accounts reflected work in progress balance of Kshs. 30,684,781.00 under note 15 to the financial statements.

Committee observations

The Committee observed that -

i) **Revised financial statements corrected the inconsistency of the notes**
ii) **The query was raised due to late submission of documents for verification**
iii) **The query was resolved**

Committee Recommendations

The Committee recommends that =

i) **Management should provide documents for audit verification in a timely manner.**
ii) **Accounting officers who fail to submit documents for audit in a timely manner should be prosecuted pursuant to the provisions of Section 62 of the Public Audit Act of 2015.**
iii) **Public Sector Accountants should adhere to IPSAS when preparing financial statements.**

196. **Investments –FY 2014/2015**

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 were provided for audit verification.

Committee Observation

This was a case of not submitting documents for audit as and when requested.

Committee Recommendation

Management should provide documents for audit verification in a timely manner.

197. **Accuracy of Financial Statements -FY 2014/2015**

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 was done and the cash book and bank statement reflected the same balance.

Committee Observation

The Committee observed that -

i) **Reconciliations were done and thus the anomaly corrected.**
ii) **The query was occasioned by delay in availing documents for audit verification.**
iii) **Audit query was resolved.**

Committee Recommendation

Management should provide documents for audit verification in a timely manner to avoid queries being raised.

198. **Receipts FY 2014/2015**

The Committee heard that the statement of financial performance reflected, under other receipts, amounts totalling 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 was not 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:

Sale of list of registered products	Kshs. 6,000.00
Gain on disposal	Kshs. 89,620.00
Other income from bank statement	Kshs 861,339.00
Charges on disposal of seized products	Kshs. 2,700.00
MNLD-Project funds	Kshs. 1,859,167.00
Refunds from KSG for non-utilized training fee	Kshs 81,400.00

Grant balance for the year 2012/2013 received in F/Y 2014/2015 Kshs. 8,399,081.38

The management further provided an investment schedule which showed that the figure of Kshs. 4,613,152 formed part of Kshs. 5,790,290 which was the total interest income for the year from investment in treasury bills and therefore was in the statement of financial performance within the total figure of Kshs. 17,089,587. Kshs. 17,089,587 was the total summation of Kshs. 11,299,307 miscellaneous incomes and 5,790,280 interest on investment.

Committee Observations

The Committee observed that -

i) **Extracts of ledgers for various income heads were availed and verified.**
ii) **Had these documents been available at the time of audit, the query could not have arisen.**

Committee recommendation

Management should provide documents for audit verification in a timely manner to avoid queries being raised.

199. **Property, Plant and Equipment FY 2014/2015**

The Committee heard that the 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 were provided on the variances. Consequently, the accuracy of the financial statements could not be confirmed.

Management Response

The management submitted 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 the balance brought down from previous year for a creditor for an amount held as retention for the construction of the administration block. The amount was paid during the year therefore forming part of the cash outflow as per creditors schedule for the FY 2012/2013.

Committee Observations

The Committee observed that -

i) **The query arose due to late submission of documents for audit**
ii) **The query was subsequently resolved.**

Committee Recommendation

Management should provide documents for audit verification in a timely manner.

200. **Receipts –FY 2015/2016**

The Committee was informed 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 related 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 was not explained.

Management Response

The management informed the Committee that the full ledger was provided which included Kshs. 336,910 interest on treasury bills earned upfront as computed.

Committee Observation

The Committee observed that -

i) **Ledgers provided show evidence of the Kshs. 336,910.**
ii) **Management did not provide explanations for the variances during the time of audit. The query was subsequently resolved.**

Committee recommendation

Management should provide documents for audit in a timely manner to avoid avoidable queries being raised.

201. **Examination of the audited accounts of Pest Control Products Board for the FY 2016/17**

The Committee was informed that the Auditor -General issued the Pest Control Product Board with an unqualified opinion.

2.14 STATE CORPORATIONS APPEALS TRIBUNAL (FY 2013/14 -2016/17)

EXAMINATION OF THE REPORTS OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF THE STATE CORPORATIONS APPEALS TRIBUNAL FOR THE FINANCIAL YEARS 2013/14 TO 2016/17

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 2017/18.

202. **Examination of the audited accounts of State Corporations Appeals Tribunal for the FY 2013/14**

The Committee heard that the Tribunal received unqualified audit reports for the financial year 2013/14.

203. **Salary advance and write-off -FY 2014/15 to FY 2017/18**

The Committee heard that Note 13 to the financial statements showed 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 pursuant to Section 69 of the Public Finance Management Act, 2012 was not availed for audit. Therefore, the Kshs. 4,479,440 write-offs was irregular and did not conform to the provisions of the Public Finance Management Act No. 18 of 2012.

Management Response

Management informed the Committee that the that 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 regularization 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 the124th Tribunal Board meeting held on 17th July 2012.

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 had not sat to reconsider its decision to recover the salary advance since it was not 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 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 be placed before the full Board for approval for write off. There was no justifiable basis for the recovery since the payment was 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 sought approval for write off under section 69 of the Public Finance Management Act, No. 18 of 2012. However, the Tribunal had not received any communication from the Cabinet Secretary.

The Secretary wrote a reminder letter to the Cabinet Secretary dated the 15th March 2019 and was awaiting response. The issue therefore remained unresolved in the financial statements prepared by the Auditor General.

Committee Observations

The Committee observed that -

i) **As at the time of compiling this report, there was no indication that the Cabinet Secretary for the National Treasury had approved the debt write off**
ii) **By the board deciding at one point to recover the money and later to change that position indicated indecisiveness. This raises questions on the capacity of that particular board to make sound decisions and the quality of advise given to them when making decisions**

Committee Recommendations

The Committee recommends that -

(i) **The Board should reverse the decision to write off the debt pending Treasury approval**
(ii) **The Secretary to the Tribunal should urgently pursue the response from the National Treasury and act accordingly once advised**
(iii) **The Cabinet Secretary to the National Treasury should reply to the request made within a month of adoption of this report.**

204. **Other matter –Appropriation of Tribunal budget by Judiciary FY 2016/17 to FY 2017/18**

The Committee heard that the Tribunal underwent 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. The amount was 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

The Committee heard that under the State Corporations Act, the National Treasury was 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 was 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 and therefore issue resolved.

In the FY 2017/18, the Tribunal encountered budgetary reduction from the Judiciary, as it had 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. lack of visibility of the Tribunal in the public parlance.

The Secretary further informed the Committee that the Judiciary allocated budgetary funds and other resources to the Tribunals on the basis of the parameters governing the mainstream judicial activities including caseload. The Tribunal embarked on sensitisation activities for the State Corporations, in collaboration with other stakeholders including the Inspector General of State Corporations in the current financial year, and anticipated an increase in the caseload, which would justify further budgetary allocation to the Tribunal.

Committee Observations

The Committee observed that -

i) **The State Corporations Act Cap 446 designated the National Treasury as the parent ministry responsible for the Tribunal.**
ii) **Article 169 of the Constitution 2010 designates Tribunals as part of the Judiciary. In line with this interpretation, the National Treasury transferred the Tribunal together with its budgetary allocation of Kshs.54 million to the Judiciary in May 2016.**
iii) **The Tribunal encountered budgetary reduction from the Judiciary in FY 2017/18 due to its limited mandate.**
iv) **The payment vouchers were presented for audit verification and the matter resolved**

Committee Recommendation

The Secretary to the Tribunal should promptly submit documents for audit verification as and when required to avoid unnecessary queries

205. **Other matters FY 2017/18**

a. Effect of Executive Order No. 1 of 2018

The Committee heard that the administration of the Tribunal was 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

The accounting officer stated that by way of an administrative order, 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) that designates Tribunals as part of the Judiciary. However, not all ministries transferred the Tribunals under their dockets to the

Judiciary. This was 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 was predicated on the history of the evolution of the Tribunal. Tribunals, mostly created by statute, are designed to provide expeditious avenues for resolution of administrative disputes arising from ministerial decisions. Further, the Judiciary was considered unsuitable for resolution of such disputes owing to legal technicalities, high cost of litigation and time consideration.

The matter requires a legislative framework and the same was due for consideration by the public and stakeholders under the Tribunals Bill, 2019 that was before the Office of the Attorney General.

Committee Observation

There is indecisiveness from the executive as to where tribunals are to be domiciled

Committee Recommendation

The Attorney General should expedite processing of the proposed Tribunals bill for tabling in Parliament and enactment to address this placement of tribunals once and for all.

b. Lack of a functional Board

The Committee heard that during the year under review, the State Corporation Appeals Tribunal operated without a functional board. This negated on the provisions of section 22 of the State Corporations Act that established the Tribunal.

Management Response

The Committee heard that Tribunal was 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 ended in 2014 and 2015 respectively. This was followed by the expiry of the tenure of the chairperson in February 2018.

The Secretary duly notified the appointing authorities of the vacancies in the Board of the Tribunals and further sought the intervention of the Attorney General. The Attorney General obliged and wrote to the appointing authorities underscoring the need to fill the vacancies to facilitate better governance of State Corporations.

Committee Observations

The Tribunal did not have a functional Board, which had not only impaired its capacity to hear any cases but also contributed to budgetary reduction from the Judiciary.

Committee Recommendation

The appointing authority should always ensure that there is a functional board at all times to avoid crippling of the tribunal's operations.

2.15 COMMUNICATION AUTHORITY OF KENYA (FY 2013/14 -FY 2016/17)

EXAMINATION OF THE REPORTS OF THE AUDITOR GENERAL ON THE ACCOUNTS OF THE COMMUNICATION AUTHORITY OF KENYA FOR THE FINANCIAL YEARS 2013/14 TO 2016/17

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.

206. **Disputed Contract Payments - FY 2013/14 and 2016/17**

The Committee heard that as previously reported, on 29th 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 14th July 2003, it was completed one year later on 23rd 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 contactor raised a dispute claiming Kshs. 1,277,961.90 being interest on delayed settlement of interim certificate No.6. The management explained that the delay was occasioned by a dispute over the material used by the contractor, which the project manager noted differed from those specified in the bills of quantities.

Further, on 5th 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 45days.

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 was made in full. On 5th 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 was not possible to confirm that Kshs. 69,963,922.75 was a proper charge to public resources.

Management Response

The Director General, CAK informed the Committee that 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 Communications Authority of Kenya as the successor of the Communications Commission of Kenya sought to set aside the Arbitral Award through High Court Miscellaneous Civil Cause No. 73 of 2014 which application was dismissed on 4th December 2014.

This meant that the Arbitral Award had a force in law just as a court judgment would. Non-payment would amount to contempt of court and therefore the Communications Authority of Kenya was 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 to establish whether there was any impropriety. The Ethics and Anti-Corruption Commission (EACC) commenced the investigations into the matter on 16th September 2015.

Committee Observations

The Committee observed that -

i) **This is a matter that had been taken to Court and ruled in favour of the contractor.**
ii) **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.**
iii) **As at the time of compiling this report, the EACC was still investigating the matter.**
iv) **The committee was convinced that public money was lost**

Committee Recommendation

The EACC should expeditiously conclude investigating the matter and have it concluded within three months of adoption of this report.

207. **Unsupported Board sitting allowances FY 2013/14 - 2016/17**

The Committee heard that as previously reported in 2013/14, examination of Board of Directors' records revealed that sitting allowances totalling to 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 totalling Kshs. 6,942,000 was not supported by notices of the meeting, agenda for the meeting and the respective Board minutes. Although the management explained that the Board of Directors were invited to participate in official events where no minutes were 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 were availed for audit review.

In the circumstances, it was not possible to confirm that the unsupported sitting allowance totalling Kshs. 6,942,000 was a proper charge to public funds.

Management Response

Management informed the Committee that the Presidential Circular Ref. No. OP/CAB.9/21/2A/LII/43 dated 23rd November 2004 Paragraph (c) states that 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 board was officially invited to participate in the official events. The invitations documents were attached.

Committee Observation

The Committee observed that sitting allowances totalling Kshs. 6,942,000 were not supported by notices of the meeting, agenda for the meeting and the respective Board minutes thus there was no evidence that such meetings ever happened.

Committee Recommendation

The Committee recommend that -

The Inspectorate of State Corporations should investigate the circumstances under which the impugned payments were made and propose surcharge

208. **<u>RECEIVABLES FROM ON-EXCHANGE TRANSACTIONS FY 2015/16</u>**

Unexplained reduction in provision

The Committee heard that 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.

Offsetting Provision Balances

The Committee heard that the provision of bad and doubtful debts figure of Kshs. 194,079,000 was arrived at 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.

Bad Debts Written Off

The Committee heard that 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.

Long Overdue Debts

Further, Committee heard that the receivables from non- exchange transaction balance of kshs.1,764,813,000 included debts totalling kshs.1,522,226,000 which had remained unpaid since the year 2000 and whose supporting schedule was not availed for audit review.

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

Management Response

Management informed the Committee that 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.

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

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.

There was no netting off of debtors as alleged. The Authority maintained a separate provisions account (Expense) from the debtor's accounts (Asset). Note 13 to the Financial Statements indicated that both amounts were captured separately.

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

On the long outstanding debts, Management indicated that it was inherited from Kenya Post & Telecommunication Corporation (KPTC) at the formation of the Authority (then Communications Commission of Kenya). The Authority had relentlessly pursued the debts including through physical visits, denial of renewal of service amongst other enforcement measures. The aged debtors list had Kshs. 1,522,226,000 outstanding.

Most of these debts were owed by government security agencies that had over time contested payment of the same citing that they offered national strategic services.

Committee Observations

The Committee observed that -

i. **The high bad debt provision in the books of CAK indicated poor financial management.**

ii. **It was CAK's policy to write off debts after four years upon falling due.**

iii. **Board approved the debt write off for three (3) Licensees amounting to Kshs. 86,638,973.70 . However, this had not been approved by the National Treasury despite a request by the CAK.**

iv. **On offsetting provisional balances, the OAG confirmed that the amount had not been reversed in the 2017/18 Financial Year despite the CAK indicating as much.**

v. **The long outstanding debts were inherited from Kenya Post & Telecommunication Corporation (KPTC) at the formation of the Authority. Some of the Companies that owed CAK had gone under.**

vi. **Debts owed by government security agencies were included and had accumulated over time (Kshs. 350 million as at the time of appearance before the Committee) as these agencies contested payment for frequency citing that they offered national**

strategic services. Further debts are from the WFP, UN & VHS but the Ministry of foreign Affairs had failed to provide protocols on exemption

vii. **Management had developed a credit policy that is yet to be implemented in a bid to address debt collection.**

Committee Recommendations

The Committee recommends that -

(i) **The Director General of the CAK should continue pursuing the long outstanding debts with a view to recovering them;**

(ii) **The Director General of the Communications Authority of Kenya should request the Cabinet Secretary for the National Treasury to write off only those debts that cannot be recovered.**

(iii) **The Ministry of Foreign Affairs should provide a guidance to the Communications Authority of Kenya on the foreign agencies exempted from paying license fees.**

(iv) **The Government should exempt security agencies from paying for frequencies.**

209. **UNDERSTATED REVENUE FY 2015/16**

The Committee heard that, 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 had 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 was not possible to confirm that withholding tax totalling Kshs. 210,638,874 was remitted to Kenya Revenue Authority.

Management Response

Management informed the Committee that 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) which 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.

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 observed that -

i) **The Authority provided Withholding tax certificates issued by the banks amounting to Kshs. 210,638,874.**

ii) **The supporting documents underwent audit verification by the Auditor and the query was resolved.**

Committee Recommendation

The query was resolved

Ms. Mercy Wanjau, the Ag. Director General of the Communication Authority of Kenya accompanied by Janet Munya (Ag. AD/Supply Chain) Mr. Joseph Kimanga (Director, Finance and Accounting), Mr. Christopher Wambua (Director, Consumer and Public Affairs), Mr. Dominic Ooko (Ag. Deputy Director of Finance), Ms. Beatrice Bonga (Ag. Deputy Director, HRM) and Ms. Priscah Motogua (Pa to the Ag. DG) appeared before the Committee on 1st October 2019 to adduce evidence on the audited accounts of the Authority for FY 2013/14 to FY 2016/17.

210. **IRREGULAR PROCUREMENT METHODS FY 2016/17**

a. Event Management Services

The Committee heard that as disclosed in Note 12 to the financial statements, the general expenses figure of Kshs. 1,969,111,000 included 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 11th 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 was 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 included 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 obligates an accounting officer to approve and sign all contracts of the procuring entity.

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

Management response

Management informed the Committee that the Communications Authority of Kenya through its procurement plan of 2016/217 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 PPADA means exclusive preference to procure goods, works and services set aside to a defined target group within a specified threshold or region".

In November 2016, the Authority commenced its ICT Consumer education forum in Bungoma County. At that 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. The Authority issued purchase order1637 to M/s Sum Decorators of Kshs. 13,302,560 after receiving their acceptance letter.

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

The Authority required the services of an event management for its County ICT Consumer forums in Busia and launch of its CSR activities in Bungoma County. An advertisement was placed in the Daily Nation on 25th November 2016 with a closing date of the tender being on 21st December 2016.

The bids were evaluated and M/s Unicore was awarded one of the (7) seven blocks that were being tendered to provide event management and related services. The awarded blocks had Busia and Bungoma Counties as some of the regions to be covered by the firm and as such the firm was engaged to provide event management and related during the ICT consumer education forum in Busia and launch of the CSR activities in Bungoma Counties.

Upon acceptance of the offer, which had terms and conditions of engagement, the Authority issued two purchase orders to M/s Unicore which were signed by the Director General as per PPADA Section135 (1) which states "*The existence of a contract shall be confirmed through the signature of a contract document incorporating all agreements between the parties and such contract shall be signed by the accounting officer or an officer authorized in writing by the accounting officer of the procuring entity and the successful tenderer."*

These were (one) time jobs, with specific deliverables and single tranche payment upon certification of delivery hence the Authority issued a purchase orders which specified the terms and conditions of contract binding on both parties.

<u>Committee Observation</u>

The Communications Authority of Kenya had time to advertise for this tender but failed to do it thereby stifling competition.

<u>Committee Recommendation</u>

The then Director General of the Communications Authority of Kenya should be reprimanded for breaking the procurement law.

b. Design, Printing, Supply and Delivery of Branded Items

The Committee further heard that the general expenses figure of Kshs. 1,969,111,000 included an amount of Kshs. 95,408,000 in respect of consumer affairs under note 12 to the financial statements. The amount of Kshs. 95,408,000 also included Kshs. 11,977,070 for the design, printing, supply and delivery of branded give-away including umbrellas and spiral notebooks by three firms identified through request for quotations instead of opening tendering method for a contract of such magnitude.

However, available information revealed that on 21st June 2017, all the three firms which were awarded the tender were notified further changes affecting their contract from one off supply to a framework contract/agreement. The change to framework contract was done contrary to section 114(1) of the Public Procurement and Asset Disposal Act 2015, which provides that *a framework contract can only be entered into through open tender and when the required quantity of goods, works or non-consultancy services cannot be determined at the time of entering into the agreement.*

<u>Management Response</u>

Management informed the Committee that during the financial year 2015/2016, the Authority planned to implement a service delivery improvement campaign to revamp service delivery within the Authority. This involved rebranding of Authority's service charter and undertaking both internal and external launch. One of the activities involved was printing and supply of branded giveaway which included umbrellas and spiral notebooks.

Through open tender, the Authority registered firms owned by youth, women and person with disabilities in readiness to participate under Access to Government Procurement opportunities (AGPO) as and when required.

The tender for supply of branded giveaways had been reserved for tender by the disadvantaged groups as shown in the procurement plan for 2015/2016. In this regard, the Authority invited bids for design and supply of branded giveaways from the list of the ten (10) registered suppliers in the category of design and printing of corporate materials.

This complied with the Public Procurement and Assets Disposal Act 71 (1) which provides that the *head of procurement function shall maintain and continuously update lists of registered suppliers, contractors and consultants in various specific categories of goods, works or services according to its procurement needs. The lists shall be applied on the alternative procurement methods as specified and appropriate.*

The alternative method of procurement used was restricted whereby exclusive preference to procure branded give aways was set for competitive tendering by youth women and persons with disabilities. The value was within threshold for Category A as per Threshold Matrix of Public Procurement and asset disposal Regulation 2006.

The change from one-time supply to framework agreement was informed by the fact that the Authority could not determine the required quantities of the giveaways at the time of entering into the of agreement for supply of giveaway that were needed for various corporate and consumer forums. However, the recommendation to enter into framework agreement was not implemented. The Authority only issued the orders for the one-time delivery.

The indicated expenditure of Kshs. 11,977,070 for tender for design, printing and supply of branded items was not correct. This is because the quantity was changed in consultation with the user department because there was an error in the quantities of the umbrellas and spiral notebooks (10,000 instead of 1,000). This was in compliance with Section 162(2) Public Procurement and Assets Disposal Act 2015 which discourages overstocking of items.

Committee Observation

The tendering process should have been open rather than request for quotation in a tender involving such magnitudes of money.

The explanation offered was not satisfactory.

<u>Committee Recommendation</u>

The then Director General of the Communications Authority of Kenya should be reprimanded for breaking the procurement law.

c. <u>Unclear Excessive Procurement of Brochures</u>

The Committee heard that as disclosed in Note 12 to the financial statements, the general expenses figure of Kshs. 1,969,111,000 included an amount of Kshs. 95,408,000. The amount of Kshs. 95,408,000 also included Kshs. 13,862,670 in respect of a contract for supply of various brochures awarded to a firm on 4th November 2015 at a contract sum of Kshs. 7,675,538 for a period of one year, with a performance bond of 5% equivalent to Kshs. 383,776.88. However, available information indicated that on 5th April 2016 and 13th October 2016, the authority wrote to the above supplier to quote and supply additional brochures worth Kshs. 9,292,500 and Kshs. 5,683,485 through direct payment.

The supplier was subsequently paid for the additional brochures vide Payment Voucher. No.vb/c/2006/12/14958 dated 18th August 2016 and VB/C2006/12/13271 dated 23rd December 2016 respectively. This was contrary to section 106(2)(b) of Public Procurement and Asset Disposal Act 2015 which requires that the request shall be given to as many persons as necessary to ensure effective competition and shall be given to at least three persons, unless that is not possible.

A physical visit to the store one year later in December 2017, revealed that a total of 139,250 child online brochures worth Kshs. 12,323,625 were still lying in store unutilized. In the circumstances, it was not possible to confirm the propriety of expenditure totalling Kshs.13,862,670 for the year ended 30th June 2017 and that the Authority was in breach of the Law.

Management response

Management informed the Committee that the Authority planned to procure printing and packaging services of its corporate and consumer education materials with a budget estimate of Kshs 47,339,379 as reflected in its 2015/2016 procurement plan.

On 24th July 2015, the Authority advertised for printing and packaging of its corporate and consumer education brochures, fliers and posters with a closing date of 12th August 2015. The tender was reserved for Youth, Women and Persons with disabilities. The Corporate and consumer education brochures, fliers and posters were to be printed as and when required during the contract period of one (1) year as indicated in the tender document (invitation to tender).

The tender attracted 62 firms and upon evaluation, the firm that offered the most competitive price for each category. M/s iBrand Ltd was awarded printing of the material at a total cost of Ksh 7,675,537.50. The contract Clause 4 A (Ceiling) stated that (i) For the services rendered pursuant to Clause 1(a) of this contract, the client shall pay the supplier a total sum of Kshs 7,675,537.50 inclusive of taxes (ii) For the services rendered pursuant to clause 1 (b) of this contract, the client shall pay the supplier a sum based on the unit rates contained in the annex upon printing, packaging and delivery of the same as and when ordered. The award for design and printing of brochures was therefore through an open tender and not direct procurement method.

On 5th April 2016 and 13th October 2016, the authority requested M/s iBrand Limited to supply additional brochures worth Kshs.9,292,500 and Kshs.5,683,485. This was in line with the contract entered to by the two parties. Clause 1 (b) of the contract which stated that "*The supplier shall also print and package any other corporate and consumer education brochures, fliers and posters of specifications similar to those specified in the Annex as and when required.*"

The Child online brochures were printed to be used for the child on-line campaign that had been scheduled. However, the consumer outreach events were postponed by (one) year due to the electioneering period.

The brochures are distributed through the following distribution channels. The Authority increased distribution to (2) new regional offices in Kisumu and Nyeri, Kenya National Libraries, E-resource centres and County Government offices

The stock position at year ended 30th June 2017 was 51,760 as tabulated below.

FY	**LPO date**	**LPO No.**	**Quantity Ordered**	**Quantity Delivered**	**Quantity Distributed**	**Quantity in Stock**
2013/ 2014	12-Apr-14	240	31,320	31,320*	-	31,320
2015/ 2016	4-May-16	1055	105,000	105,000	19,740	116,580
2016/ 2017	13-Oct-16	1659	40,300	40,300	105,120	51,760
2017/ 2018	11-Apr-18	3190	69,600**	-	51,760	-
Total			246,220	176,620	176,620	0

** Order cancelled

Phase II of campaign conducted FY 2017/2018 and all the brochures issued.

Committee Observations

The Committee observed that -

i) **This was a term contract**
ii) **Clause 4 A of the contract was couched in such terms as to allow whoever that has been awarded the contract can do further printing and be paid at unit cost. This clause was exploited by the CAK to allow supply of additional brochures and therefore there was no breach. However, this open-ended contract may be subject to abuse**
iii) **The auditors were not given all documentation during audit hence reason of raising the query.**
iv) **Distribution of child online broncures was suspended during the electioneering period hence the reason why stocks were still in the store.**

Committee Recommendation

The Committee recommends that -

i. **The CAK should avoid entering into open-ended contracts.**
ii. **The National Assembly should amend the procurement law to restrict open ended contracts to specific figure**

d. Supply of computers to Schools and E-Resource Centres

The Committee heard that included in the general expenses figure of Kshs. 1,969,111,000 under Note 12 is an amount of Kshs. 95,886,000 in respect of universal service obligation. The amount of Kshs. 95,886,000 also included Kshs. 58,577,271 paid to a firm for supply of computers to schools and E-resource centres out of which Kshs. 55,035,471 was for supply and installation of computers, Kshs. 2,934,800 for annual computer hardware maintenance and Kshs. 607,000 for annual renewal fees for anti-virus for a period of two (2) years and three (3) months. However, examination of available records revealed that the supplier attached a manufacturer authorization letter which had a disclaimer on warranty of the products in place of the Standard

Manufacturer's Authorization form/letter specified in the tender documents where Quality of the Product is guaranteed by the manufacturer.

Although the management explained that they intended to award the tender to more than one bidder as a way of extending the opportunities to the women, youth and persons with disabilities in order to minimize the risk of any possible setback to the entire project in the event that a single bidder experienced challenges that may affect the delivery of goods and services, the maximum number of lots that were to be awarded to any one bidder were three (3) out of total five (5) lots. However, this was not the case as the above supplier was awarded all the five (5) lots. Consequently, the Authority is in breach of the law and the propriety of expenditure of Kshs. 58,577,271 for the year ended 30 June 2017 could not be confirmed.

Management Response

Management informed the Committee that in its tendering process, the Authority uses the standard tender developed by Public Procurement Regulatory Authority. All the standard tender documents have standard forms which all bidders must complete and submit as part of bidder's compliant to tendering process.

One of the forms is Manufacturers Authorization Form (Standard for attached for ease of reference). The Manufacturers Authorization Form was one of the forms that bidders had to submit during the tendering process as a documentary evidence of their eligibility to tender and that goods are from the eligible source. The tender document gave a sample format of the Manufacturer's Authorization letter but it was not mandatory that it had to match the sample word by word since manufacturers might have different formats of their Authorization letter. The purpose of the sample was to highlight on the basic requirements that were to be contained in the template.

The 303rd TC deferred the paper for re-evaluation citing reasons for value for money if the tender was awarded to one firm the Authority was to save Kshs. 2.1million. The re-evaluation was done and presented to the TC in its 304th sitting for adjudication. The TC awarded the tender to M/S Modern Integrated Business Solutions of P.O Box 78610-00507 Nairobi for the contract to supply, install and maintain computers and software at a total tender sum of Kshs 58,577,271.68, being Kshs 55,035,471.68 for supply and installation of computers, Kshs 2,934,800 for annual computer hardware maintenance and Kshs 607,000 being amount for annual renewal fees for anti-virus.

Notification letters to all participants was done vide letters dated 28th January 2016. The notification letters to the unsuccessful participants also detailed reasons for non-responsiveness of the bids. The Authority received a complaint through the Public Procurement Regulatory Authority vide letter dated 7th March 2016 requesting for assorted documents relating to the tender.

The Authority filed a response to the Public Procurement Regulatory Authority vide letter dated 16th March 2016. The documents were later returned back to the Authority and the Public Procurement Regulatory Authority never stopped the tender implementation process.

The computers were delivered and installed as per the contract specifications

Committee Observations

The Committee observed that -

(i) The tender was awarded despite existence of a disclaimer.

(ii) On the supplier being awarded all the five (5) lots contrary to (3) lots specified in the invitation to tender, the response given was satisfactory.

Committee recommendation

The query was adequately addressed and therefore resolved

211. UNACCOUNTED FOR EXPENDITURE 2016/17

The Committee heard that included in the general expenses figure of Kshs. 1,969,111 under note 12 was an amount of Kshs. 54,786,000 in respect of Corporate Social Responsibility. The amount of Kshs. 54,786,000 also included Kshs. 23,000,000 being sponsorship of the National

Youth Talent Academy. The sponsorship was on furtherance of 28th June 2012 agreement between the Authority and UNICEF Kenya to sponsor the National Youth Talent Academy boys football team established by government through the Ministry of Sports, Culture and Arts at a cost of Kshs. 17,763,250 per year for three years, with a commencement date of 28 June 2012. The agreement was later renewed on 9th May 2016 for a total sum of Kshs. 69,000,000 for a period of three financial years with effect from June 2016 to 2019 at Kshs. 23,000,000 per annum. However, the Kenya Academy of sports had not submitted any returns and financial reports of the football club (Talanta) or accounted for the grants or the donations as per agreement between the two parties.

Further, according to the agreement, the utilization of the funding was to be subjected to an annual external audit by the Auditor General. The Authority was also mandated to call any time for any financial accounting and other project records maintained by Kenya Academy of Sports in pursuant to agreement and subject the records to an audit process of its choice. However, no evidence to show that the financial records of Kenya Academy of Sports were subjected to any audit was availed for audit review.

In addition it was noted on 13th December, 2016 the acting Director Corporate Services for Kenya Academy of sports wrote to Director General Communication Authority of Kenya through letter Ref. No. KAS/A/13(21) requesting for a change in remittance of the second instalment of Kshs. 23,000,000 for the football club (Talanta), from the old account No. 0260500659 at Equity Bank as per the agreement to a new account at Jamii Bora Bank account No. 1001823633002. The request was honoured on 20 January, 2017 without authority from the parent Ministry and the national Treasury.

Further, Communications Authority of Kenya did not notify Kenya Academy of Sports and the Ministry of Sports, Culture and Arts of the transfer of the funds.

Consequently, it has not been possible to confirm the propriety of expenditure totalling Kshs. 23,000,000 transferred to Jamii bora Bank account for the year ended 30 June 2017

Management Response

Management informed the Committee that the FC Talanta was initiated as a programme between cooperation of UNICEF, Kenya Secondary Schools Heads Association (KESSHA), and the Ministry of Sports, Culture and the Arts (Under the auspices the National Youth Talent Academy later transformed to Kenya Academy of Sports). UNICEF managed the programme and was responsible for the submission of the reports to the Authority as the sponsor. The initial contract was between UNICEF and the Authority in the period Year 2012- 2013.

The Kenya Academy of Sports, incorporated in year 2014, took over the management of the FC Talanta programme. Subsequently, the Authority signed the renewal of the sponsorship with the Kenya Academy of Sports in Year 2016.

FC Talanta was initially audited as a programme under UNICEF and later by Mwencha Certified Public Accountants upon takeover of the management of the programme by Kenya Academy of Sports. The Audit is currently undertaken by the Office of the Auditor General.

The FC Talanta Board granted approval of engagement of another banking institution, Jamii Bora, in accordance with its mandate. The Management of FC Talanta availed to the Authority, Minutes of the Board reflecting the approval of engagement of Jamii Bora. Additionally, both parties revised the Cooperation Agreement to recognise the change of bank account details, as per the Article III clause (j) of the Agreement.

The Cabinet Secretary in the Ministry of Sports, Culture and the Arts was informed of the renewal of the Kshs 69,000,000 sponsorship and also invited to the occasion of the official announcement of the sponsorship renewal.

Committee Observations

The Committee observed that -

(i) **The accounts were audited by a private firm appointed by UNICEF;**
(ii) **Audited accounts by a private auditor not appointed by the Auditor General cannot be owned by the Auditor General; and**
(iii) **It was illegal under the PFM Act to open an account without a written permission from the National Treasury.**

Committee Recommendation

The Auditor General should re audit the accounts for the purposes of ownership pursuant to Section 23 of the Public Audit Act 2015

212. **DIRECTORS EXPENSES FY 2016/17**

a. Irregular payments to the directors

The Committee heard that included in the director's expenses figure of Kshs. 47,211,000 under note 10 was an amount of Kshs. 1,656,000 in respect of board welfare. The amount of Kshs. 1,656,000 also included Kshs. 1,200,000 being Christmas shopping vouchers worth Kshs. 100,000 to each Board director. The Universal Service Advisory Council members were given Christmas shopping vouchers worth KShs. 900,000 which is included in Note 12 under universal advisory council of Kshs. 47,261,000. The payment of Christmas shopping totalling Kshs. 2,100,000 was made without parent Ministry and National Treasury approval. This was done contrary to provisions of circular ref OP/CAB9/21/2A/LII/43 dated 24 November 2004. Guidelines on terms and conditions of service annex IV paragraph (i) at page 42 that provides that any other benefit that are not provided in annex iv do not apply. Consequently, the management was in breach of the Law and propriety of expenditure totalling Kshs. 2,100,000 for the year ended 30th June 2017 could not be confirmed and was not a proper charge to public resources

Management response

Management informed the Committee that section 19 (2) (a) KICA Act 2012 gives the Board a mandate to provide for the payment of the salaries, allowances and other charges in respect of the staff of the Authority and the members of the Board.

Committee Observations

As much as the law allows the Board to prepare financial statements to remunerate themselves, however the SRC is mandated to under the constitution of kenya and the SRC act to determine/ set such remuneratuions.

Committee Recommendation

The Cureent Director General should surcharge those who were paid irregular allowances identified by the OAG.

b. Irregular Disposal of MacBook laptops and IPADS to Directors

The Committee heard that examination of available record revealed that Authority assets including macbook laptops and IPADs held by the former directors were un-procedurally disposed off to the individual directors. The nine (9) MacBooks laptops with net book value of Kshs. 466,551, nine (9) iPads with net book value of Kshs. 160,515, ten (10) ipads with net book value of Kshs. 200 and fourteen (14) laptops with net book value of Kshs.280 all totalling to Kshs. 627,553 were offset with the directors' fees due to the former directors. Offsetting of said assets was done contrary to Section 164 (3) of the Public Procurement and Asset Disposal Act 2015 which states that there shall be a technical report where appropriate by a relevant expert of the subject items for disposal that takes into account the real market price and in so doing the technical expert shall set up a reserve price which shall be the minimum acceptable price below real market value of the boarded items. Consequently, the authority was in breach of the law and the propriety of Kshs. 627,546 for the year ended 30th June 2017 could not be confirmed.

Management Response

Management informed the Committee that the Board members challenged their ouster and the matter is pending in court hence it was not possible to recover the laptops and IPADS for disposal. As a caution Management provisioned the amount equivalent to the written down value awaiting the court determination. The assets would be reverted to the Financial Statements for the year ended 30th June 2019.

Committee Observations

The Committee observed that -

(i) **The matter was still in Court**
(ii) **The explanation offered was satisfactory and query resolved**

2.16 BOMAS OF KENYA (FY 2013/14 - FY 2016/17)

EXAMINATION OF THE REPORTS OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF THE BOMAS OF KENYA FOR THE FINANCIAL YEARS 2013/14 TO 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 Lusweti (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 2016/17.

213. **Delinking from Tourism Finance Corporation - FY 2013/14 to 2016/17**

The Committee heard that Company was one hundred percent fully 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 Report of the Public Investments Committee (PIC) where it was resolved that the two institutions 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 implement the PIC recommendation the Company continued to face legal challenges in meeting its obligations to the Tourism Finance Corporation since it is not a separate entity.

Management Response

The Management concurred with the audit observation that Bomas of Kenya limited was a fully owned subsidiary of Tourism Finance Corporation (formally Kenya Tourist Development

Corporation). The 19th report of the Public Investment Committee on the audited Financial Statements of state corporations recommended that 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 wrote several correspondences with intention of delinking Bomas of Kenya from Tourist Finance Corporation.

Current Status

The Ministry of Tourism and Wildlife requested the Bomas of Kenya to pay off all the outstanding loan arrears totalling Kshs. 8,175,759 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 (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 via payment acknowledgement letter dated 25th November 2014.

By its letters dated 21st May 2015, 24th August 2015 and 15th June 2016, 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

The Bomas of Kenya through the Ministry of Tourism and Wildlife requested discharge of charge over Bomas of Kenya Title deed.

The Ministry of Tourism and wildlife wrote to Tourism Finance Corporation to discharge the charge and release the title deed.

On 28th September 2017 Tourism Finance Corporation handed over the Title deed but the Ministry of Tourism and Wild life retained the title.

On 14th February 2018, Bomas of Kenya requested the Ministry to hand over the tile deed (Letter of 13th June 2018, 12th September 2018 and 7th February 2019).

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 the Tourism Finance Corporation on 27th September 2017 and was under the custody of Ministry of Tourism and wildlife. The title deed should however be under the custody of Bomas of Kenya who are the Legal owners.

The Bomas of Kenya wrote to the parent Ministry requesting to be delinked from the Tourism Finance Corporation as recommended by Public Investment Committee of the National Assembly in its 19th report (Letters of 6th August 2015, 15th June 2016, 14th December 2016, 8th March 2017 and from Tourism Finance Corporation of 21st July 2016).

The matter of delinking had not been resolved as at the date of appearance before the Committee. Further, the Tourism Finance Corporation would be merged with Industrial Commercial Development Corporation (ICDC) and IDP Capital limited to create Development Bank of Kenya (Letter of 21st June 2018).

Management expected the issue of delinking of Bomas of Kenya and Tourism Finance Corporation would be concluded before the merger.

Committee Observations

The Committee observed that -

i. **The Ministry of Tourism and Wildlife confirmed that the Tourism Finance Corporation had handed over the Bomas of Kenya Title deed and it was under its custody. There was however no justification for the Ministry's continued holding of the said title.**

ii. **This therefore settles the matter and the query resolved**

Committee recommendations

The Ministry of Tourism and wildlife should handover the title to the Bomas of Kenya land to Bomas for safe custody without delay.

214. **Trade and other receivables FY 2013/14 to 2016/17**

The Committee heard that trade and other receivable balance of Kshs. 15,137,670 as at 30th June, 2014 was net of Kshs. 5,844,308 which had been outstanding for over 10 years and which was fully provided for. However, in spite of the Public Investments Committee recommendation to have the Board approval to regularise the bad and the doubtful debts, no efforts had been made to have the matter resolved.

Consequently, it was not possible to confirm the accuracy of the trade and other receivable balance of Kshs.15,137670 as at 30th June 2014.

Management Response

Management informed the Committee that bad and doubtful debt write off approval was granted by the Board of Directors in the 172nd 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 made a full provision for these bad and doubtful debts on its financial statements.

Committee Observation

There was no evidence placed before the Committee to show that management had made a request to the Cabinet Secretary to the National Treasury for a write off thus indicating that management was in contempt of Parliament.

Committee Recommendation

The Committee recommends that -

(i) Request for write off of debt should be made to the Cabinet Secretary for the National Treasury within three months of adoption of this report.

(ii) The managing director for Bomas of Kenya should be held responsible and surcharged for the bad and doubtful debts if he fails to make a request of debt write off to the National Treasury with three months of adoption of this report

215. **Valuation of assets**

The Committee heard that valuation of assets was conducted last in 1996. With a time lapse of over eighteen (18) years, the value of assets must have changed drastically yet the Company had not taken that 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 was not possible to ascertain that property, plant and equipment balance of Kshs. 1,211,106,796 was fairly stated in the Financial Statements as at 30th June, 2014.

Management Reponses

The Management concurred with the audit observation that the last valuation of Assets was conducted in 1996. The Board had been making budgetary provisions for valuation of assets over the years but were however hindered by lack of title deed L.R No. 12066 for the valuation to be carried out. The title deed was under the custody of the Ministry of Tourism and Wildlife after it was surrendered by Tourism Finance Corporation.

Current status

The Bomas of Kenya wrote to the Ministry of Land and Physical Planning to conduct a survey and valuation of the property. 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 of Kenya section. Bomas of Kenya through letter dated 12th September 2018 requested the Ministry of Land and Physical Planning to resurvey Property –LR No 12066 and conduct valuation of the resurveyed land and property and was awaiting response.

Committee Observations

The Bomas of Kenya's assets had not been valued as at the time of compiling this report.
Title to the BOMAS of Kenya remained with the Ministry of Tourism

Committee Recommendation

The Committee recommends that -

i) **The Minsitry of Tourims should give BOMAS of Kenya its title deed within three months of adoption of this report.**

ii) **The BOMAS of Kenya should budget for asset valuation in the 2021/2022 financial year**

216. **Unpaid compensation for compulsory land acquisition FY 2015/16 to FY 2016/17**

The Committee heard that the Kenya Urban Roads Authority compulsorily acquired 0.8055 hectare (2 acres) on L.R 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 indicated that the compensation was yet to be paid. Consequently, the awarded compensation crystallization remained in doubt given the time lapse.

Management Response

The Kenya Urban Roads 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). Vide letter Ref. KURA/SUR/14/2 Vol.3 (56) dated 7th February 2013, the Kenya Urban Road Authority undertook to compensate Bomas of Kenya upon valuation and awards.

The compulsorily acquired land of 0.8055 hectares (2 acres) was valued at Kshs 85 Millions. However, the Kenya Urban Road Authority and National Land Commission had not compensated the compulsorily acquired land as at the date of appearance before the committee.

The Bomas of Kenya instructed Lawyers M/S Shapley Barret and company Associate to pursue compensation of the compulsorily acquired land through the legal process. The Bomas of Kenya also sued the National Land Commission and Attorney General vide civil case No. 81 of 2018 for compensation.

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 to 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.

Committee Observations

The Committee observed that -

i) **The Bomas of Kenya sued the National Land Commission and the Attorney General vide civil case No. 81 of 2018 for compensation.**
ii) **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.**
iii) **Per the brief to the committee of 10th June 2020, the Kenya Urban Roads Authority and National Land Commission had not compensated Bomas of Kenya for the compulsorily acquired land claiming an advisory from the attorney general to the parent ministry thatgovernment land cannot be compulsorily acquired by another government entity and therefore the issue of compensation for the same should not occur. It is on this premise that all the parties agreed to withdraw the case from court.**
iv)

Committee Recommendations

Considering the government policy that government entities should not sue each other, the Head of Public Service should convene a meeting between the aggreived parties and resolve the matter within three months of adoption of this report.

2.17 KENYA NUCLEAR POWER AND ENERGY AGENCY (FY 2013/14 – 2015/16)

EXAMINATION OF REPORT OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF NUCLEAR POWER AND ENERGY AGENCY FROM THE FINANCIAL YEAR 2013/14 TO 2015/16

Eng. Collins Juma, the Chief Executive Officer of the Nuclear Power and 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.

217. **Unqualified Opinion (FY 2013/14)**

The Committee heard that the Auditor-General issued an unqualified opinion on the Agency's financial statements for the year ended 30th June 2014.

218. **Inventories (FY 2014/15)**

The Committee heard that the statement of financial position as at 30th June 2015 reflected inventories of Kshs. 6,141,076 (2013/14 Kshs. 1,520,400) which were described as consumables. This was contrary to International Public Sector Accounting Standard No. 12 on inventories which provides for expending such consumables. This had the effect of overstating total assets and understating the reported deficit for the year.

Management Response

The CEO stated that 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 Observation

They currently use IPSAS reporting format

Committee Recommendation

The accounting officers should at times adhere to the reporting framework recommended by the Public Sector Accounting Standard under the PFM Act.

219. **Other Matters**

a. **Financial Performance FY 2014/15**

The Committee heard that during the year under review, the Board reported a deficit of Kshs. 171,684,240 (Year 2013/14 – Surplus of Kshs. 101,999,442) that decreased the accumulated surplus to Kshs. 10,661,038 (2013/2014 Kshs. 183,404,865). The Board's financial statements also indicated that current liabilities exceeded current assets by Kshs. 28,096,754 as at 30th June 2015.

The Board's ability to meet its current obligations as and when they fell due was therefore doubtful. Further, Board's ability to carry out its mandate in the long run was dependent on government support.

Management Response

Management informed the Committee that:

1. Before the year 2012, Kenya Nuclear Electricity Board (KNEB, then Nuclear Electricity Project Committee (NEPC) operated under the Ministry of Energy and Petroleum with a budget of Kshs.280M.
2. During the year under review, the Board had a budget proposal of Kshs.1.6Billion, but was given only Kshs.300Million. As a result, the Board reported a deficit and reduced net assets as pointed out in the query.
3. In the FY 2015/2016 the funding was increased from 300Million to Kshs.610Million.
4. 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 was addressed by the Board. However, the Board relied on Government support to carry out its mandate.

Committee Recommendations

The Committee recommends that -

(i) **The Board should prepare realistic financial statements based on government cash flow projections rather than being overambitious.**

(ii) **The National Treasury should endeavor to advance the funds approved in the budget estimates.**

2.18 NATIONAL DROUGHT MANAGEMENT AUTHORITY (FY 2013-2017/18)

EXAMINATION OF REPORT OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF NATIONAL DROUGHT MANAGEMENT AUTHORITY FOR THE FINANCIAL YEARS 2013/14 TO FY 2017/18

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.

220. **Property, Plant and Equipment FY 2013/14 to FY 2015/16**

The Committee heard that Property, Plant and Equipment balance of Kshs. 637,151,087 as at 30th June 2016 (Kshs 624,768,358 as at 30th June 2014) included 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 were not registered under the name of the Authority neither were they valued. Information available for audit indicated that a Board of Survey committee was appointed on 25th May 2016 to assess the status of the verification on 19th September 2016 and gave the assets an estimated value of Kshs. 361,849,239. This situation indicated a significant impairment on some of the properties.

In the circumstances, it was not possible to confirm that the carrying values as stated in the financial statements reflected the fair values of the Property, Plant and Equipment as at 30th June, 2016.

Management Response

The Chief Executive Officer for NDMA informed the Committee that 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 25th May 2016 to assess the status of the verification on 19th 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 had to be assessed and valued and officially handed over to the Authority.

221. **Audit matter on property, plant and equipment - FY 2016/17**

The Committee heard that during the financial year 2016/2017, the Authority revalued its Plant, Property and Equipment from Kshs. 637, 151, 088 as at 30th 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 Chief Executive Officer reported that 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.

The Authority received the booklet which indicated details of all the assets. The Authority had not revalued the assets since they were handed over by the Ministry.

Committee Observations

The Committee observed that -

i) **The State Department for Devolution had verified and valued the assets and handed them over to the Authority on 26th November, 2016.**

ii) **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 Recommendation

The NDMA should value its assets every five years

222. **Unutilized Balances from Counties**

The Committee hears that disclosed at Note 15 to the financial statements were receivables from non-exchange contracts totalling Kshs. 50,711,946. Included in that amount was Kshs. 13,510,403 that related to 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 that amounted to Kshs. 13,510,403 could not be confirmed.

Management's Response

The Chief Executive Officer stated that NDMA County offices were funded from headquarters (HQ) on quarterly basis for their recurrent and development expenditure by way of AIEs. On accountability of the funds disbursed to the counties, HQ received 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 were 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 totaling Ksh.13,510,403 were attached.

Committee Observations

The Committee observed that -

i) **As at the time of audit, the Authority had not submitted all the relevant documents for verification. These documents were submitted way after the completion of the audit exercise and subsequently verified by the Auditor.**

ii) **The audit query was resolved.**

Committee Recommendation

The Authority should provide documents to the Office of the Auditor General for audit within the sated timelines to avoid unnecessary audit queries. Failure to provide documents should attract the sanctions provided for under Section 62 of the Public Audit Act of 2015.

223. **Donor related funded activities FY 2016/17**

a. Unreconciled donor related expenses

The Committee heard that notes 3,4 and 12 of the financial statements reflected the following amounts/balances for donor 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 differed with the recorded expenditure by Kshs. 11,250,767. The resulting variance was not reconciled or explained. Consequently, the accuracy of reported donor related funded activities expenses could not be confirmed.

Management's Response

The Management stated that the variance in question related to the UNDP-DRR Project. The Authority received a total of Kshs 29,967,260 from the UNDP-DRR Project in the 2015/2016 financial year. However, that 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 was reported as unutilized balances held at counties as confirmed by the attached ledgers. The management presented the following documentation to explain the queried variance:

a) Analysis of unutilized balances to counties as at the end of the 2015-2016 financial year, which formed part of the opening balance for the 2016-2017 financial year.

b) Ledger and bank statement that indicated a total of Kshs. 29,967,260 received by the Authority from the UNDP-DRR Project during the 2015/2016 financial year.

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 observed that -

i) **The Ledger balances and certificate of bank balance on the unspent amount were submitted and verified by the Auditor.**

ii) **Had these documents been submitted in time, such queries should not have been raised.**

Committee Recommendation

The Authority should provide documents to the Office of the Auditor General for audit within the sated timelines to avoid unnecessary audit queries. Failure to provide documents should attract the sanctions provided for under Section 62 of the Public Audit Act of 2015.

b. Expenses on Drought Contingencies Fund-Kshs. 435,918,831

The Committee heard that disclosed at Note 12 to the financial statements was an amount of Ksh. 435,918,831 in respect of expenses on Drought Contingency Fund (DCF), which was also indicated as a receipt under Note 3. The basis of the requisition for disbursement by the various county offices was not supported by necessary documentation justifying the extent of the fund required to undertake the given interventions. In addition, the expenditure was 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 could not be confirmed.

Management Response

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

The following documentations were 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 was managed through the use of a computerized management information system (MIS), thus all disbursement transactions were documented and available on the MIS for review/triangulation.

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

NDMA attached a detailed Drought Contingency Fund (DCF) listing of actual expenditure incurred with a total of 922 transactions, totaling to Kshs 435, 913,831. The documents were available at the time of audit. In addition to the OAG audit, the donor required that the fund expenditure verification be undertaken by an independent accounting firm as per the provisions of the grant contract.

Committee Observations

The Committee observed that the Authority delayed in providing documentation on the Drought Contingency Fund Expenses to the Auditor General. These documents were later availed and verified.

Committee Recommendation

(i) **The audit query was resolved.**
(ii) **The Authority should provide documents to the Office of the Auditor General for audit within the stated timelines to avoid unnecessary audit queries. Failure to provide documents should attract the sanctions provided for under Section 62 of the Public Audit Act of 2015.**

c. Expenses on Ending Drought Emergencies

The Committee heard that Note 12 to the Financial Statements disclosed an amount of Kshs. 719,161,995 relating to expenses on Ending Drought Emergencies (EDE) which was similarly reported as a receipt on Note 3. The basis of the requisition for disbursements to the various county offices and other procurement activities were not supported by necessary documentation that justified the extent of the funds required to undertake the given interventions. In addition, the expenditure was 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 could not be confirmed.

Management Response

Management informed the Committee that the Ending Drought Emergencies (EDE) was an EU funded project through NDMA and financed Resilience and Response activities at county level. It was a successor of Drought Contingency Fund Project (DCFP).

Requisition Process

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

- Latest county drought early warning bulletin

- Minutes of County Steering Group meeting that authorized 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 were documented and were available on the MIS for review/triangulation.

Expenditure

The management attached a detailed listing of actual expenditure incurred with a total of 34 transactions, totaling to Ksh. 719,161,995 under expenses on Ending Drought Emergencies (EDE). The EDE expenditure was captured in NDMA financial statements based on actual expenditure incurred which was supported by original expenditure supporting documents. Each of the expenditure items was duly and adequately supported through a payment or journal voucher, with the relevant accompanying supporting documents.

In addition to the OAG audit, the donor required 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 observed that -

i) **This query arose due to failure to submit document for audit within the required timelines.**
ii) **Relevant supporting documents were later submitted and verified by the Office of the Auditor General.**
iii) **The audit query was resolved**.

Committee Recommendation

The Authority should provide documents to the Office of the Auditor General for audit verification within the stated timelines to avoid unnecessary audit queries. Failure to provide documents should attract the sanctions provided for under Section 62 of the Public Audit Act of 2015.

d. Expenses on Hunger Safety Net Programme

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

Management Response

The CEO stated that the Hunger Safety Net Programme (HSNP) was a poverty-based programme implemented by NDMA. The programme was jointly funded by GOK and Department for International Development (DFID). DFID supported five components of the program, 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 channeled 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. Upon successful payments to beneficiaries using DFID funds, FSD would submit payment confirmation letter to NDMA.

FSD was a specialized 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 that included the hiring of the PSP.

In addition to the cash transfers, DFID gave quarterly summary report on the other three components which were directly contracted by DFID. DFID retained all original documents supporting the expenditure and contracts for all the components.

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 was presented.

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.

Committee Observations

The Committee observed that -

i) **This query arose due to failure to submit document for audit within the required timelines.**
ii) **Relevant supporting documents were later submitted and verified by the Office of the Auditor General.**
iii) **The audit query was resolved**.

Committee Recommendation

The Authority should provide documents to the Office of the Auditor General for audit within the stated timelines to avoid unnecessary audit queries. Failure to provide documents should attract the sanctions provided for under Section 62 of the Public Audit Act of 2015.

224. **Pension Scheme Expenses FY 2016/17**

The Committee heard that the Authority operated a registered defined contribution Pension Scheme for the employees. Although the scheme was 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, appeared not to be a valid charge on the Authority's Fund.

Management Response

Management informed the Committee that 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 operationalization 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 Principal Secretary, National Treasury, advised that the scheme sponsor may meet the set-up costs of a new scheme in its first year of operations.

Committee Observations

The Committee observed that -

i) **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 provided that the sponsor of a pension scheme may meet the set-up costs of a new scheme in its first year of operation.**
ii) **This query arose due to failure to submit document for audit within the required timelines.**
iii) **Relevant supporting documents were later submitted and verified by the Office of the Auditor General.**
iv) **The audit query was resolved**.

Committee Recommendation

The Authority should provide documents to the Office of the Auditor General for audit within the stated timelines to avoid unnecessary audit queries. Failure to provide documents should attract the sanctions provided for under Section 62 of the Public Audit Act of 2015.

225. **Unsupported Expenditure FY 2016/17**

The Committee heard that the following expenditure did not have supporting documentation provided for audit verification.

	Expense Category	Amount (Kshs.)
1	Domestic Compensation	4,846,350
2	Donor related funded Activities (GoK)	
	DCFP (GOK)	8,064,923
	UNDP	7,009,634
	WFP	872,950
	TOTAL	**20,793,857**

This made it not possible to confirm the correctness and accuracy of the respective expenditures.

Management Response

The CEO stated that as at the time of audit, the documents were kept at the County offices. The documents in question had since been availed.

Accounting documents from various counties that amounted to Kshs. 8,055,923 expenditures relating to DCFP-GOK supported activities. This expenditure constituted 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

- Accounting documents for Kshs. 872,950 related to WFP activities at Makueni County
- Accounting documents for expenditure of Kshs. 4,846,350 under Employee costs (travel costs-domestic). This expenditure constituted the following:

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.

<u>Committee Observations</u>

The Committee observed that -

i) **This query arose due to failure to submit document for audit within the required timelines.**
ii) **Relevant supporting documents were later submitted and verified by the Office of the Auditor General.**
iii) **The audit query was resolved**.

<u>Committee Recommendation</u>

The Authority should always provide documents to the Office of the Auditor General for audit within the stated timelines to avoid unnecessary audit queries. Failure to provide documents should attract the sanctions provided for under Section 62 of the Public Audit Act of 2015.

226. **<u>Other matter FY 2016/17</u>**

a. <u>Signing of Financial Statements</u>

The Authority had 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 was not possible to establish whether or not the board of management took full responsibility for the preparation and presentation of the Authority's financial statements in line with the legal obligation on board.

<u>Management Response</u>

The CEO stated that NDMA presented a copy of the financial statements signed by the Director Ms. Emily Mworia and the CEO, as audited by the OAG.

<u>Committee Observation</u>

This was a case of non-adherence to Public Sector Accounting Standards on preparation and submission of financial statements for audit.

<u>Committee Recommendation</u>

The chief executive officer of the NDMA should always adhere to Public Sector Accounting Standards on preparation and submission of financial statements for audit.

b. <u>Board Committees</u>

The Committee heard that the Audit and Risk Committee of the Board constituted three members. The three members also formed part of finance committee which comprised of four members.

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

<u>Management Response</u>

The CEO submitted that NDMA had only five (5) Board members during 2016/17 financial year instead of nine (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.

<u>Committee Observation</u>

The Committee observed that -

i) **The effective operations of the board were severely affected by the limited membership of the board arising from the appointing authority's failure to appoint the members in time.**
ii) **The NDMA Board had since been fully constituted.**

<u>Committee Recommendation</u>

The appointing authority should promptly appoint membership of the board as and when vacancies arise.

c. <u>National Drought Emergencies Fund</u>

The Committee heard that the Authority received an amount of Ksh. 2,000,000,000 from National Drought Emergency Fund (NDEF). However, even though the fund was supposed to be operated by the CEO of the National Drought Management Authority and financial statements presented to the Auditor General for audit at the end of every financial year, no financial statements were availed for audit and therefore confirmation of the transfer of funds was 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 was not in line with the National Drought Management Act, 2016 provision as there were no cashbook and other books of accounts.

Management Response

Management informed the Committee that 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 had not been operationalized through amendment of the NDMA Act and finalization of the NDEF.

The books of accounts would be populated once the Fund was 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.

Committee Recommendation

The NDMA should present the financial statements of the NDEF to the audit general's office for audit regardless of whether or not the law is operational

2.19 COUNCIL FOR LEGAL EDUCATION (FY 2015/16 -2017/18)

EXAMINATION OF THE REPORT OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF COUNCIL FOR LEGAL EDUCATION FOR THE FINANCIAL YEARS 2015/16 AND 2017/18

Dr. Jacob Gakeri, the Secretary to the Council for Legal Education accompanied by Mr. Jones Otuke (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.

227. **Unqualified Opinion (FYs 2015/16 and 2016/17)**

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.

228. **Other Matter**

a. **Operationalization of Tribunal FY 2015/16 & FY 2016/17**

The Committee heard that during the audit, 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 21st May 2013 and 10th June 2014 respectively but the Tribunal had not been operationalized. No reason was given for failure to operationalize the Tribunal.

Management Response

The Secretary to the Council informed the Committee that Legal Education Act no 27 of 2012 established a Legal Education Appeals Tribunal under Section 29 (1) of the Act. Council letter Ref CLE/MISC/3 VOL.I (18) dated 25th September 2017 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. The 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.

<u>Committee Observation</u>The Committee observed that -

i) **The Legal Education Appeals Tribunal had since been operationalised and the Judiciary had listed it among the operational Tribunals. The Tribunal operates from Reinsurance Plaza 12th Floor, Nairobi.**
ii) **The query was resolved.**

b. <u>Terms of Council Members Expiring FY 2016/17</u>

The Committee heard that during the audit, it was 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.

<u>Management Response</u>

The secretary informed the Committee that 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 Honorable 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) was yet to be gazetted. The newly constituted Council convened as a committee to transact business on 16th February 2018.

Committee Observations

The Committee observed that -

i) **This is a case where the appointing authority delayed in appointment of Council members and staggering their appointment dates to ensure continuity.**
ii) **Upon advice from the Secretary to the Council, the appointing authority staggered Council member's terms in line with the Code of Governance for State Corporations provisions on succession planning.**
iii) **Relevant Gazette notices and letters of appointment were attached for the Committee's review.**
iv) **The query had been addressed and considered resolved.**

Committee Recommendation

The appointing authority should always appoint council members in time and also stagger their terms of service to ensure continuity

c. Exam related costs on Project and Oral Examination FY 2016/17

The Committee heard that the statement of financial performance as at 30th June 2017 reflected examination related costs of Kshs. 54,547,803. Out of this, a balance of Kshs. 7,390,275 represented payments to the Kenya school of law in relation to cost of administering Project and Oral Examinations, which were being administered by the school on behalf of the Council for the first time.

During its Governing Council meeting of 24th March 2016, the council resolved that existing arrangements with the school should be revised, by having a formal agency agreement between the two entities. 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.

Committee Observation

The query was adequately addressed and therefore resolved.

229. Cash and cash equivalent FY 2017/18

The Committee heard that included in cash and cash equivalent balance of Kshs. 389,247,265 as disclosed at note 16 to the financial statements was National Bank of Kenya Revenue Account balance of Kshs. 363,357,727 for which the supporting bank reconciliation statement reflected direct deposits of Kshs. 1,869,512.30 out of which deposits amounting to Kshs. 1,203,511 were outstanding for more than six months. No explanation was provided for not clearing these items in time.

In addition, the reconciliation statement for the National Bank of Kenya expenditure account reflected unpresented 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

The Committee was informed that the Council of Legal Education bank reconciliation as at 30th June 2018 had credits in bank not in cashbook amounting to Kshs. 1,869,512.30 of which Kshs. 1,203,511.30 had been outstanding for more than six months. This was occasioned when individuals deposited money in the Council of Legal Education account directly but did not seek the services they paid for. In that case, the Council was not in a position to recognize the funds deposited in bank as revenue because service had not been rendered and the individual had not presented the evidence of payment as per Council's procedures.

Direct deposits in bank and not in cashbook in most cases related to candidates who deposited examination fee in Council's bank account but did not register for examination for period of more than six months. Council Conducted the Bar Examination twice in a year. The reconciling items listed in the credits in bank not in cashbook were only cleared when the candidate presented the original deposit slip and registered for examination or sought the service for which they paid. The Council, in consultation with the bank, endeavored to clear the direct deposits in time when there is sufficient information to recognize the funds in our books.

Expenditure account unpresented cheques of Kshs. 9,528,386

The Council of Legal Education bank reconciliation statement as at 30th June 2018 for the revenue account had unpresented cheques amounting to Kshs. 9,528,386. All the unpresented cheques were cleared by 30th September 2018.

Committee Observations

The credits in bank not in cashbook of which Kshs. 1,203,511.30 was outstanding for more than six months was occasioned when individuals deposited money in the Council of Legal Education account directly but did not seek the service they paid for. The Council was thus not in a position to recognize the funds deposited in bank as revenue because service had not been rendered.

Committee Recommendation

The council should liaise with the bank and come up with a system of promptly identifying credits made and for what purpose.

230. **Other matter FY 2017/18**

a. Budgetary Performance

The Committee heard that during the year under review, the Council's 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 translated 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 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 was not desirable and there was therefore need to review the budget process to ensure that resources are budgeted in a realistic manner.

Management Response

The Committee received submissions to the effect that 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 was from Appropriations-in-Aid. The increase was due to an increase of number candidates sitting the Bar Examination, number of institutions that sought 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.

As at the time of appearance before the Committee, the Council of Legal Education had an operational board whose appointment was staggered unlike before where terms of Council members ended on the same date.

The Council of Legal Education Board approved the setting up of the Legal Education Revolving Fund to support candidates in partnership with Higher Education Loans Board. The requisite structure was being set up and candidates sitting for the Bar Examination November 2019 would be the first beneficiaries.

<u>Committee Observations</u>

The Committee observed that -

i) 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.

ii) The increase in actual revenue compared to budgeted revenue was attributed to increased uptake and re-sits of Bar examination by students.

iii) There was mass failure in the Bar examination hence a high rate of exam re-sits. The pass mark for the Bar exam as established by statute is 50%.

iv) **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.**

v) **The Bar exams are moderated by experienced professionals in the legal industry.**

vi) **The Council should review the Bar exam administration process to address the mass failure by students that led to over collection of revenue.**

Committee Recommendations

The council should prepare realistic budget that can be fairly implemented

3.20 NEW KENYA COOPERATIVE CREAMERIES (FY 2011/12 – 2017/18)

EXAMINATION OF THE REPORT OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF NEW KENYA COOPERATIVE CREAMERIES (NEW KCC) FOR THE FINANCIAL YEARS 2011/12 TO 2017/18

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.

231. **Cash and cash equivalent FY 2014/15**

a. The Committee heard that Cash and Cash Equivalents balance of Kshs. 44,468,465 as at 30th June 2015 excluded Kshs. 269,883 which was credit in Equity Bank statements and was not captured in the cashbook and out of which Kshs. 119,803 was for transactions between 25th April 2013 and 12th June 2014 and Kshs. 61,402 being credit in the Cooperative Bank statement not recorded in the cashbook and which was not resolved.

b. Similarly, the cash and cash equivalent balance as at 30th June 2015 included an amount of Kshs. 723,371 for credit in KCB bank statements not in the cashbook out of which Kshs. 100,259 were outstanding between 3rd October 2012 and 18th December 2014 that were not resolved. Additionally, the balance included Kshs. 24,980 credit in the Standard Bank statements not in the cash book that was not adjusted.
c. The bank overdraft balance of Kshs. 759,892,422 included debit in the bank statement not in the cashbook of Kshs. 4,782,595 out of which Kshs. 4,306,396 was outstanding for the period between 8th January 2007 and 31st March 2013. The same bank overdraft balance also excluded an amount of Kshs. 1,056,784 that related to credit in the bank statement not in the cashbook out of which Kshs. 611,591 had remained outstanding for the period between 9th August 2012 and 3rd November 2014 that was not reconciled or adjusted.

In the circumstances, it was not possible to confirm the accuracy of cash and cash equivalents balance of Kshs. 44,468,465.

Management Response

The MD informed the Committee that the amounts were reconciled and documentation provided to the Office of the Auditor General for verification.

Committee Observation

This was a reconciliation matter that was later done, verified by the Office of the Auditor General and the matter resolved.

Committee recommendation

Management of KCC should reconcile its books promptly

232. **Procurement of EXADATA 1/8TH Oracle Engineering System FY 2014/15**

The Committee heard that on 30th September 2014, the management 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 2nd October 2014 with delivery date expected to be 23rd October 2014. The equipment was received by the Company on 30th January 2015 and 18th 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 equipment and defaulted in payment as per the contract terms agreed between the two parties. Neither the value of the equipment nor the contingent liability was recognized in the financial statements.

ii. The supplier later sued the Company and engaged a legal firm that issued a demand note on 4th 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 26th 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 29th September 2015 out of which the Company made a partial payment of Kshs. 1,000,000 on 26th 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 3rd February 2016 for them to proceed with the case. By the end of audit, no other payment had been made to the advocates and they were yet to proceed.

iv. The equipment was in the custody of the Company but was 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 Managing Director stated that 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, New KCC embarked on processing payments to affected vendors leading to the court settlement with Ms. Netronics Communications Ltd.

Committee Observations

The Committee observed that -

i) **The New KCC entered into a contract with full knowledge that in the previous year it had made a loss and the year in question would suffer droughts that will have an impact on milk production leading to reduced cash flows**
ii) **The case on procurement of the system was withdrawn from Court, mediated and the matter settled.**
iii) **A total of Ksh. 10,168,780 was spent on legal fees**
iv) **The procurement of the system was duly approved by the Board and its budget provided for in the budget estimates of the 2014/15 FY. Additional funds were also approved by the Board**
v) **The system was insured and relevant licenses secured.**
vi) **The system has since addressed challenges in the data management with respect to payment for farmers so as to mitigate against losses.**

Committee Recommendation

New KCC management should prepare realistic budget estimates that can implemented within any particular financial year.

233. **Trade and other payables FY 2016/17 and FY 2017/18**

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

Management Response

The MD submitted that the management resolved the outstanding price variances as the prices variances relating to stock balances at the end of the year (30 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 balance 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 Recommendation

The New KCC management should always reconcile its books promptly

234. **Property, Plant and Equipment FY 2017/18**

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

(i) Title documents for twenty-two (22) properties with a value of Kshs. 853,900,000 were not availed for audit verification.

(ii) The property, plant and equipment balance of Kshs. 4,122,379,669 excluded four (4) parcels of land and buildings which were not valued.

(iii) Twenty-three (23) disputed unvalued properties were registered in the name of third parties. The company failed to disclose in the financial statements that 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 were legally 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 was 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) 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 removal of squatters and stoppage of any other developments on the land, the case was yet to be determined.

Management Response

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

Committee Observations

The Committee observed that -

i) **Valuation of all assets was done and a breakdown of all the valued (2018) assets availed for verification**

ii) **The case of contested land had taken inordinately long to conclude.**

iii) **Based on KCC brief to the Committee of 27th May 2020, there were no new titles secured after its last appearance to the Committee.**

iv) **The New KCC did not avail titles to LR. No. 17601 and LR No. 23413 properties for audit verification**

Committee Recommendations

The New KCC should liaise with the National Land Commission and the Land Registry to register all the New KCC's parcels of land that have not been registered within six months of adoption of this report.

235. **Trade and other receivables FY 2017/18**

The Committee heard that included in trade and other receivables balance of Kshs. 1,996,009,658 as at 30th June 2018 was an amount of Kshs. 1,628,317,392 reflected in note 18(a) for trade receivables which in turn included Kshs. 379,914,225 related to receivables from Nakumatt Holdings Limited of Kshs. 290,839,391 and Uchumi Supermarkets Limited of Kshs. 89,074,834. Information available indicated that the companies were either in receivership or liquidation.

Although management made provisions for these receivables, the value from these companies was doubtful. The recoverability of these debts remained doubtful.

Management Response

The MD submitted that the management made specific provision for the debts.

Committee Observations

The Committee observed that -

i) **Trade receivables in the New KCC have been reducing since the year 2011. In the year 2011, it stood at kshs. 985,286,568 while in 2018, it was Kshs. 379,914,225.**

ii) **New KCC issued demand letters to Nakumatt and Uchumi. The NKCC's brief to the Committee of 27th May 2020 indicated that Nakumatt and Uchumi were under receivership and in Court. NKCC had not therefore received any debts from them.**

iii) **New KCC pursued the matter in court.**

Committee Recommendations

The Committee recommends that -

i) **The New KCC should continue pursuing the recovery of all the amounts due to it.**
ii) **Any future supplies should be guaranteed either by insurance or financial institutions**

3.21 KENYA INVESTMENT AUTHORITY (FY 2014/15 - 2016/17)

EXAMINATION OF THE REPORT OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF KENYA INVESTMENT AUTHORITY FOR THE FINANCIAL YEARS 2014/15 TO 2016/17

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.

236. **Payment to a consulting firm FY 2014/15 & FY 2015/16**

The Committee heard that 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.

The Authority delayed to issue instruction to its lawyers on the next cause of action even after they were reminded that the interest was accruing, hence the total bill escalated to Kshs. 10,251,977.

The Authority also failed to heed to advice from its lawyer that an appeal on the case was bound to fail on 28th June 2013 and a further advice from Attorney General's office on 11th October 2013 that the Authority should 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

The Committee heard that on 21st March, 2017, the Authority wrote to the Inspectorate of State Corporations to request for 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 agreed 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 but it has not received any feedback.

Committee Observations

The Committee observed that -

i) 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.

ii) **The variation in amount was caused by a clause in the contract for the services which provided for a simple interest of 3% per day on delayed payments.**
iii) **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.**
iv) **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.**
v) **The Inspectorate of State Corporations investigated the matter and recommended for surcharge against the then CEO.**
vi) **The Committee had written to the former CEO, Susan Kikwai (current deputy governor of Kericho County) requesting for her appearance but she did not honour the Committee's invitation.**

Committee Recommendation

The Committee recommends that -

i. **The former CEO, Susan Kikwai, should be surcharged.**
ii. **The EACC should investigate the former CEO, Susan Kikwai, with a view of prosecuting her if found culpable**

Other Matters

237. **Amount from receivables transaction FY 2014/15**

The Committee heard that the statement of financial position reflected accounts receivables from exchange transactions of Kshs. 12,355,183 which included un-surrendered imprest of Kshs. 1,143,704 relating to Milan expo.

Management's Response

The officer (Mr. Meshack Washier) was scheduled to travel between 1^{st} to 18^{th} July 2015 but was advanced imprest to enable him travel. The imprest warrant Number 6519 and 6527 were prepared on 24^{th} June 2015 and paid out on 29^{th} 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 Committee observed that -

i) **The officer was issued imprest totalling Kshs. 1,063,436. The amount surrendered on 30th July 2015 was Kshs. 1,062,485.20 leaving a balance of Kshs.951.80. The balance of Kshs. 951.80 was paid.**
ii) **The matter was resolved.**

Committee Recommendation

The Chief Executive Officer should always ensure that imprest issued to officers is surrendered within seven days pursuant to the PFM regulations.

238. **Budgetary Performance –Kenya International Investment Conference FY 2015/16**

The Committee was informed that the expenses for the conference exceeded the budget without adequate explanations and/or necessary approvals.

Management's Response

a) Kenya International Investment Conference (KIICO)

The MD informed the Committee that 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 were held. It was expected that the funds would cater for the cost of hosting the conference at Kenya International Convection 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 the Authority's control. The Authority therefore utilized its reserves to cater for the expense. There was no pending bill on that. In addition, the Authority could restate the statement of changes in net assets to reflect the same.

b) ISO Certification

The expense of KShs. 238,840 which was not 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 observed that -

i) **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.**
ii) **The Ministry later wrote to the Authority after the conference indicating lack of funds to meet the expenses incurred.**
iii) **The Authority had failed to provide documentation to justify the expenditure despite repeated concerns raised by the Auditor.**
iv) **The Board had provided approval to management to undertake the expenditure.**

Committee Recommendation

Considering that the authority did not provide relevant documentation to justify this expenditure, the EACC and the DCI should within six months of adoption of this report investigate the propriety of the expenses made.

239. **Poor budget absorption FY 2016/17**

The Committee heard that 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 had a negative impact on service delivery and achievement of the Authority's mandate.

Management's Response

The CEO informed the committee that the main reason for under-absorption of the budget 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 Observation

The audit query was resolved.

Committee Recommendation

The authority should always prepare and implement budgets as fairly as possible.

240. **Expired contract FY 2016/17**

The Committee heard that revenue from exchange transaction (other income) balance of Kshs. 28,118,390 included an amount of Kshs. 489,789 received on 15th July 2016 in accordance with the memorandum of understanding between the UNIDO and the Kenya Investment Authority dated 14th March 2013 for hosting within the Authority an Industrial SPX at its Kenya Railways Headquarters. No explanation was provided for the receipt of funds outside the contract period.

Management Response

Management informed the Committee that 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 Observation

The audit query was resolved.

3.22 NATIONAL IRRIGATION BOARD (FY 2014/15 - FY 2016/17)

EXAMINATION OF THE REPORT OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF NATIONAL IRRIGATION BOARD FOR THE FINANCIAL YEARS 2014/15 TO 2016/17

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 2012/13 to FY 2017/18.

241. **Property Plant and Equipment FY 2012/13 to FY 2017/18**

   a. FY 2012/13 through to 2017/18: The Property, Plant and Equipment balance of Kshs. 4,845,130,713

The Committee heard that the captured figure excluded the value of land in seven (7) schemes for which the board did not have ownership documents. Therefore, accuracy of the balance could not be confirmed.

Further, the figure included Irrigation works and sewerage of Kshs. 3,396,305,865. No justification for inclusion of this amount was offered because the works were on community land and the Board did not have ownership documents.

Management Response

The General Manager, concurred with the audit observation that the Property, Plant and Equipment excluded the value of land in the seven Irrigation Schemes. This was because NIB held in trust the said land through gazette notices. The land included farmlands which were cultivated by the scheme farmers and land where NIB's offices were located. The land was also omitted from the fixed asset register as that could only be done after the land was 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 referred to the irrigation water conveyance infrastructure in the seven Irrigation Schemes under NIB. The sewerage system was for the NIB's staff houses and offices in all the Irrigation Schemes.

Committee Observations

The Committee observed that -

i. **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.**

ii. **As at the time of appearing before the Committee, six schemes land measuring 75, 509 acres had no ownership documents**

iii. **The grabbed land was gazzeted as belonging to the Board.**

Committee Recommendations

The Committee recommends that -

(i) **The NIB management should expedite the process of acquisition of titles of all the seven properties.**

(ii) **The Management response with regard irrigation works and sewerage was satisfactory and therefore the matter resolved.**

b. FY 2017/18: Loss of a vehicle

The Committee heard that during the year, motor vehicle registration no. KBT 972A whose ownership details were not provided for audit review got lost. Without such documentation, the accuracy of the value of the Plant, Property and Equipment could not be fairly determined.

Management response

Management informed the Committee that the project vehicle was stolen while still under the contractor and had not been handed over to the employer. The contractor was instructed to replace the vehicle accordingly as per the conditions of the contract by the employer; National Irrigation Board.

The vehicle could also not have been included in the fixed assets register since it was still in possession of the contractor and had not been handed over to NIB.

Committee Observations

The Committee observed that -

i. **The stolen motor vehicle had been recovered as at the time of NIB's appearance before the Committee.**
ii. **The motor vehicle was not captured in NIB's books of account for the financial year 2014/2015**

Committee recommendations

The NIB should capture the motor vehicle in the books of accounts within three months of adoption of this report and the Auditor General to confirm in the next audit report.

c. **FY 2015/17: compensation for land**

The Committee heard that included in the free hold land balance of Kshs.1,189,586,062 as at 30th June 2016 were 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 had not provided details on persons compensated, the rates of compensation, and the acreage of the land acquired during the period.

It was 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

Management provided a breakdown the persons paid and the rates of payments of Kshs. 357, 895,014 paid as compensation for Mwea Irrigation Development Project (Thiba Dam) to acquire 43.78 acres of land together with improvements thereon.

Management further provided details of Kshs. 10,922,017 paid as compensation for Lower Sio Irrigation Development Project in which 15 persons were compensated to acquire 31.66 acres of land together with improvements thereon.

Further, management provided details of Kshs. 6,331,485 paid as compensation for Lower Kuja Irrigation Development Project in which 71 persons were compensated to acquire 64.81 acres of land together with improvements thereon.

Committee Observations

The audit query arose due to failure to submit documents for audit within the required timelines which were later submitted and verified.

The query was addressed satisfactorily

Committee Recommendation

The NIB management should always adhere to the timelines in submission of documents for audit failure to which the provisions of Section 62 of the Public Audit Act should be invoked.

242. **Long term investments FY 2012/13**

The Committee heard that the NIB shareholding in Mwea Rice Mills and Western Kenya Rice Mills were 55% and 60% respectively which were acquired between 1967 and 1998 respectively. The actual shareholding according to share certificates was 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.

Further, Mwea Rice Mills Ltd. and Western Kenya Rice Mills Ltd. were registered under the companies act as limited companies but were directly managed by NIB but did not consolidate their financial statements.

Management Response

Management informed the Committee that Mwea Rice Mills Ltd, which was owned by NIB and Mwea Rice Growers Multipurpose Cooperative Society, had 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 held 137,500 shares with a par value of Ksh.20.00 valued at Ksh.2, 750,000.00 giving it 55% ownership.

Whereas, at Mwea Rice Growers Multipurpose Cooperative Society Limited NIB owned 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 owned 137,500 shares in Mwea Rice Mills Ltd.

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.

Committee Observation

The Committee observed that the Board continued to report independently from the two subsidiaries, Mwea Rice Mills Ltd and Western Kenya Rice Mills Ltd, which were limited companies.

Committee Recommendations

The audit query was resolved.

243. **Trade and other receivables FY 2012/13**

Trade and other receivables of Kshs. 933,411,176

i. According to NIB, Receivables from Mwea was Kshs. 38,283,440 while Payables to NIB according to Mwea was Kshs. 18,691,689. This resulted in an unexplained difference of Kshs. 19,591,751.
ii. There was Unsupported amount of Kshs. 271,229,265 in the trade and other receivables balance.
iii. Staff debtors' balance of Kshs. 15,112,468 differed with the analysis amount of Kshs. 9,239,870 by Kshs. 5,872,599.

No explanation was provided for the difference.

Management Response

Management informed the Committee that transactions between National Irrigation Board and Mwea Rice Mills Ltd dated back to 1966 when the mills started operations. National Irrigation Board was reconciling her books with Mwea Rice Mills to establish the correct position with a view of settling the respective debts. However, it faced challenges such as difficulty in retrieving of some records which arose from a lapse in handing over by retrenched staff in the year 2002. That notwithstanding, the management was working on the reconciliations.

The management did not avail the schedules to support the figure of Ksh. 271,229,265 at the time of audit.

The amount of Ksh.9, 289,870.00 referred to staff debts. The difference of Ksh. 5,872,599 referred to overstated expenses over earlier years where staff surrenders were directly expensed instead of being applied to reduce staff debts.

Committee Observations

The Committee observed that -

i) **The provisions of the Limitation of Actions Act prevented the Board from pursuing long outstanding receivables after six years.**

ii) **The reconciliation on outstanding staff debt was carried out and any outstanding debt was being recovered through the payroll.**

iii) **The Authority submitted schedules to support the amount of Kshs. 221,229,265 under the payables.**

Committee Recommendation

The NIB management should pursue the remaining receivables with a view to recovering them in full

244. **Cash and Cash Equivalent FY 2012/13**

The Committee heard that the cash and cash equivalent of Kshs. 1,993,712,682 included an unsupported amount of Kshs. 539,759,704 without bank reconciliation statements and certificate of bank balances. It was therefore not possible to ascertain the accuracy of the cash and cash equivalents balance.

Management Response

The General Manager confirmed to the Committee that the cash and cash equivalents were reconciled and the bank statement balances were in agreement with cash book balances. The cash and cash equivalents balance was 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 Recommendations

The Committee recommends that -

- **(i)** **The NIB management should always adhere to the timelines in submission of documents for audit, failure to which the provisions of Section 62 of the Public Audit Act should be invoked.**
- **(ii)** **The audit query was resolved.**

245. **Cash and cash equivalent FY 2016/17**

Barclays Bank of Kenya- Queens way House

The Committee heard that Payments made in Barclays Bank of Kenya- Queensway Branch amounting to Kshs.2,555,402 were not recorded in the cashbook and no explanation made on what they related to.

Management response

Management informed the Committee that the figure of Ksh. 2,555,402 comprised of the following:

1) Ksh 343,469.90 which refered to standing instructions to the bank for trading in the Treasury Bills on behalf of NIB. However, the confirmation by the bank was received after the financial statements had been prepared and forwarded for review.
2) Ksh 2,134,555.90 which related to an erroneous entry by the bank debiting the NIB's account twice. The management was making follow up with the bank so that it could correct the error.
3) Ksh 77,376.55 related to an erroneous payment to War Memorial hospital -Nakuru. The error was corrected and cleared in the financial year 2017/18 (evidence provided).

Committee Observations

(i) The amount of Ksh. 343,469.90 in relation to cost of Treasury bills bought by the bank on behalf of NIB has since been adjusted in the books by recognizing both the revenue and the expense.

(ii) The figure of Ksh 77,376.55 in relation to erroneous payment to the War Memorial hospital in Nakuru has since been refunded and necessary entries made in the cash book in the month of September 2018.

(iii) The figure of Ksh 2,134,555.90 which relates to an erroneous payment committed by the bank by debiting the account twice had been sorted out and cleared in June 2019.

(iv) All the above had been verified by the officer of the Auditor General

Barclays Bank of Kenya Kisumu

The Committee heard that the amount of Kshs.415,787 described as historic uncredited receipts have were not analysed.

Management response

Management informed the Committee that it had reconciled the account and established that the error was arising from electricity bills for Ahero pumping station which had not been posted in the cashbook. A voucher and the reconciliation statement capturing the same was provided as evidence.

Committee Observations

The issue was resolved in May 2018.

Committee recommendations

The NIB should always reconcile its books in a timely manner to avoid unnecessary queries

246. **Development Fund FY 2012/13**

The Committee heard that the Development Fund of Kshs. 11,695,220 was set up in 1992 and had been dormant since 2002. The Bank statement or certificate was not provided for audit review by the Board to confirm if the fund was available.

Management Response

The Board confirmed that the figure of Ksh 11,695,220 was 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

This was a fictitious asset in the books that has never been operationalized and there was no intention to operationalize it.

Committee Recommendation

The NIB management should develop a Board Paper to write off this fictitious asset in the books

247. **Japanese International Cooperation Agency Grants FY 2012/13**

The Committee heard that that an analysis of the assets capitalized for the Japanese International Cooperation Agency (JICA) Grants of Kshs. 94,156,125 was not provided for audit review. The accuracy of the balance could therefore not be confirmed.

Management Response

Management informed the Committee that 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 were contracted as consultant for Thiba Dam Construction.

The management also presented a schedule detailing payment to Nippon Koei Co. Ltd that had not been availed during audit in support for the same.

Committee Observation

This was a case in which the NIB failed to provide documents for audit. These documents were however provided later and verified.

Committee Recommendation

The Committee recommends that -

(i) The Management of the NIB should adhere to timelines given during the audit cycle. Failure to which the provisions of Section 62 of the Public Audit Act should be invoked.

(ii) The audit query was resolved.

248. **Trade and other payables FY 2012/13, 2016/17 and 2017/18**

The trade and other payables balance of Kshs. 364,750,840 (FY 2013/14):

The Committee heard that according to NIB, Payables to Mwea was Kshs. 5,615,952. On the other hand, receivables on Mwea's books indicated a nil balance against the Board.

Further, there were no supporting documents for stock of Kshs. 144,560,929 and provision for bad debts of Kshs. 21,508,816.

Further, the Board excluded accumulated bills owed to Water Resources Management Authority of Kshs. 74,780,044 while a debit balance of Kshs. 305,526 was included and no explanation was provided.

Management Response

i. Transactions between National Irrigation Board and Mwea Rice Mills Ltd dated back to 1966 when the mills started operations. National Irrigation Board had 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, it was 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. That notwithstanding, the management was working on those reconciliations.
ii. The amount of stock difference of Ksh. 144,560,929 referred to the difference between the value of physical stock counted as at 30th June 2013 and the ledger balance for the same period. The 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.

Committee Observations

The Committee observed that -

i. The status as at the date of appearance before the Committee (2nd July 2019) was that NIB owed WARMA Kshs. 20,981,308.38 after it made some payments. However, NIB had no plans of making further payments as there was no obligation for NIB to pay for water abstraction permits on behalf of farmers.
ii. The Kshs. 144,560,929 was later reconciled, auditors given the documents and verified.

iii. **A board paper will be done in the 2019/2020 to write off the remaining bad and doubtful debts.**

Committee Recommendations

The Committee recommends that -

(i) **The NIB should expedite a board paper on debt write off to resolve this matter once and for all.**

(ii) **WARMA should not charge NIB after handing over the project**

249. **Long term Loans FY 2012/13**

The Committee heard that 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 GM submitted that the figure of Ksh. 2,573,066,569 reflected in the Government's outstanding loan statement as at 30th June 2013 was 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 Observations

The Committee observed that -

i) **The Committee observed that there was communication from the National Treasury dated 3rd April 2018 to the Board that acknowledged that the amount in question was a loan.**

ii) **Presence of a repayment plan of the amount confirms that it was a loan and not a grant.**

Committee Recommendation

The NIB should capture the amount in its books as a loan

250. **Other operational income FY 2012/13**

The Committee heard that other operational income of Kshs. 361,941,801 excluded accountancy and administration fee due from Mwea Rice Mills Ltd. and Western Kenya Rice Mills Ltd. of Kshs. 942,501. Additionally, unsupported bank interest of Kshs. 267,640,463 was included in other operational income.

Management Response

The management stated that bank interest figure of Ksh. 257,471,747 for which schedules and supporting documents were not provided during the time of audit review but had since been provided to the Office of the Auditor General.

Committee Observation

The revenue was recognized in the books of accounts and the supporting schedules for the bank interest were provided and cleared by the Office of the Auditor General in the financial year 2013-14.

Committee Recommendations

The Committee recommends that -

(i) **The Management of the NIB should adhere to timelines given during the audit cycle. Failure to which the provisions of Section 62 of the Public Audit Act should be invoked.**
(ii) **The audit query was resolved.**

251. **Government Grants FY 2012/13**

The Committee heard that grants received from the Ministry of Water and Irrigation according to schedules provided reflected an amount of Kshs. 7,533,614,433 resulting to an unexplained difference of Kshs. 133,859,980.

Management Response

The Committee heard that the government grants received by NIB amounted to Ksh. 7,399,754,453.00 and the same was 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).

Committee Observation

The figures were reconciled and the query was dropped during the audit of the financial year 2013-14.

Committee Recommendations

The Committee recommends that -

(i) **The NIB should always provide documents for audit within the required timelines.**
(ii) **The audit query was resolved.**

252. **Works in Progress (WIP) FY 2014/15**

The Committee heard that included in the statement of financial position WIP figure of Kshs. 16,937,607,320 were costs totaling Kshs. 9,695,074,003 that related to periods prior to 2012/2013. The projects were ongoing although some behind schedule. It was not possible to confirm whether the projects would 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 were not completed. Consequently, it was not possible to give an opinion on the carrying value of the work in progress as reflected in the financial statements.

Management Response

The Committee was informed that as observed by the auditors, the projects were ongoing though some were behind schedule. The main reason for delay in some of the projects was cash flow problem due to budget cuts.

Committee Observations

The Committee observed that -

i) **The delay in completion of some of the projects was caused by cash flow problems attributed to budget cuts.**
ii) **The projects were completed and completion certificates issued.**

Committee Recommendation

The National Treasury should adhere to the approved budgets

253. **Buildings FY 2015/16**

The Committee heard that building materials were included in the balance under buildings with no specific building project. Further, the fixed asset register did not have a record of NIB buildings as the Board's assets.

Management Response

Management informed the Committee that the figures amounting to Kshs.32, 611,964 related specifically to major repairs carried out to workshops, and drying floors, offices and staff houses. NIB maintained a fixed asset register which included buildings which were all over the various Irrigation Schemes.

Committee Observation

This query rose due to the NIB's failure to submit documents for audit. These documents had since been provided to the Office of the Auditor General and verified.

Committee Recommendation

The NIB management should adhere to audit timelines by submitting documents when requested.

254. **Works in Progress FY 2015/16**

The Committee heard that included in the statement of financial position was work-in-progress balance of Kshs. 15,014,397,659 as at 30th 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 had stalled and were far behind schedule.

It was not possible to confirm whether they would be completed in the near future and the additions cost(s) if any, that would be required to complete them or the losses the Board would suffer in the event that the projects were not completed.

Management Response

Management informed the Committee that all the projects were completed and completion certificates issued.

Committee Observations

The stalled projects were completed and handed over to farmers.

255. **Payables from exchange transactions FY 2015/16**

a. Outstanding KRA Dues

The Committee heard that included in the payables from exchange transactions' balance of Ksh.4, 198,630,672 as at 30th June 2016 was a balance of Kshs. 623,242,634 due to Kenya Revenue Authority which was outstanding over a long period. However, the management did not explain how it intended to settle the balance. Further, interests and penalties on the outstanding balances were not recognized in the Board's books of account.

Management Response

NIB management team informed the Committee that they were in the process of settling the KRA bills as and when it received 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.

As at the time of appearance before the Committee, the NIB had paid a total of Ksh. 630,000,000 in respect of the old debt. The management also undertook a deliberate stand not to ever again accumulate KRA debt but to settle the bills as they fell due.

Committee Observations

The Committee observed that -

i) **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.**

ii) **A total of Ksh. 630,000,000 in respect of the old debt was paid. No penalties were charged by the Revenue Authority.**

Committee Recommendation

The NIB should pay the remaining dues to the KRA on the basis of the agreed upon repayment plan.

b. Dues to Contractors

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

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

Management Response

The Committee heard that the amount due to contractors of Ksh. 2,106,175,301 was part of NIB's pending bills of Ksh. 4,249,843,292 as at 30th June 2016. The management 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 strived to ensure that the Board continued executing ongoing projects and closed the year with minimum pending bills so as to embark on 2016-17 projects and programs on a sound footing.

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 would continue to honour its financial obligations as and when they fell due.

Committee Observations

The Committee observed that -

i) **Pending bills arose due to exchequer issues**

ii) **All certified pending bills were paid by the Board.**

iii) **The Board did not incur any interest on delayed payments to contractors following negotiations between the two parties.**

Committee Recommendations

The Committee recommends that -

i) **The NIB should pay for all the pending bills to avoid incurring interest**

ii) **The National Treasury should ensure exchequer releases promptly**

c. **Staff Gratuity**

The Committee heard that included in the trade payables balance' of Kshs. 4,198,630,672 was an amount of Kshs. 22,605,637 which was staff gratuity, some dating as far back as 2013/2014 not remitted to the pension administrator. Failure to make statutory remittances suggested that the Board was facing financial constraints. The interest and penalties on the unremitted amounts was not factored in the Board's books of account.

Management Response

The General Manager stated that NIB had four categories of staff serving under different terms i.e. contract, permanent, temporary and casual.

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

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

Committee Observation

The Committee observed that -

(i) **The query arose due to exchequer issues and also the contracts for some contractual employees.**
(ii) **This information had not been availed to the Office of the Auditor General for audit.**
(iii) **The National Irrigation Board did not have any outstanding dues to the pension fund and no risk of penalties was anticipated.**

Committee Recommendation

The NIB management should adhere to audit timelines but submitting documents when requested.

d. Retention Money

Included in the balance from trade payables of Ksh.1, 735,753,197 was 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 reflected a balance of Ksh.111, 804,362. This resulted in an unexplained and unreconciled difference of Ksh.25, 098,198.

Management Response

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

This changed and NIB paid retention liabilities to contractors directly from the development bank account without having first to transfer to the retention account.

Committee Observations

NIB had not provided this explanation to the auditor during the audit hence the reason behind the audit query.

Committee Recommendations

The NIB management should adhere to audit timelines but submitting documents when requested. Failure to provide the requested documents, the provisions of Sections 62 of Public Audit Act and 68 of the PFM Act.

256. **Inter Company Transactions 2015/16**

a. Mwea Rice Mills

The Committee heard that included in other debtors' balance of Kshs.228,483,441 as at 30th June 2016 was a balance of kshs.61,959,517 being balance owing from Mwea Rice Mills

Limited. In the books of Mwea Rice Mills Limited the same balance reflected at Kshs.38, 632,670 leading to unexplained and unreconciled difference of Kshs.23, 326,847.

Management Response

Management informed the Committee that the figure of Kshs.23, 326,847.which was the difference between the NIB books and the Mwea Rice Mills Ltd books was as a result of lapse in the handing over reports during retrenchment in 2002. However, the management was reconciling the difference in the view of settling the difference.

Committee Observations

The Committee observed that -

i) **As reported in the financial statements for the year 2017/2018, in the books of NIB, it is owed by MRM Ltd Ksh.68, 499,382 while in the books of MRM Ltd, NIB is owed Ksh. 43,549,705.**

ii) **The management had not reconciled the two accounts with a view of settling the difference of Ksh. 24,949,677.00.**

Committee recommendation

Management of the two state corporations together with their sector auditors should reconcile its books as a matter of priority.

b. **Western Kenya Rice Mills Limited**

Similarly, included in the debtors' balance was an amount of Kshs.17, 695,864 being a balance due from Western Kenya Rice Mills. In the books of the company, the same balance is given as Kshs.31, 279,331 resulting in an unexplained and unreconciled difference of Kshs.41, 416,533.

Management Response

The figure of Kshs. 41,416,533 which is the difference between the NIB books and the Mwea Rice Mills Ltd books was as a result of lapse in the handing over reports during retrenchment in

2002. However, the management is reconciling the difference in the view of settling the difference.

Committee Observations

The Committee observed that -

i. **As reported in the financial statements for the year 2017/2018, in the books WKRM Ltd, NIB was owed Ksh.27, 950,094 while in the books of NIB, WKRM Ltd owed NIB Ksh. 79,331,535.**

ii. **The management had not reconciled the two accounts with a view of settling the difference of Ksh. 51,381,441.**

iii. **The matter had been addressed in the previous financial year**

Committee Recommendation

The management of the two corporations together with sector auditors should reconcile the books as a matter of urgency

c. **Suspense Account**

Further, the Committee heard that included in other debtors' balance of Kshs.228,483,441 was a suspense account balance of Kshs.23,142,118 which had been outstanding for more than one year but which management had not reconciled or explained.

Management Response

Management informed the Committee that the amount of Ksh 23,142,118 was a historical figure recorded in the books. This figure had been included in the provision for bad debts in the financial statements. The management undertook this decision since it was difficult to establish the list supporting the same. Through the guidelines of PFM Act, 2015, the management is seeking for ways on how to write off these figures from the books.

Committee Observations

Due to lack of proper handing over by retrenched staff, it has been difficult to reconcile these accounts indicating that there was no proper record management at the NIB.

Committee Recommendations

The Committee recommends that -

i) **The Management of NIB should improve record keeping in future to avoid similar scenario.**

ii) **The NIB management should prepare a debt write off board paper to write off such figures from NIB's books**

d. Non-Performing Debtors

The Committee heard that debtors from farmers' balance of Kshs.276, 186,375 and other debtors' balance of Kshs.228, 676,226 had both been outstanding over a long time. Although management had made a full provision, it was not put in place measures to have the sums recovered. The Board was therefore likely to lose Kshs.504, 862,601 being public funds that management had failed to secure.

Management Response

Management informed the Committee that in the year 1998, NIB witnessed a revolt from farmers in Mwea Irrigation and Settlement Scheme. At that time, NIB had advanced inputs and services for that year's crop to farmers in Mwea, Ahero, West Kano, Bura and Tana Schemes. The situation in Mwea Scheme deteriorated so much that it culminated in NIB's failure to recover advances made to farmers in the various Schemes as this led to stalling of cropping operations. Due to the huge number of the farmers affected, it was difficult to collect the outstanding debts. The management had made a provision for bad debts for the same.

Committee Observations

The Committee observed that -

i) **The debts have not yet been collected and the management was seeking for ways to get approval for write off.**
ii) **NIB management was complicit by not putting mechanisms in place of collecting any advances it made to farmers.**
iii) **The Management had not placed any materials before the Committee to show its attempts to recover the debts**

Committee Recommendation

NIB should liase with financial institutions on loan management

e. **Provision for Bad Debts**

The Committee heard that included in the provision for bad debts' balance of KShs.518, 364,597 were deposits for services the Board was reportedly receiving from other service providers and staff imprests of Kshs.28, 295,783. However, management had not explained why they included the deposits in the provision. The deposits were recoverable and therefore did not need to be provided for as this may cause the Board to incur a loss. In view of the foregoing, the accuracy and recoverability of the debtors of Kshs.228, 483,441 could not be ascertained.

Management Response

The staff imprest of Ksh 28,295,783 had been accounted for and any un-surrendered imprest was being recovered through the payroll. The provision of the figure as a bad debt was an error which had since been noted and necessary action taken to correct the books of accounts.

Committee Observations

The management corrected the error which the auditor verified and the correct schedule of debtors provided.

Committee Recommendation

The query was adequately addressed and therefore resolved

257. **Unallocated Irrigation Works (2015/16)**

The Committee heard that the Board had nine (9) irrigation projects spread all over the country on which it spent Kshs.3, 603,941,641 without indicating the cost for each specific project. The projects included:

	Scheme	Place
1	Mwea Irrigation and Settlement Scheme	Mwea
2	Bura Irrigation Scheme	Tana River
3	Tana Irrigation Scheme	Tana River
4	Perkerra Irrigation Scheme	Baringo
5	Ahero Irrigation Scheme	Nyanza
6	West Kano Irrigation Scheme	Nyanza
7	Bunyala Irrigation Scheme	Western
8	Miad Center	Mwea
9	Mwea Irrigation Development Project	Mwea

Consequently, it was not possible to ascertain that the total expenditure of Kshs.3, 603,941,641 is a proper charge on public funds.

Management Response

Management informed the Committee that the figure of Ksh 3,603,941,641 in question referred to the expenditure on development projects from the GoK development allocation of

Kshs. 3.7 Billion for the year under review. The allocation was made to specific projects as indicated 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 observed that -

i) **The query was raised due to NIB's failure to provide documents during the audit process.**

ii) **The matter was resolved and reviewed by the auditor**

Committee Recommendation

The Committee recommends that -

i) **The NIB should promptly provide documents for audit as and when requested**
ii) **The query was adequately addressed and the matter settled.**

258. **Retained Earnings' Adjustments (FY 2015/16)**

The Committee heard that the retained earnings balance of Kshs.14,606,538,943 was 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 was contrary to IPSAS 3 paragraph 47 (b). Further, no explanation for this had been provided as required under IPSAS. In the circumstances, the accuracy of the retained earnings balance could not be confirmed.

Management Response

Management informed the Committee that it was NIB's policy to adjust retained earnings to the projects which were complete and handed over to the communities within the financial year under review. In this regard, the figure of Ksh. 5,684,395,617 related to the projects which were completed within the 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 observed that -

i) **It is the policy of NIB to adjust the value of completed projects to Retained earnings.**

ii) **This explanation had not been given together with relevant documents during the time of audit.**

Committee recommendation

The Committee recommends that -

i) **The NIB should promptly provide documents for audit as and when requested**
ii) **The query was adequately addressed and the matter settled.**

259. **Board Members Expenses**

The Committee heard that the Board members' expenses balance of Kshs.22, 650,506 was understated by Ksh.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 did not explain 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

Management informed the Committee that 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 six independent members was appointed on 17th April 2015 and an additional of three more directors were appointed on 2nd October 2015. The new Board was in 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, 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.

The comparative analysis of the costs between periods when there was a fully constituted Board and when there was no full Board in place could give an objective result, hence, leading to the ratio of 740%. The size of the Board was also of great challenge as a fully constituted one is approximately 14 members representing the face of Kenya.

Committee Observations

The Committee observed that -

i) **High turnover of the Board Members and the attendant costs was the primary cause of the huge increase in board allowances.**
ii) **NIB board of directors is fully constituted and there is a smooth flow of operations in the institution.**

Committee Recommendation

The query was adequately addressed and therefore resolved

260. **Other Matter (2015/16)**

a. **Irrigation Projects**

261. **Bura Irrigation Project Phase I**

The Committee heard that the NIB 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. Further, the company was awarded the project despite being its bad past record. As at 30th 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 remained doubtful.

Management Response

Management informed the Committee that 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 contractor did not perform as expected due to inadequate mobilization of machinery and equipment despite the employer giving various instructions. NIB terminated the contract at 30 % completion and procurement of balance of the works was ongoing.

Committee observation

The Committee observed that -

i. **There was no material placed before the Committee to justify both absence of a feasibility study before commencing of the project and awarding a contract to a contractor with past record.**
ii. **There was no material placed before the Committee to show that any form of due diligence was done on the contractor before being awarded the contract. It was contented, through NIB brief to the Committee of 8th June 2020, that the contractor was one of the prequalified contractors.**
iii. **The contractor was paid Kshs. 2.2 billion for the evaluated work he did after termination. As per NIB brief to the Committee of 8th June 202, the Consortium between Sabbour Associates (Egypt), CAS Consultants Ltd (Kenya) and Dar Al Dowaillah (Kuwait) carried out the evaluation of the works before termination. Since the consultant was already engaged for supervison work, evaluation was part of his work.**
iv. The remaining works were lotted into 3lots as follows;

Lot 1: Construction of diversion facilities at Kora-Kora site, riverbank protection works and sedimentation basin involving piling works at an estimated cost of 1.78 billion

Lot 2: Construction and lining of Connecting canal for 26.3 km and construction of road crossings and bridges at an estimated cost of Kes 1.15 billion

Lot 3: Rehabilitation and lining of existing main canal (53km), existing irrigation command area infrastructures (canals, canal structures, night storage reservoirs, drains roads) for Bura, Chewele, Pumwani and Masabubu commands at estimated cost of Kes 2.1 billion

Lot 1 which comprised of construction of the intake works and the assoaciated civil works had been contracted to Afrikon Ltd and works were ongoing and expected to be completed in October 2020.

Committee Recommendations

The Committee recommends that -

i. **Going forward, the donors should be advised not to insist giving contracts to companies whose record had been questioned in the past.**
ii. **The mother Ministry should reprimand the Management of NIB for abuse of office in awarding a contract without feasibility study and not doing due diligence on the contractor especially on contracts with huge sums of money.**

262. **Great Bura Irrigation Project-Feasibility Study**

The Committee heard that the NIB awarded the contact at contract sum of Kshs.167, 086,400 for contract duration of 40 weeks starting 28th 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 had 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

Management informed the Committee that there was no variation in the contract and the consultant was awarded at a contract sum of Kes 177,476,400.00 (inclusive of Kes 16,800,000.00 Provisional sum and taxes). The ACT was followed while utilizing the provisional sum of the contract. The consultancy contract did not provide for liquidated damages but the contract was extended to allow the assignment to be completed. The consultancy was completed and accepted by the Board.

Committee Observations

The Committee observed that -

i. **The signed contract had not been provided to the office of the auditor general for audit verification during the audit process. The same had since been provided,**

verified and the matter resolved.

ii. **As much as there was no variation in terms of money to the contractor, the NIB may have lost in terms of time value of money for delayed completion of the consultancy work.**

Committee recommendations

The Committee recommends atht the NIB should in future contracts have punitive provisons in case of a default from contractors

263. **Ndula Magongoni Irrigation Scheme Phase 1**

The Committee heard that 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 5th 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 28th January 2016 and recommended for payments which were made in March 2016. In the circumstance, no benefit was derived from the expenditure of Kshs.199, 599,465 incurred on the project as it was not operationalized.

Management Response

Management informed the Committee that 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 a 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.

This phase 1 of the project was completed and handed over; Ndula line which was completed during this phase is under production.

Committee Observations

The query was raised due to NIB's failure to provide documents for audit verification during the audit process. All the documents have since been provided, verified and the matter resolved.

Committee Recommendations

The Committee recommends that -

(i) **The NIB should always provide documents for audit verification within the required timelines**
(ii) **The query was adequately addressed and therefore resolved**

264. **Ndunga Magongoni Irrigation Scheme Phase 2**

The Committee heard that 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 5th September 2015 to 28 December 2016. However, no documents on the project were made available for audit verification. It was therefore not been possible to ascertain the propriety of the expenditure of Kshs.224, 584,458 allocated to the project.

Management Response

Management informed the Committee that contract sum for this phase was Kes 239,676,239.86. All the documents pertaining to the implementation of Ndula Magongoni phase 2 were available which included contract document, payment certificates for certified works and design document. The project was to completed in July 2019. Full production had therefore been realized.

Committee Observations

The query was raised due to NIB's failure to provide documents for audit verification

during the audit process. All the documents have since been provided, and verified.

Committee Recommendations

The Committee recommends that -

(i) **The NIB should provide documents for audit verification within the required timelines as per law;**
(ii) **The NIB should ensure implementation of the projects as per the contractual timelines.**

265. **Oldonyiro Irrigation Scheme Development-Isiolo County**

The Committee heard 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

Management informed the Committee that 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. The project was fully completed.

Committee Observations

The Committee observed that -

i) **The query was raised due to NIB's failure to provide documents for audit verification during the audit process. All the documents have since been provided, verified and the matter resolved.**
ii) **The variation was 16.8% and therefore within the 25% threshold allowed in law**

Committee Recommendations

The Committee recommends that -

(i) **The NIB should always provide documents for audit verification within the required timelines as per law.**
(ii) **The query was adequately addressed and therefore resolved**

266. **Oldonyiro Irrigation Scheme Development-Phase 2**

The Committee heard that 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 starting 4th 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 yet the project was incomplete.

Consequently, the propriety of the expenditure of Kshs.224, 584,457 paid and or to be incurred on the project could not be confirmed.

Management Response

Management informed the Committee that 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 was completely a new technology in Kenya. Payments to the contractor were done for measured certified works which were fully inspected as per the contract provisions and the works were fully inspected before payment.

The equipment had been imported, delivered and installed. The project was completed in July 2019.

Committee Observation and recommendation

The Project was complete albeit late. The query was therefore resolved.

267. **Rahole Canal Irrigation Scheme-Garissa County**

The Committee heard that 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 was incomplete 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. In the circumstance, it was not possible to ascertain the effectiveness and efficiency of the amount of Kshs.300, 365,375 spent on the project.

Management Response

Management informed the Committee that 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.

Committee Observations

The query was raised due to NIB's failure to provide documents for audit verification during the audit process. All the documents have since been provided, verified and the matter resolved.

Committee Recommendations

The Committee recommends that -

(i) **The NIB should always provide documents for audit verification within the required timelines**
(ii) **The query was adequately addressed and therefore resolved**

268. **Rahole Canal Irrigation Scheme-Phase 2**

The Committee heard that 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 payment of Kshs.20, 000,000 and Ksh.18, 096,612 to the contractor which however, were not supported with the certificate of work done.

Under the circumstance, the project's objectives were not clear and the project expenditure of Kshs.38, 096,612 as at 30 June 2016 may not be a proper charge on public funds.

Management Response

Management informed the Committee that 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. This phase of the project was completed.

Committee Observations

The query was raised due to NIB's failure to provide documents for audit verification during the audit process. All the documents have since been provided, verified and the matter resolved.

Committee Recommendations

The Committee recommends that -

(i) The NIB should always provide documents for audit verification within the required timelines

(ii) The query was adequately addressed and therefore resolved

269. **Runga Rehabilitation Works Irrigation Project**

The Committee heard that the NIB 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 30th 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 was not clear when the project will be completed and if additional costs would be incurred to complete it.

Management Response

Management informed the Committee that 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.

Committee Observations

The query was raised due to NIB's failure to provide documents for audit verification during the audit process. All the documents have since been provided, verified and the matter resolved.

Committee Recommendations

The Committee recommends that -

(i) **The NIB should always provide documents for audit verification within the required timelines**
(ii) **The query was adequately addressed and therefore resolved**

270. **Construction Works of the Mukengesya Irrigation Scheme**

The Committee heard that 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 appeard to be higher than the actual work done. Consequently, value for money for the amount of Kshs.70, 252,600 could not be confirmed.

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 inspection report. The project was fully completed and was under production.

Committee Observation

The matter was adequately addressed and the query resolved

271. **Buildings (FY 2016/17)**

The Committee heard that examination of the fixed assets register revealed that the balance reported under buildings of Kshs.78,304,130 as at 30th June 2017 included the cost of building materials amounting to Kshs.28,787,614. However, the building materials in question were not attributed to any specific building. Further, the asset register did not have a list of the Board's buildings.

In view of the foregoing, it was not been possible to confirm the accuracy, valuation and completeness of the property, plant and equipment balance of Kshs.5, 210,433,820 as at 30th June 2017.

Management Response

Management informed the Committee that the figure of Kshs.28, 787,614 related specifically to major repairs carried out to workshops, drying floors, offices and staff houses as per the summary in the table below. NIB maintained a fixed asset register which include buildings which are all over the various Irrigation Schemes.

Building	Amount
Workshop buildings and drying floor	17,396,806
Offices	8,696,903
Staff houses	2,696,905
Total	28,787,614

The assets register for property plant and equipment was availed for perusal.

Committee Observations

The query arose as a result of the NIB's failure to provide the asset register during the audit period. The documents had since provided and verified by the Office of the Auditor General

Committee Recommendations

NIB should provide documents for audit and when requested.

272. **Receivables from Exchange Transactions (FY 2016/17)**
273. **Long Outstanding Debts**

The Committee heard that included in the receivables from exchange transactions (Note 15) balance of Kshs.624, 814,720, is Kshs.501, 257,096 (2016: Kshs.518, 364,597) or 80% provision for bad debts. However, the trade debtors, farmers and other debtors were all historical figures carried forward for unknown number of years. No reason had been given for the huge provision of 80% or receivables.

Management Response

Section 14 of the Public Financial Management Act regulations provides for write off of unrecoverable debts and losses. The un-recoverable debts owed by farmers and other debtors of Ksh 501,257,096 were making up 80 % of the total debts, hence provision to that tune.

Committee Observations

The Committee observed that -

- **(i) Management failed to put in place mechanisms to recover advances made to the farmers.**
- **(ii) Writing off Kshs. 501,257,096 shows poor management**

Committee recommendations

The then Management of the NIB should be held responsible for not putting in place mechanisms for collection advances made to farmers

NIB should liase with financial institutions for loan management

274. **Suspense Account-sundry Debtors**

The Committee heard that included in the other debtors' balance of Kshs.230,882,623 was an amount of Kshs.34,280,229 which did not relate to any specific debtor but instead classified as other trade debtors (Kshs.11,098,612), sundry debtors (Kshs.23,142,118) and other debtor (Kshs.39,500) which had been outstanding but the Board has not reconciled or explained the suspense amount.

Management Response

The figure of Kshs. 501,257,096 referred to historical debts which included:

1. Kshs 276,191,374.57 owed by farmers that dates back to 1998. These are debts which the management was recommending to be written off as the recovery of the same has been difficult.

2. Kshs.34,280,229.29 did not have a debtors' supporting list but was classified as:

i. other trade debtors(Kshs.11,098,611.60),

ii. sundry debtors (Kshs.23,142,117.76) and

iii. Other debtor (Kshs.39, 499.93).

The supporting list for these figures had not been located based on the fact that there was no proper handing over notes when NIB underwent massive retrenchment in the year1998. The management through the board of directors would seek approval from the National Treasury for write off of this class of debtors. NIB was preparing a board paper for presentation to the board members for deliberations, necessary approval and recommendation to the National Treasury for write off in accordance with the PFM Act regulation 145(5)

Committee Observations

The Committee observed that -

(i) Management failed to put in place mechanisms to recover advances made to the farmers.
(ii) Writing off huge debts shows poor management.

Committee recommendation

The DCI should investigate the circumstances under which the management did not act

275. **Inter Company Transactions (FY 2016/17)**

Mwea Rice Mills Ltd

The Committee heard that included in other debtor's balance of Kshs.230, 882,623 as at 30 June 2017 was a balance of Kshs.67, 737,278 being balance owing from Mwea Rice Mills Limited. In the books of Mwea Rice Mills Limited the same balance is reflected as Kshs.40, 410,431 resulting in an unexplained difference of Kshs.27, 326,847.

Western Kenya Rice Mills Ltd

Similarly, included in the debtors' balance was an amount of Kshs.73, 457,601 being a balance due from Western Kenya Rice Mills Ltd. In the books of the company, the same balance is given as Kshs.26, 426,152 resulting in unexplained and unreconciled balance of Kshs.47, 031,449. In view of the foregoing, it was not possible to confirm the accuracy and recoverability of the receivables from exchange transactions balance of Kshs.123, 557,624 as at 30th June 2017.

Management Response

Management informed the Committee that 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 had faced 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 was working on these reconciliations. The National Irrigation Board was preparing a board paper intended to write off these debts.

<u>Committee Observations</u>

The Committee observed that -

(i) Management failed to put in place mechanisms to recover advances made to the farmers.

(ii) Writing off huge debts shows poor management

<u>Committee recommendations</u>

The Committee recommends that -

i. The then Management of the NIB should be held responsible for not putting in place mechanisms for collection advances made to farmers and also for not keeping records properly.

ii. Writing off of debts should only be done after audit of the debts and approved by the National Treasury.

276. **Outstanding Kenya Revenue Authority Dues (FY 2015/17)**

The Committee heard that, as previously reported, included in the payables from exchange transactions balance of Kshs.3,560,750,127 as at 30th June 2017 was a balance of Kshs.973,391,569.29 due to Kenya Revenue Authority which had been outstanding over a long period. This amount had risen considerably by 36% as compared to the previous year amount of Kshs.623, 242,634. Further, interest and penalties on the outstanding balance had not been recognized in the Board's books of account thus understating the balance reported by accrued interest/levies which Kenya Revenue Authority may impose. Management did not explain how it intended to settle the balance.

Management Response

Management informed the Committee that NIB had been settling the KRA bills as and when it received 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.

As at the time of appearance before the Committee, a total of Ksh. 630,000,000 in respect of the old debt has been paid. The management had also undertaken a deliberate stand not to ever again accumulate KRA debt but to settle the bills as they fall due.

Committee Recommendations

The NIB should honour the repayment plan agreed with the KRA.

277. **Long Outstanding Trade Payables**

The Committee heard that included in current liabilities-payables from exchange transactions balance of Kshs.3,560,750,127 as at 30th June 2017 was an amount totaling Kshs.407,257,813 due to various contractors, consultant and other trade payables which had remained outstanding for more than one year without supporting documents. The audit could not establish why the Board had not prioritized the settlement of those outstanding amount and the criteria it uses to settle debts. Consequently, the accuracy and completeness of the trade payable account balance of Ksh.407, 257,813 could not be ascertained as at 30th June 2017.

Management Response

The figure of Ksh 407,257,813 on long outstanding trade payables arose due to budget cuts. The supporting documents which were not provided at the time of audit have been provided and verified by the auditor. As at June 2019, NIB's pending bills stood at Ksh 2.4 billion as opposed to Ksh. 3.2 billion in the financial year 2016/2017. With continued support from The National Treasury, the management would honour its financial obligations as and when they fell due.

Committee Observations

The pending Bills were as a result of challenges in exchequer releases.

Committee Recommendation

The National Treasury should always endeavour to finance the approved budgets.

278. **Retention Money (FY 2016/17)**

The Committee heard that included in the balance for current liabilities trade payables was an amount of Kshs.392, 448,788 referred to as retention money. However, the analysis provided for the retention account and reconciliation statement of the account which was held at Co-operative Bank Account No.01136128012902 as at June 2017, both reflects a balance of Kshs.109,528,989 resulting in an unexplained and unreconciled difference of Kshs.282,919,799.

Management Response

Management informed the Committee that the figure of Ksh 560,207,474 was a book entry in the financial statements relating to the liability created when paying the contractual works to be paid on expiry of the defects liability period and once the works had been inspected. On the other hand the figure of Kshs.99, 141,648 as at 30th June 2018 refers to actual money transferred from NIB's development bank account to NIB's retention bank account. However, due to the funding and cash flow challenges faced the institution; the management had not been transferring funds from the main account to the retention account.

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

Committee Observation and recommendation

The query was adequately addressed and therefore resolved

279. **Water Resources Management Authority (WARMA)**

The Committee heard that included in the statement of financial position was payables from exchange transactions balance of Kshs.3, 560,750,127 as at 30th June 2017 comprising of various outstanding balances. Included in trade payables amount was Kshs.20, 981,308 indicated as owing to Water Resources Management Authority. However, upon verification from WARMA books, the amount indicated Kshs.26, 820,104 as receivable from the Board resulting in an unexplained variance of Kshs.5, 838,796.

In view of the foregoing, it was not been possible to confirm the accuracy, completeness and validity of the Current liabilities (payable from exchange transactions) of Kshs.3, 560,750,127 as at 30th June 2017.

Management Response

Management informed the Committee that the figure of Ksh. 20,981,308 given in the books of National Irrigation Board as owed to WARMA was supportable by the NIB. However, when the discrepancy was brought to the attention of the management, it wrote to WARMA requesting for a statement of account to facilitate reconciliation so as to establish as to what they might have posted as owed by NIB which may not have reached NIB office for posting. They however, did not respond as at the time of this response.

Committee Observations

The management had reconciled this difference as at the time of appearance before the Committee

Committee Recommendation

The NIB management should expedite the reconciliation process by engaging with WARMA.

280. **Construction works of Rahole Canal Phase (ii) Irrigation Scheme Development Project (NIB/T/160/2012-2013), Kshs.300, 356,375**

Deferment of works to defects liability period

The Committee heard that the defects liability period for the above phase was for the period starting from 30 January 2015 to 30 January 2016. Substantial completion certificate of phase II was issued of Kshs.25,879,739. The remaining items which include the following were to be done during the defects liability period;

S/NO.	BILL NO.	DESCRIPTION	AMOUNT(Kshs.)
1.	1(1.3)	Purchase and supply of office furniture	500,000
2.	1(1.5)	Allowance for supervision of works	1,519,494
3.	1(1.9)	Allowance for farmers sensitization	5,000,000
4.	2(2.4)	Rock blasting	3,248,000
5.	4(4.2.5)	Construction of Riprap	4,517,240
6.	4(4.2.8)	Installation of gabion protection	32,961,750
7.	4(4.2.9)	Fabricate and fix screen for gully crossing	50,000

TOTAL			47,796,484

The audit could not establish if the contractor would be in a position to finish the above outstanding works as at end of the defects liability period although a payment of Kshs.32, 017,134 was made to the contractor in the year under review. As a result, it was not possible to establish the accuracy and value for money for the payment of Kshs.32, 017,134 as at 30th June 2017.

Management Response

Management informed the Committee that payment was done during the defects liability period for measured and certified works which were fully supported.

Phase 1 and 2 of the project had fully been completed and tested. Phase 3 of the project was under construction at over 95 % completion and the contractor was undertaking the last component of land preparation to facilitate handing over of the project to the beneficiaries.

281. **Bura Irrigation Settlement Scheme Rehabilitation Project (NIB/T/046/2010-2011), Kshs.7, 355,829,104**

i. Failure to carryout geotechnical investigation

The Committee heard that the soil strata differed from that of the tender and the contractor met with hard soils/soft rock in the new gravity canal works, which had reduced the productivity per working set of equipment's deployed. The audit could not establish why investigation was not carried out in the new gravity canal works section.

Management response

The Geotechnical study was carried out before the implementation of the project. The study was being utilized to guide in the implementation of the project.

Committee Observations

ThePer the NIB brief to the Committee dated 8th June 2020, the study was conducted by the University of Nairobi at a cost of Kshs 15.4 million and submitted to NIB.

Committee Recommendation

The query was resolved

ii. **Delay in completion of the project**

The Committee heard that as reported previously, the company was awarded the project despite its bad past record. As at 30th June 2017, two years after the expected completion date, the project was incomplete.

Management response

The contract was terminated due to none performance of the contractor. The National Irrigation Board terminated contract and has initiated procurement for completion of the balance of works.

Committee Recommendation

NIB should always undertake due diligence on any contractor before awarding a contract

iii. **Pricing risk**

The Committee heard that the contractor was executing works at quoted rates which were worked out on the baseline pricing of 2011. This therefore exposed the project to possible escalation on the cost of non-specified materials as some of them the cost might have already shot up.

Management Response

The Committee heard that the escalation in prices in the contract was normally provided for and addressed using the price indices tables in the contract and this protected both the employer and the contractor and ensured smooth implementation of a contractor and for the Bura project there was no loss to the employer.

Committee Observation

There was a serious problem at the NIB in writing contracts thus exposing the Board for losses

Committee Recommendation

The Committee recommends that -

i. **NIB should reform its legal department with competent officers capable of drafting contracts that NIB normally engages in**
ii. **NIB to follow strictly adhre to the provisons of Section 134 of the PPAD Act 2015 on AG's review of contracts above Kshs. 5 billion**

282. **Delay in completion of Kalundu Kitui clusters Irrigation Scheme Development Project, Phase II, in Kitui County**

The Committee heard that the examination of documents in regard to Kitui Clusters Irrigation Project, Phase II revealed the following:

The contract No. NIB/T/106/2013-2014 awarded to Aventure Ltd at an amount of Kshs.16, 982,900 and notification for the award dated 18th December, 2014 was to take twelve (12) months that is from 1st March, 2015 to 1st March 2016. However, the contract was signed on 10th February, 2015 and the Board modified the completion date from 1st March, 2016 to 30th September, 2016. The contractor Aventure Ltd was to take twelve (12) months but had taken over thirty six (36) months and the project was incomplete.

A default notification letter dated 30th June, 2017 was written by the Deputy General Manager (ES) Ref: NIB/HQ/K1/74A (33) bringing to the attention of the Contractor on the following issues: On failure to secure an extension of the contract period which ended on 30th September 2016; Failure to extend the performance bond which was not valid since 26 July, 2015; Failure to resume work on site despite numerous reminders by the Resident Engineer.

The delay by the contractor to complete the projected slated to take one year but delayed for another two years put into question the competence of the contractor. In consequence, the Board had not achieved its operational and strategic objectives for the year under review.

Management Response

The contract was terminated due to nonperformance of the contractor. The remaining component in the contract was power connection and the National Irrigation Board had requested for a quotation from Kenya Power on the cost of Power connection which will be paid directly using the funds which were to be utilized for this item in the contract.

Committee Observations

The Committee observed that -

i) **This query exposes NIB's incapacity to do due diligence on contractors before awarding them any contract.**
ii) **The NIB brief to the Committee dated 8th June 2020 indicates that the contractor had been paid kshs. 15,605,475.96 based on the assessed work done. The contractor was picked from prequalified contractors at the start of the financial year. The contractor met all the prequalification criteria set. He was invited to bid alongside others and emerged the most responsive.**
iii) **The reaming works was poer connection valued at Kshs. 2 million as per the contract and that the NIB had applied to the KPlC for connection using unutilized funds.**
iv) **There is a delay in completion of the project by amost five years**

Committee Recommendation

The NIB management ??????????????? should be held responsible and surcharged for any extra cost that will be incurred for the remaining work. Who is management ??

283. **Budgetary Controls Over-Expenditure (FY 2016/17)**

The Committee heard that audit examination of the budget versus actual revealed that the Board had overshot her budget for repairs and maintenance by Kshs.21, 967,163. No reason had been provided for failure to spend within the approved budget nor formalizing the over expenditure through supplementary budget as required.

Management Response

Management stated that the year in question was one of the years that experienced severe drought. This even led to the President's waiver of Operational & maintenance fee for Mwea farmers'. National Irrigation Board had to ensure that canals and other irrigation infrastructures were well maintained to ensure that there was a smooth flow of the little water available. This necessitated going an extra mile and incurring extra expenditure to achieve the above and ensure that the crop which was in the field did not fail. The overshot was 4.39 % and was necessitated by a noble cause to safe a crop in the entire Mwea Scheme. The management will ensure that there is no budget overshot in future.

Committee Observations

The NIB overspent and never bothered to rectify the same by way of a supplementary budget. This is a clear violation of the PFM Act.

Committee Recommendations

The Mother Ministry should reprimand the NIB General Manager for violating the law.

284. **Inventories: Obsolete Stock FY2017/18)**

The Committee heard that the statement of financial position as at 30th June 2018 reflected inventories balance of Kshs.95, 293,715, out of which an amount of Kshs.5, 238,587 related to inventory maintained at the National Irrigation Board head office. Examination of records and physical verification of stores revealed that inventories worth Kshs.1, 497,842 were obsolete. However, no provisions had been made for the obsolete stock in the financial statements. The inventories were therefore not fairly stated.

Management Response

Management acknowledged absence of a provision for obsolete stock and undertook to address it in the year 2018/2019 FY. Management also undertook to do a board paper to the board of directors seeking approval for the disposal of these stores in line with the provisions of the Public Procurement and Asset Disposal Act of 2015.

Committee Recommendations

The NIB should adhere to IPSAS in preparation of its financial statements.

285. **Retained Earnings**

The Committee heard that the statement of financial position and as disclosed under Note 20 to the financial statements reflected a balance of Kshs.15, 972,115,340 under retained earnings as at 30th June 2018. The balance was arrived at by adding the surplus for the year of Kshs.3,006,086,316 to the opening balance Kshs.16,282,172,345 and deducting an amount of Kshs.3,316,143,321 which was explained as retained earnings adjustment. However, Note 14 to the financial statements on work in progress indicated WIP adjustment of KShs.3,058,216,610 and transfer of completed projects to retained earnings of Kshs.5,958,077,975 resulting in a net adjustment of Kshs.2,899,861,365 which differed with the retained earnings adjustment figure of Kshs.3,316,143,321 in Note 20 amount by Kshs.416,281,956. The variance of Kshs.416, 281,956 was not explained.

Further, the policy of the Board was to offset all projects completed during the year to the retained earnings. However, the policy was not documented or disclosed by a way of a note to the financial statements in alignment to the requirements of IPSAS 3.

Management Response

Management informed the Committee that the variance of Kshs.416, 281,956 referred to a book error that occurred while transferring completed community projects being implemented by NIB from Work In Progress to retained earnings. This error was corrected and verified by the auditors as per the reconciliation schedule.

Committee Observation

This was a reconciliation error that had since been corrected and verified by the auditors.

Committee Recommendation

This NIB management should reconcile its books regularly to avoid unnecessary queries

286. **Inter Company Transactions (FY 2017/18)**

The Committee heard that the statement of financial position reflected receivables from exchange transactions net balance of Kshs.262, 732,596 comprising staff imprests, trade debtors, farmers and other receivables as disclosed in Note 18 to the financial statements. The other receivables gross amount of KShs.239, 947,346 disclosed under Note 18 further includeed balances owing from Mwea Rice Mills Limited and Western Kenya Rice Mills (WKRM) as tabulated below:

Entity	NIB Books (Kshs.)	Mills' Books (Kshs.)	Variance (Kshs.)
Mwea Rice Mills Current Account	68,499,382	43,549,705	24,949,677
Western Kenya Rice Mills Current Account	79,331,536	27,950,094	51,381,442
Total	**147,830,918**	**71,499,799**	**76,331,119**

The variance of Kshs.76, 331,119 between the books of National Irrigation Board and the Mills, respectively was not explained. Consequently, the accuracy of the receivables from exchange transactions net balance of Kshs.262, 732,596 could not be confirmed.

Management Response

The variance of Kshs.76, 331,119 between the books of National Irrigation Board and the Mills, respectively arose due to lapse in the handing over of accounts records by retrenched NIB staff, in the year 2002. As reported in the financial statements for the year 2017/2018, NIB in its books shows that it is owed by MRM Ltd Ksh.68, 499,382 while in the books of MRM Ltd, NIB is owed Ksh. 43,549,705. The management was in the process of reconciling the books with a view to settling the difference of Ksh. 24,949,677.00.

Similarly in the financial statements for the year 2017/2018, in the books WKRM Ltd, NIB is owed Ksh.27, 950,094 while in the books of NIB, WKRM Ltd owes NIB Ksh. 79,331,535. The management was reconciling the two accounts with the view of settling the difference of Ksh. 47, 031,449.

Committee Observation

This matter had taken inordinately long time to settle.

Committee recommendation

TheNIB should reconcile amounts and settle the difference within three months of adoption of this report.

287. **Staff Imprests**

The Committee heard that disclosed in Note 18 to the financial statements under receivables from exchange transactions were staff imprests balance of Kshs.12, 590,850 as at 30th June 2018. Further, it included the amount of Kshs.2, 468,258 relating to long outstanding imprests dating back in 2015. No measure seems to have been taken by the management to recover the long outstanding imprests, whose recovery appeared to be doubtful. Consequently, the accuracy of the staff imprests balance of KShs.12, 590,850 could not be confirmed.

Management Response

Management informed the Committee that the long outstanding imprest of Kshs.2, 468,258 was being recovered through the payroll system. The board had implemented a computerized system Enterprise Resource Planning (ERP) whereby any unsurrenderd imprest was automatically transferred to salaries section for recovery through the payroll. So far Ksh 1,970,348 had been recovered. The recoveries would continue until all outstanding staff imprest was fully recovered.

Committee recommendations

The Committee observed that -

(i) **All officers issued with imprest should surrender it within seven days of expiry of the activity they were undertaking inline with the PFM Act, 2012 .**

(ii) **Any imprest not surrendered after seven days of expiry of the activity meant to be undertaken using such imprest should be recovered from the officer as per the PFM regulations 2015.**

288. **Long Outstanding Debts**

The Committee heard that note 18 to the financial statements on receivables from exchange transactions includes trade, farmers and others with balances of Kshs.127,060,541, Ksh.382,808,562 and Ksh.239,947,346, respectively. Although, the Board made a provision for bad debt of Kshs.499, 674,704 or 66%, no aging analysis of the receivables was made available for audit review. In addition, no documentary was provided to confirm that the board of directors had given approval for the write-off of bad debts. Consequently, the accuracy of receivables from exchange transactions net balance of Kshs.262, 732,596 as at 30th June 2018 could not be ascertained.

Management response

Though the management did not provide the aging analysis at the time of audit review, the same was later provided the auditors and verified.

On the issue of approval by the directors for the write off of bad debts, the management first did the provision as indicated in Note 18 to the financial statements. Plans were underway to do a board paper to the board of directors for deliberations and possible approval for the write off as provided for in the PFM Act, 2015.

Committee Observations and recommendations

Refer to the Committee observations and recommendations in the 2016/17 FY

289. **Suspense Account**

The Committee heard that included in other receivables balance of Kshs.239, 947,346 disclosed under Note 18 to the financial statements was an amount of Kshs.34, 280,229.29 which did not relate to any specific debtors. In the circumstances, the validity, completeness and accuracy of the suspense account balance of Kshs.34, 280,229.29 could not be confirmed.

Management Response

The figure of Ksh.34, 280,229 comprised of other trade debtors (Kshs.11,098,611.60); sundry debtors (Kshs.23,142,117.76) and other debtor (Kshs.39, 499.93)

These were historical figures recorded in the books. Due to difficulties in establishing the list supporting the figure, the management decided to include the same in the provision for bad debts in the financial statements.

Committee Observations and recommendations

Refer to the Committee observations in the 2016/17 FY

290. **Payables from Exchange Transactions (FY 2017/18)**

The Committee that disclosed under note 29 to the financial statements were payables from exchange transactions totalling to Kshs.2, 396,957,520 as at 30th June 2018. However, included in the payables was amount Kshs.1, 126,307,614 owed to KRA and which had accumulated over a long period of time. The amount has increased by Kshs.152, 916,045 (16%) as compared to the previous year balance of Kshs.973, 391,569.20. The interest and penalties on the balance have, however, not been recognized in the Board's books of account.

In view of the foregoing, the completeness and accuracy of payables from exchange transactions balance of Kshs.2, 396,957,520 as at 30th June 2018 could not be ascertained.

Management Response

NIB management stated that it depends on the National Treasury for her funding has been facing challenges due to budget cuts from the government since the financial year 2014. It has been settling the KRA bills as and when it receives funding from the Treasury. The management would however endeavor to clear the outstanding KRA bill when receives the exchequer. NIB had made a commitment to make part payments until the whole debt was cleared.

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. 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.

Committee Observations and recommendations

Refer to the Committee observations in the 2016/17 FY

291. **Rahole Canal Irrigation Project Phase 3 (FY 2017/18)**

The Committee heard that the project had been under implementation by the Board over the last four financial years (since the year 2013) and only three phases of the project had been implemented at a total cost of Kshs.679,805,824 (Phase I: Kshs.143,911,619, Phase II: Kshs.300,356,375 and Phase III: Kshs.235,537,830). The contract was awarded to M/S Concordia Building and Civil Engineers Limited for all the phases. The main activities/components of the project included construction of intake works, excavation of secondary canals and construction of water distribution structures.

The contract for phase II was to commence on 17 September 2014 and to be completed on 17 September 2015. The current status report indicates that 85% of the works have been done. No reason or explanation had been provided for delay in completion of the project.

Management Response

The delay in the completion project had been occasioned by several factors key of them being budgetary cuts which caused delay in payment to the contractor. Others were insecurity in area and inadequate skilled labour.

Committee Observations

The project was completed and the matter resolved

292. **Yakitaa Irrigation Development Project (FY 2017/18)**

The Committee heard that Tender No. NIB/T/004/2015-2016 for the above project was awarded to Benisa Limited for a contract sum of Kshs.123, 500,147. The start and completion dates were 30th December 2015 and 30th December 2016, respectively. Although Certificate No.1 for Kshs.40, 381,824 had been paid, the completion status was 30%. Further, the performance guarantee was for up to 30th December 2016 and had not been renewed. No reason had been provided for the delay in completion of the project.

Management Responses

The Management informed the Committee that contract was terminated due non-performance of the contractor and failure to extend the performance guarantee. The contractor had undertaken that he will not sue the NIB for termination of the contract and that the balance of the works had been procured.

Committee observation

The Committee observed that -

i. **The Contract was terminated partly due to non-performance of the contractor**

and partly due to NIB's inability to pay in time.

ii. **Out of a contract sum of Kshs. 219 million, NIB had paid Ksh. 40,381,824 at the time of termination of the contract**

Committee recommendation

The NIB should complete the project at no extra cost

293. **Lower Kithengi Irrigation Development Project**

The Committee heard that the Contract No. NIB/T/120/2013-2014 in respect of construction works for Lower Kithengi Irrigation Development Project was awarded to Siyale Investment at a sum of Kshs.27, 546,902.77. The work commenced in July 2015 and was expected to be completed in June 2016. It aimed at irrigating 30 acres of land that would benefit 150 farmers.

A certificate for an amount of Kshs.18, 618,185 representing about 68% of the contract sum was approved on 29th January 2016 and paid. No explanation was provided for non-completion of the project.

Management Responses

The contract was terminated due to non-performance of the contractor and the balance of the work was procured.

Committee Observations

The Committee observed that -

i) **The contract was terminated on account of non-performance.**
ii) **Per the NIB brief to the Committee of 8th June 2020, the contractor that had failed to complete the work was terminated due to non performance and was paid kshs. 16,756,366.72 of the assessed work. This figure is at variance from what the auditors reported of Kshs.18, 618,185 representing about 68%.**
iii) **The NIB brief to the committee of 8th June 2020 indicate that the contractors are prequalified at the start of the year and therefore no due diligence is done on**

contractors once awarded contracts during the year.

iv) **As at 8th June 2020, the project was still incomplete. It was being undertaken by Mutahi Engineering Services at cost of Kshs. 18,753,152.80. This will bring the total contract sum at kshs 35million shillings against the earlier figure of Kshs.27M. This would represent a variation of more than 25% allowed under the public procurement and Asset Disposal Act of 2015, but this was a new contract.**

Committee Recommendation

The committee recommends that NIB should always undertake proper due diligence on contractors before awarding them contracts

294. **Rehabilitation Works of Riu Nderi Water Pan**

The Committee heard that the Contract No. NIB/T/087/2014-2015 for rehabilitation works of Riu Nderi Water Pan was awarded to Bofas Zipper Ltd at a sum of Kshs.84, 476,370. The work commenced on 24 September 2015 and was expected to be completed on 24th June 2016. As at 30th June 2018, it was captured as being in progress in the financial records and a total of Kshs.60, 797,600 or 72% of the contract sum had been paid to the contractor. Although, performance guarantee expired on 24th June 2016, management did not confirm the extension of the performance guarantee. Further, no reasons were given for the delay in completion of the project.

Management Responses

The contract was terminated due non-performance of the contractor and procurement to complete the balance of the works had been initiated.

Committee Observations

The Committee observed that -

i. **The contract was terminated on account of non-performance.**
ii. **As per NIB brief to the Committee of 8th June 2020, there was no due diligence**

done on contractors as contractors are prequalified at the start of the year.

iii. **As per the NIB brief to the Committee of 8th June 2020, the terminated contractor had been paid for assessed work (kshs. 40,435,920 out of the contract sum of kshs 76m). The work was scaled down and therefore no new contractor was procured having realised 150,000 m^3 of water storage out of a target of 200,000m^3**

Committee Recommendation

The NIB should always undertake proper due diligence on contractors before awarding them contracts

295. **Rehabilitation Works of Bura Irrigation and Settlement Scheme Project**

Award of Contract

The Committee heard that the Contract No. NIB/T/046/2010-2011 for rehabilitation of the Bura Irrigation and Settlement Scheme project was awarded to IVRCL Limited on 24th August 2012 and signed on 27th February 2013 at a sum of Kshs.7, 355,829,104 inclusive of 10% contingency sum. It was to be financed in the following proportion:

	Ksh.
GOK	5,394,199,104
Kuwait Fund	1,856,400,000
BADEA	680,000,000
OPEC Fund	510,000,000

Progress of Work

The rehabilitation commenced on 27th November 2013 and expected to be completed within a period of twenty-four months (27th November 2015) which was later revised to 27th November 2016. A letter from National Irrigation Board dated 7th February 2017 addressed to the Principal Secretary on the project gave an extension of up to 31 December 2017 for the completion of the entire work. A revised date of completion was later granted up to 31st March 2018. The project was overall 30% complete against elapsed contract period of 1821 days as per the status report dated October 2018. It was noted that the delay in completion of the work was partly due to inability of the contractor to finance the work.

On 3rd March 2018, a public announcement was made under the provisions of regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons), Regulations, 2016 on IVRCL Ltd (the contractor) which the contractor confirmed. Information available indicated that the Board had written to Kenya Commercial Bank (KCB) demanding payment of the advance payment guarantee of USD5, 750,000 and performance bond guarantee of USD5, 751,744 a demand which the bank dishonored.

Payments Certified

The work that the contractor had done prior to termination was valued and certified at Kshs.2, 693,229,804.4. The amount certified and paid to the contractor was Kshs.2, 487,528,120.93. This amount included an advance payment of Kshs.665, 192,201.30 to the contractor, which had not been fully recovered.

Management Response

After seeking legal advice from the Attorney General, the NIB made an application at the High Court seeking orders for KCB to be compelled to honor the demand and pay the amounts guaranteed both for the advance payment and performance bond guarantees to enable full recovery of the advance payment. The hearing of the case at the high court has started

Committee Observations

The Committee observed that -

i) **The contract was terminated on account of non-performance.**

ii) The quality of due diligence done on contractors by NIB is wanting

Committee Recommendation

The NIB should always undertake proper due diligence on contractors before awarding them contracts

296. **Failure to Implement Internal Audit Management System**

The Committee heard that the NIB had procured an Internal Audit Management System for control management, analysis and risk assessment in September 2015. The Audit Management System (Pentana v2015) was procured from Service and Computer Industries Kenya Limited vide Contract Number: NIB/T/061/2014-2015 of 4 September 2015 at a contract sum of Kshs.6, 499,736.

A total payment of Kshs.5,531,461.36 had been made to the firm in two installments vide cheque No.012122 dated 8/29/2017 for Kshs.2,209,523.81 and cheque No.012807 dated 3/21/2018 for Kshs.3,321,892.55. However, it was observed that the system was not being used by the internal auditors for their audits.

Consequently, the Board appeared not to have obtained value for money in respect of the expenditure of Kshs.5, 531,461.36 so far incurred for the Audit Management System.

Management Response

Management informed the Committee that upon implementation of the Internal Audit Management system, it was noted that the system was using a database which was not compatible with the ERP system to allow ease of integration. This posted a challenge in operationalizing all the modules. However, this has now been rectified.

Committee Observation

(i) The system was put into use at no extra cost.

(ii) The query was therefore resolved.

3.23 KENYA VETERINARY BOARD (FY 2014/15-2017/18)

EXAMINATION OF REPORT OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF KENYA VETERINARY BOARD FOR THE FINANCIAL YEARS 2014/15-2017/18

Dr. Indraph Ragwa, the Chief Executive Officer of the Kenya Veterinary Board (KVB) 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 years 2014/15 to 2017/18.

297. **Cash at bank FY 2014/15 and FY 2015/16**

The Committee heard that in the year 2014/15, the Cash and Cash Equivalents balance of Kshs. 13,372,444, as disclosed under note 7 to the accounts, excluded bank receipts of Kshs. 1,084,435 not in the cash book, some dating as far back as the year 2012. This resulted in understatement of revenue by the same amount based on the financial records of the Board.

In the year 2015/16, Cash and Cash Equivalents balance of Kshs. 2,986,796 disclosed in note 7 to the financial statement, excluded receipts in the bank not in cash book, totaling to Kshs.1,344,537 some dating as far back as year 2012.

Management Response

The Chief Executive Officer stated that pursuant to the provisions of the Veterinary Surgeons and Veterinary Paraprofessional (VSVP) Act, 2011, the Board got revenue (AiA) from registering and licensing practitioners, payments were done through cash or bank deposits. For direct payments to the bank account, the depositors were required by the Board to forward the deposit slips that indicated their Kenya Veterinary Board (KVB) registration numbers or national identity card to facilitate verification and issuance of the receipts. The Kshs. 1,084,435 thus represented the money directly deposited to the Board bank account, and the depositors did not forward deposit slips. That 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.

In 2015/16, the Kshs. 1,344,537 represents the money deposited directly into the Board bank accounts and the depositors had not forwarded deposit slips, this amount was not consequently, therefore recorded in the cash book for lack of details. However, they were presented as un-reconciling items in the bank reconciliation statement

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. The platform greatly assisted the Board to identify persons making payment since the mobile and account numbers were mandatory and those details were shown in the Safaricom pay bill statement. This made issuance of receipts and recording of income manageable.

Committee Observations

The Committee observed that -

i) **This query arose from depositors that could not be identified**

ii) **The depositors were later identified, reconciliation done and verified by the Office of the Auditor General.**

iii) **In the FY 2016/2017 the Board registered a mobile platform with Safaricom and was issued with a paybill account No 787888 which assisted the Board to identify persons making payment and issue receipts.**

Committee Recommendation

The query was adequately addressed and therefore resolved

298. **Other matter (Ag. Chief Executive Officer) FY 2014/15**

The Committee heard that the office of the Chief Executive Officer of Kenya Veterinary Board was held under acting capacity since 9 May, 2012. No explanation was provided for the failure of the Board of Directors to have the position filled substantially in order to enhance independence in decision making. The auditor's opinion was not qualified in respect of that 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. Before this could be effected, the Board received a letter from the Chief of Staff and Head of Public Service that stopped filling of vacancies in Boards as well as CEOs across all state corporations unless authority was sought and granted by his office. 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 was filled competitively in October 2016.

Committee Observations

The Committee observed that -

i) **The Board failed to recruit a substantive CEO during the period under review due to a moratorium on recruitment that was put in place by the Head of Public Service.**

ii) **The Board recruited a substantive CEO in October 2016.**

Committee Recommendation

The query was adequately addressed and therefore resolved

299. **Emphasis of matter (Operating loss of Kshs. 12,941,456) FY 2015/16**

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

Management Response

The Chief Executive Officer concurred with the audit observation that the Board made a loss of Kshs 12,941,456 during the financial year under consideration. The loss for the year was attributed to:

- A decline in government grant by Kshs. 7,474,218 (Kshs. 16,895,900 received in 2015/2016 FY 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.

Committee Observations

The Committee observed that -

i) **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 Board's strategic plan.**

ii) **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 Recommendation

The query was adequately addressed and therefore resolved

300. **Examination of audited accounts FY 2016/17 to FY 2017/18**

The Committee was informed 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.

3.24 CENTRAL BANK OF KENYA (FY 2012/13-2017/18)

EXAMINATION OF REPORT OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF THE CENTRAL BANK OF KENYA FOR THE FINANCIAL YEAR 2014/15-2017/18

Dr. Patrick Njoroge, the Governor of the Central Bank of Kenya, accompanied by Ms. Sheila Mbijiwe (Deputy Governor), Mr. Moses Ng'otho (Ag. Director, Finance), Mr. Kennedyu Abuga (Director, Governor's office), Mr. Richard Njoroge (Partner, PWC), Mr. Stanley Langat (Head of Financial Reporting), Mr. Dickson Ndegwa (Head of Protocol) 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.

301. **Unqualified Reports- FYS 2012/13 to 2017/18**

The Committee heard the CBK was issued with unqualified reports in the financial years 2012/13 through to 2017/18.

302. **Other matter 2017/18**

The Committee heard that the CBK Board was fully constituted. It had only five members instead of eight and also there was a vacancy in the Deputy Governor's position – only one was in place instead of the requisite two.

Management response

Management informed the Committee that it had already notified the appointing authority of the matter and that it was waiting for the response.

Committee Observations

Though the board was not fully constituted, its operations were not affected as the Members available quorate. Further, absence of one of the deputy governor did not affect the operations of the Bank.

Committee Recommendations

The Committee recommends that -

(i) **The appointing authority should appoint the remaining Board Members promptly to ensure smooth operations of the Board**
(ii) **The appointing authority should within three months of adoption of this report appoint the Deputy Governor**

3.25 KENYA FERRY SERVICES (FY 2015/16-2017/18)

EXAMINATION OF REPORT OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF THE KENYA FERRY SERVICES (KFS) FOR THE FINANCIAL YEARS 2015/16-2017/18

Mr. Bakari Gowa, the Managing Director of the Kenya Ferry Services accompanied by Mr. Kombo Rajab (Finance Manager), Ms. Jeniffer Cirindi (Procurement Manager), Mr. Paul Kotut (Operations Manager), Mr. Henry Katana (Principal Internal Audit) and Mr. Athmani Washenga (Head of Engineering) appeared before the Committee to adduce evidence on the audited accounts of the Kenya Ferry Services for financial year 2015/16 to financial year 2017/18.

303. **FINANCIAL PERFORMANCE FY 2015/16**

The Committee heard that the KFS recorded a net loss of Kshs 108,273,000 in 2015/2016 financial year resulting to accumulated deficit of Kshs 913,494,000 as 30th June 2016. The financial performance of the Company was precarious and if strategies were not put in place to reverse the trend, the company would experience financial challenges in future.

Management Response

Management informed the Committee that the KFS made a loss of Kshs 108,273,000 in 2015/2016 financial year thereby bringing accumulated deficits to Kshs 913,494,000 over time. One of the Company's long term objectives was to strengthen her financial base and posting surpluses in the near future. To this end, the Company was pursuing strategies to ensure long-term financial sustainability of her operations. Key among these was a continuous and timely revision of its vehicular toll charges. The Company had a policy to review its toll charges after every two years to ensure that charges levied could help meet operational costs. The last reviews were done in 2010/2011 and 2013/2014 financial years and this resulted in improvement in revenue. The Company submitted a proposal to review its charges in the financial year 2015/2016 to its parent ministry for consideration and at the time of audit, the Company was awaiting gazettement of the same by Ministry of Transport & Infrastructure.

The toll tariffs were gazzeted and subsequently implemented with effect from 15th February 2018 and the resultant impact was an increase of toll revenue from Kshs.401 million in 2015/2016 to Kshs 552 million in 2018/2019. Since then the company's financial position had improved from a deficit making to a surplus making. For example in the year, 2017/2018 the company posted a surplus of Kshs. 43 Million and was expecting to post similar results in 2018/2019. Overall accumulated deficit had been reduced from Kshs 913, 494,000 to Kshs 638 Million in the year 2017/2018.

The Company was also pursuing other projects as strategies to improve her revenue generation capacity such as the Multilevel Ferry Terminus, Integrated Marine Transport System and Likoni Cable Express. The Likoni Cable Express had been approved by Cabinet and Project Commercial Agreement between KFSL and Likoni Cable Express Ltd on 18th October 2018. Management was in the process of clearing Conditions Precedent to the contract and the ground breaking of the project was expected to be done in the November 2019. The Cable Car Project was expected to generate an average of Kshs 50 million per annum for KFSL.

<u>Committee Observations</u>

The Committee observed that -

i. **The Kenya Ferry Services had put in strategies to enable it remain afloat and also make profits.**
ii. **The strategies put in place have seen the KFS reduce its deficit and hence is on track to profitability**

Committee Recommendation

The query was adequately addressed and therefore resolved

304. **PROPERTY, PLANT & EQUIPMENT FY 2015/16**

a. **Understated Works in Progress**

The Committee heard that the Company capitalized a security project during the previous year of Kshs 82,100,150 instead of Kshs 104,535,330 which was the actual cost of the project. No adjustment was made in the books of account to correct the anomaly during the year under review hence the Property Plant and Equipment was understated by Kshs 22,435,100.

Management Response

While the contract sum of Kshs Kshs104, 535,330, as stated and observed by the auditor, included VAT of 16%. Kshs 82,100,150 of the cost of project was capitalized in the year 2015/2016. The balance of Kshs 7,616,513.71 in the financial year 2016/2017 and the balance of the amount was VAT (Ksh 14,818,666.30) which could ot be capitalized.

Committee Observation

The matter was adequately addressed and therefore the query resolved.

b. **Idle Assets (FYS 2015/16 to 2017/18)**

The Committee heard that during the year under view, the management procured and installed weigh bridges on both sides of the Likoni channel at a cost of Kshs. 26,779,893 as indicated in the assets register. Although the weigh bridges were integrated with the revenue system, they were practically idle assets since KFS did not use them charging use of its ferries by motor vehicles. Furthermore, management indicated that the bridges were a control measure to enhance safety by estimating the weight of motor vehicles boarding ferries at the channel. However, there was no evidence showing that weights of motor vehicles measured through the weigh-bridges were used to control the number of motor vehicles that board the ferries.

Consequently, it was not possible to confirm the propriety of the expenditure totaling Kshs. 25,779,893 incurred on installation of weigh-bridges at Likoni Ferry during the year under view.

Management Response

Management informed the Committee that the said weighbridges were installed in 2013/2014 financial year to bring equity in terms of ensuring that vehicles were billed according to, among others, the load they carry. The billing system in place charged motorist as either loaded or empty, with the component of load appearing as a surcharge to the empty component. To cure this anomaly the proposed system aimed to introduce a rate per tonnage and length of the vehicle.

During construction time and before completion of the project, KFS was directed to stop the construction of the facility by its parent Ministry. This was due to challenges experienced at the time in queue management as a result of weighing of one vehicle at a time. In its part, the Company pleaded with the Government to be allowed to complete the project since an earlier termination could have attracted unnecessary claims from the contractor. The facility has capacity to bill using the weight.

The KFS had engaged the State Department of Public Works in developing a Part Development Plan (PDP) with the aim of reorganizing the ferry approach area to provide for expanded infrastructure and smooth flow, which would include full utilization of the weighbridge.

Committee Observations

The Committee observed that -

(i) **Construction of the project that was not put in use indicated poor planning and consultations before initiation of the project.**
(ii) **There was a request from the KFS to the Parent Ministry to operationalize the new tariffs in the year 2021.**

Committee Recommendations

The KFS should operationalize the weighbridges by 2021

The parent ministry should gazette new tarrifs within three months of adoption of this report

c. **Irregular Award of Tender for Two New Ferries Kshs1,863,000,000 (FYs 2015/16 to 2017/18)**

The Committee heard that during the year under view, Kenya Ferry Services Limited Company awarded a contract for supply and delivery of two new passenger ferries at the cost of Kshs. 1,863,000,000 (US$ 18,630,000). Information availed for audit review indicated that the tender award process had the following anomalies:

Technical Evaluation

The contract was awarded to the bidder who was ranked No 4 at the technical evaluation stage. The technical evaluation report indicated that the type of ferry to be supplied by the winning bidder was Roll on/Roll off and that the dead weight at designed draft was approximately 490 tons. However, review of the winning bidder’s tender revealed that the bidder did not provide this information.

Irregular Down Payment

The company made a down payment of Kshs. 598,023,000 (US$ 5,920,726.7) to the local appointed agent in August 2015. Section 17.1 of the contract document required that such payments be made upon production of an unconditional bank guarantee issued by an established and reputable bank located in Kenya. The winning bidder submitted a performance bank guarantee of Kshs. 93,150,000 (USD 931,500) issued by a foreign bank, located in Istanbul, Turkey. However there was no evidence showing that due diligence was carried out to establish the validity of the guarantee. It was further noted that the performance bond dated 13th July 2017 was submitted sixteen days after the signing of the contract contrary to Paragraph 10 on General Conditions of the contract which required the contractor to furnish the employer with performance security before the signing of the contract.

Failure to Deduct and Remit Taxes

During the year under audit, the company made an advance payment of Kshs. 598,023,000 (US$5,920,726.70) to the Kenyan agent but failed to withhold 6% of the value-added-tax totaling to Kshs 35,881,380 and withholding tax at 20% for the non-resident company totaling to Kshs. 119,604,600 despite professional advice from Kenya Revenue Authority to subject the payments to the taxes.

Delay in Executing the Contract

The contract was signed on 27th June 2015 and the new ferries were to be delivered after seventeen (17) months, by November 2016. However as the time of this audit in January 2017, there was no evidence of the level of progress-of-work since photographs of work-in-progress stipulated in the contract, and progress reports by the project Manager, were not availed for audit review.

In the light of the foregoing, it was not possible to confirm the validity and accuracy of the building and supply of two new ferries at cost of Kshs 1,863,000,000 (USD 18,630,000) and the propriety of the expenditure totaling Kshs. 598,023,000 paid to the contractor during the year under review.

Management Response

Technical Evaluation

Evaluation of tender for design, build, supply and commissioning of two new passenger/vehicle ferries was carried out based on the criteria set out in the tender document obtained by all bidders who participated in the tender as per section 66 (2) of the Act which provides that "*The evaluation and comparison shall be done using the procedures and criteria set out in the tender document and no other criteria shall be used*" and consequently each member of the technical evaluation committee evaluated independently from the other member as per Regulation 16 (6) of the Public Procurement and disposal Regulations 2006.

Four bidders were evaluated at technical evaluation stage and their scores were: 83.25%, 80.43% and two bidders scored 80.25% (Including the lowest evaluated) . All the four qualified for financial bid evaluation. The successful bidder having scored a combined score of 80.25% was above the required pass mark of 80% for qualification for financial bid evaluation. Award of contract was based on evaluation of the technical bids and financial bids. The successful candidate was the lowest evaluated bidder.

The bidder quoted for Roll on/Roll off type of ferry as evidenced from the drawings attached to his bid document. Roll on/Roll type off vessels were designed to carry wheeled cargo such as cars, trucks, semi-trailer trucks, trailers, and railroad cars, that were driven on and off the vessel on their own wheels or using a platform vehicle such as a self-propelled modular transport. One of the ferries supplied (MV Jambo) was Roll on/Roll off type and was operating at the Likoni channel.

From the parameters given derived from the technical drawings, the proposed vessel met the minimum requirement of dead weight. The 490/500 tones was just indicative as per the tender document i.e. "approximately". Since this was a design and build contract, the actual dead weight could only be established upon final design made and approved. Particulars of the ferry as built indicated the ferry's dead weight as 526 tones and type of ferry as Roll on – Roll off (Ro-Ro).

Committee Observations

The Committee observed that -

(i) Four bidders were evaluated at technical evaluation and qualified for financial bid evaluation stage and their scores were:

- Southern Engineering Co. Ltd & BV Scheepswerf Domen Gorinchem Joint Venture - 83.25%, (Financial bid – USD 18,999,960)
- JGH-WMS Joint Venture - 80.43%; (Financial bid – USD 19,132,892.19)
- Xin Yue Feng Shipyard Ltd. - 80.25%; (Financial Bid USD 19,600,000)
- Ozata Tersanecilik San Vertic. Ltd. & Moto Nguvu EA – 80.25%. (USD 18,630,000)

(ii) The successful bidder having scored a combined score of 80.25% was above the required pass mark of 80% for qualification for financial bid evaluation. Award of contract was based on evaluation of the technical bids and financial bids.

(iii) The successful candidate was the lowest evaluated bidder.

(iv) Southern Engineering with the highest technical evaluation score of 83.25% raised a complaint at the Public Procurement Regulatory Board and the Board ruled in favour of Kenya Ferry Services.

(v) A member of the public had also challenged the procurement process in court and the case was ruled in favour of the Kenya Ferry Services.

(vi) Additional information regarding the technical evaluation was provided to the Auditors outside of the audit period.

(vii) The audit query on technical evaluation was resolved in the subsequent financial year.

Committee recommendation

The explanation offered was satisfactory and therefore the matter resolved.

Irregular Down Payment

On 21st August 2015, M/s National Bank of Kenya Ltd (the KFS's bankers) conducted due diligence and the bank issued a confirmation of authenticity dated 25th August 2015.

Committee Observations

The Committee observed that -

(i) The performance bank guarantee was issued by a foreign bank contrary to section 17.1 of the contract document that provides for a guarantee issued by a Kenyan bank.

(ii) The Kenya Ferry Service carried out due diligence on the performance bond issued by the foreign bank. The due diligence was conducted by National Bank of Kenya on behalf of KFS.

(iii) The KFS did an illegality in signing the contract prior to getting a performance bond

(iv) The award of the contract was done in December 2014 but signing of the contract was done in June, 2015. The six-month delay was occasioned by an injunction of the Public Procurement Regulatory Authority. Additionally, the Attorney General reviewed the contract which further delayed the signing.

(v) The winning bidder agreed to wait for the resolution of these matters before signing the contract.

(vi) The Public Procurement and Disposal Act (2005) under which the contract was administered did not provide for a limit of 25% down payment for the project.

(vii) The Public Procurement Regulatory Authority and the Office of the Attorney General both gave their approval for the contract to be signed.

(viii) The winning bidder, Ozata Tersanecilik San Vertic. Ltd. Gave agency to Moto Nguvu EA to act as their local agent for the implementation of the contract.

Committee Recommendation

The Committee recommends that -

(i) **The KFS management should be reprimanded for signing a contract before getting a performance bond**

(ii) **The Office of the Attorney General should review contracts within a reasonable time and return them to government entities that requested the same to avoid litigations arising from delay.**

Failure to Deduct and Remit Taxes

KFS consulted with Kenya Revenue Authority (KRA) for guidance on treatment of taxes in regard to the project vide letter reference MD/FIN/2 dated 4th December 2016 and response on the same was given which indicates among others that advance payment was not subject to withholding taxes. The withholding of 6% VAT does not apply in this case since this is an importation of a goods and not services (6% withholding only relates to local goods and services. The company thereby implemented the advice from KRA and did not fail to recover taxes since the Kshs 598,023,000 was an advance payment for foreign goods to facilitate implementation of the project.). Upon importation of the complete ferry, the shipyard paid all the duties and taxes

Committee Observations

The Committee observed that -

(i) **The advance payment was not subject to withholding taxes. The withholding of 6% VAT as per Section 10 of the VAT Act does not apply in this case since this is an importation of goods and not services.**

(ii) Upon importation of the complete ferry, the shipyard paid all the duties and taxes.

(iii) The KRA did not query this matter

Committee Recommendation

The query was adequately addressed and resolved.

Delay in executing the contract

The signing of the contract was to assist parties move to effective date which was delayed by availability of funds. Although the contract was signed on 27/06/2015, the effective date of the contract was August 2016 after revolving Letters of Credit were put in place. Construction period as per the contract was 18 months with a further 3 months for delivery (voyage) and therefore ferries were to be delivered in April 2018. The first ferry was delivered in July 2017 therefore there was no delay in terms of delivery.

The second ferry was delivered on 15th January 2020.

Committee Observations

The Committee observed that -

(i) The first ferry came 9 months earlier than expected.

(ii) The effective date of the contract was August 2016 after revolving Letters of Credit were put in place. Delay in provision of the letters of credit by KFS occasioned the delay of the effective start of the contract.

(iii) The consultant for the project took Kenya Ferry Services to court following cancellation of their contract in June 2017. KFS won the case whose judgement was given in April 2018.

(iv) KFS is pursuing damages against the consultant and Management has forwarded details of the consultants to PPRA for blacklisting.

Committee Recommendation

The Committee recommends that -

i. The KFS should move to court to claim damages from the consultant.

ii. **PPRA should hasten investigations with a view to instituting debarment proceedings requested by the KFS**

305. **<u>REVENUE FY 2015/16</u>**

a. **Income from operations**

The Committee heard that the statement of comprehensive income reflectd an amount of Kshs 410,742,000 as income from operations. However records availed for audit review indicated that the company toll collections amounted to Kshs 410,845,000 resulting in an unexplained variance of Kshs 103,000.

<u>Management Response</u>

Management informed the Committee that income from operations amounted to Kshs 410,742,086 as per the trial balance and general ledger accounts. The said amount of Kshs 103,000 reconciled with the same amount of Kshs 103,000 in the bank balance as indicated under item 4 on bank balances where a corresponding difference of equal amount was observed. This was reconciled as Ksh 410,742,086.

<u>Committee Observations</u>

The Committee observed that -

(i) **The relevant ledgers were belatedly provided for audit verification and reconciled.**

(ii) **The delay in provision of the documents was contrary to Section 62 of the Public Audit Act.**

<u>Committee Recommendation</u>

Accounting officers should always submit documents for audit verification within the required timelines as required under Section 62 of the Public Audit Act 015.

The KFS should introduce electronic revenue collection system

b. **<u>Variance between receipt books and control records</u>**

The Committee heard that during the year under review, one thousand two hundred and ninety (1,290) manual receipt books were issued by the revenue section to collect as shown in the control receipt book register (CRBR). However the number of receipt books issue to the revenue section by the procurement department was shown in bin cards five hundred and seventy (570) resulting in an excess of seven hundred and twenty (720) receipt books that did not originate from the procurement department. Although the management explained that the extra 720 receipt books were received directly from the suppliers, the receipt books were not accounted for as at 30th June 2016.

Furthermore stores records reviewed at the close of financial year under review manual receipt books balance was one hundred and fifty (150). Whereas stock taking records revealed a nil balance thus resulting to an unaccounted surplus of one hundred and fifty receipt books.

Management Response

Management informed the Committee that KFS made orders from suppliers for receipt books and the same were taken on charge in the stores upon receipt. However, on three occasions, there were stock-outs of the receipt books and due to the emergencies that existed at the time (prolonged power outage), these were delivered by the supplier to Finance Department at the revenue section (user) and received by Senior Officer Revenue. 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. KFS had since acquired personal digital assistants (PDAs) which were integrated to the mainstream billing system and connected to main server as a long-term solution to be used in times of power outage. Revenue billed from these gadgets is captured in a real time basis to the main server.

The records at Procurement and Finance Departments were also reconciled. Below was 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

Committee Observations

The Committee observed that -

(i) **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.**
(ii) **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.**
(iii) **Revenue billed from these gadgets is captured in a real time basis to the main server.**

Committee Observation

Management should ensure proper control over receipt books

c. **Irregular motor vehicle toll fees**

The Committee heard that the Kenya Ferry Services did 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 contravened 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 was not possible to confirm the income from operations amounting to Kshs 410,742,000 for the year ending 30th June 2016 is fairly stated.

Management Response

Management informed the Committee that the basis for charging vehicular toll charges was 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 was 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 were already identified and their relative toll tariffs indicated in the same legal notice. The ferry charges as already established under the said regulation were publicly displayed for ferry users who were conversant with this form of toll tariff and because of the simple nature of the tariff structure both KFS and its customers could easily understand and apply.

Committee Observation

The explanation offered was satisfactory and therefore the query resolved.

Committee recommendation

The parent ministry should gazette new tariffs within three months of adoption of this report

306. **BANK AND CASH BALANCES FY 2015/16**

The Committee heard that the statement of the financial position as at 30th June 2016 reflected 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 unreconciled difference of Khs. 103,000.

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

Management Response

Management informed the Committee that the Cash and Bank balances amounted to Kshs1,020,620,449 as at 30th June 2018 and the same was duly supported by the bank reconciliations attached.

Committee Observations and Recommendation

The reconciliation was later or done, verified by the Office of the Auditor General and the matter resolved.

307. **LONG OUTSTANDING DEBTS (FY 2015/16)**

The Committee heard that Note 17 to the financial statement reflected trade receivables balance of Kshs 88,981,000 which included 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 indicated that the debts were subject to a court case, no documentary evidence was provided to confirm the management assertion.

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

Management Response

Management informed the Committee that the long outstanding debts owed by M/s Lustman & Co. (1990) Ltd was contracted on 24th September 2010 to manage the infrastructure facility and Nova Media Ltd 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 had been fixed for hearing on a number of occasions but was 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 were yet to communicate new dates by September 2019.

M/s Nova Media disputed certain amounts billed leading to the case. Consequently, the KFS filed a dispute resolution mechanism early 2017

Committee Observations

The Committee observed that -

(i) **The Kenya Ferry Services had sued the long term debtors and provided evidence of court documents on the status of the two cases.**

(ii) **An arbitration case 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.**

Committee Recommendations

The Committee recommends that -

(i) **The Kenya Ferry Services management should apply for expeditious conclusion of court case**

(ii) **The Kenya Ferry Services should put in place reliable cash management system to avoid losses**

(iii) **The KFS should put in place electronic cash management system**

308. **TRADE AND OTHER PAYABLES (FY 2015/16)**

The Committee heard that the included in the other payables and balance of Kshs 208,620,000 as shown in Note 24 to the financial statements were creditors amounting to Kshs. 177,371,000 out of which creditors of Kshs 58,973,323 were 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 the financial statements.

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

Management Response

Management informed the Committee that it was KFS's policy that all payables were settled within 45 days. However, where there were short term liquidity problems and to avoid legal cases with suppliers and or losing critical suppliers, the KFS entered into a settlement plan with suppliers. Because of the existed good working relations, amount owed was paid as per payment plan agreed on by the two parties. This would ensure that short term liquidity challenges dd not constrain KFS to deliver its mandate. As such, Management was not sued by these suppliers in cases of delays. The long outstanding invoices had 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 confirmed the validity of the amount of kshs 208,620,000. Further, all the long outstanding debts had since been paid for invoices of up to 45 days. As at 30th June 2019, KFS had an outstanding payables of Kshs 62M.

Committee Observations

The Committee observed that -

(i) **The long outstanding invoices had since been settled.**
(ii) **All the referred invoices amounting to Kshs 1,116,958 were correctly captured and formed part of the financial statements.**

Committee Recommendations

The KFS management should put in place measures to ensure that it meets is obligations as and when they fall due to avoid litigations

309. **ADMINISTRATION EXPENSES (FY 2015/16)**

The Committee heard that 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 prohibited avoidance of competition of procurement. Further, the management did not provide analyses of domestic and foreign travel expenditure amounting to Kshs 12,605,000 included in the accommodation expenses for the year under review for audit 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 could not be confirmed.

Management Response

Management informed the Committee that 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

Committee Observations

The Committee observed that -

(i) **The first advert attracted three bidders of which only one bidder submitted a responsive bid as at the deadline for submission.**

(ii) **The tender was re-advertised but only one bidder bid**

(iii) **Management provided an analysis of domestic and foreign travel expenditure for the financial year under review.**

Committee Recommendation

The explanation given was satisfactory and therefore the query resolved.

310. **FERRY OPERATION COSTS (FY 2015/16)**

The Committee heard that the statement of comprehensive income for the year ended 30th June 2016 reflected ferry operations cost amounting to Kshs 176,577,000 out of which expenditure of Kshs 59,152,000 related 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:

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. However the winning bidder's signatures were not appended on the page requiring information about the registration of the company contrary to the requirement that signatures were to be appended in every page of the questionnaire.

Management Response

A review of the bid document submitted by the successful bidder for this tender indicated information that was contrary to the audit observations as follows: The requirement for directors who have control as introduced by the auditor was 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.

Committee Observations

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 Recommendation

The explanation offered by management was satisfactory and therefore the query was resolved

Technical evaluation

The management of KFS 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

Management informed the Committee that 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. This particular audit query was not raised by the auditors at the management letter and that the KFS was surprised to find it in the audit report.

Committee Observations

This is a matter that required further scrutiny as there were no materials placed before the Committee to enable it make a decision.

Committee recommendation

The EACC should within three months of adoption of this report investigate this matter and report its findings. ADVANCES - KENYA PORTS AUTHORITY FY 2015/16

The Committee heard that the Kenya Ferry Services Ltd owed KPA Kshs.336 million in form of advances and it was not clear how the debt would be paid.

Management Response

The KFS CEO informed the Committee that advances amounting to Kshs 336 million had been written off by Kenya Ports Authority vide letter FA/3/2/02 dated 12th July 2017.

Committee Observations

The Committee observed that -

1. **(i) 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. **(ii) The copy of the letter referenced above was not sufficient evidence to indicate write off approval had been granted by the National Treasury.**

Committee Recommendation

The National treaury should confirm whether the KPA indeed wrote off the advance payments totaling to Kshs 336 Million to KFS before the next audit report comes out.

311. **PROPERTY PLANT & EQUIPMENT FY 2016/17**

Fully depreciated assets

The Committee heard that the statement of financial position as at 30th June 2017 reflected a balance of Kshs. 2,181,924,000 in respect of Property, Plant and Equipment which included fully depreciated assets with a total cost of Kshs 473,885,000 (2015/2016 Kshs 69,784,000) as per disclosure under note 16 to the financial statements. Although some of the assets were in use, the economic value of those assets was not accounted for in these financial statements as they were carried at zero value contrary to international accounting standards No. 16 which states that revaluations should be carried out regularly so that the current amount of an asset does not differ materially from its fair value at the balance sheet date.

As a result, it was not possible to ascertain that the Property, Plant and Equipment balance of Kshs 2,181,924,000 as at 30th June 2017 was fairly stated.

Management Response

The KFS CEO informed the Committee that the KFS engaged the State Department of Public Works to value items identified for disposal in the year 2017/2018 and produced a report. The items earmarked for disposal included guard rails, LED screens, computers, engines, and other equipment. Management advertised to dispose the same in May 2019. The disposal process had since started.

Committee Observations

The KFS management had belatedly disposed the items and the matter resolved

Committee Recommendation

The KFS should dispose equipment as soon as they are depreciated to zero

312. **LONG OUTSTANDING DEBTS FY 2016/17**

The Committee heard that trade and other receivables balance of Kshs 716,622,000 as at 30th June 2017 included staff receivables of Kshs 10,157,000. Audit verifications revealed that staff advances amounting to Kshs 4,178,131 was owing from former staff. The KFS management had not clearly explained how the staff were cleared before settling the debts. Consequently, it was not possible to confirm the validity and recoverability of trade and other receivables balance of Kshs 716,622,000 as at 30th June 2017.

Management Response

The KFS CEO informed the Committee that advances owing by former staff amounting to Kshs 3,691,229 was being pursued for recoverability through court processes whereas some have/are paid/paying their outstanding balances. No staff has been cleared to leave the organization before settling their account balances.

Management provided the following summary of status of each ex-staff member account

No.	**Staff No.**	**Name**	**Original amount Kshs**	**Paid**	**Current Balance Kshs**	**Remarks**
1	FER300	Ambrose Riasi Getenge	20,000	-	20,000	Dismissed

2	FER347	Mwangi Kahora Gitonga	356,315	145,677	210,638	Resigned, partly repaid
3	FER391	Mong'are Edwin Momanyi	116,065	116,065	-	Cleared
4	GMA002	Joel John Ria	798,735	-	798,735	Dismissed
5	KOO001	Kenedy Oyugi Onkoba	858,801	-	858,801	Dismissed
6	SNR003	Sajad S Janoowalla	13,750	13,750	-	Written off
7	SNR005	Deche Nelson Kachero	748,586	-	748,586	Dismissed
8	SNR009	George Chiwai Barua	295,937	-	295,937	Deceased
9	T020	Edwin Osano Onkoba Motuka	82,515	-	82,515	Dismissed
10	T023	Martin Mwenda Mbaka	244,244	-	244,244	Dismissed
11	T022	Joseph Kariuki	22,500	-	22,500	Dismissed
12	FER313	Kurgat Kiprop	180,140	-	180,140	Retired, not cleared
13	FER242	Victor Chite	45,100	-	45,100	Dismissed
14	FER178	Fredrick Baraza Dodi	259,920	129,960	129,960	Dismissed
15	FS325	Douglas Kitonyi Ndeto	161,738	161,738	-	Cleared
16	FS185	Salim Mwabaka	54,073	-	54,073	Dismissed
		Total	**4,258,419**	**567,190**	**3,691,229**	

Committee Observations

The advances owing by former staff amounting to Kshs 3,691,229 was being pursued for recoverability through court processes.

Committee Recommendations

The Committee recommended that -

(i) **Management should consider writing off debts from the deceased staff after evaluation by social security agencies**
(ii) **Management should ensure the remaining debts are recovered by either recovering it from the staff benefits or attaching their properties or any other legal means**

313. **ADMINISTRATION EXPENSES FY 2016/17**

The Committee heard that the statement of comprehensive income for the year ended 30th June 2017 reflected Kshs 111,392.000 in respect of administration costs. Included in this was Kshs 8,572,000 in respect of legal dues. Records availed for audit indicated that Kshs 6,020,000 was paid to a law firm as a deposit based on a proposal presented by the firm to finalize outstanding cases arising from Mtongwe Ferry disaster of 1994. However, as at the time of audit, there was no documentary evidence of any progress made towards achieving objectives of the proposal including court application and settlement of claims by affected persons. It was therefore not clear which service was rendered by the law firm.

Management Response

The CEO for the KFS informed the Committee that in April 2017, the KFS developed a plan to close all cases that were still outstanding arising out of the Mtongwe ferry disaster of 1994.

To implement that plan, the KFS together with its external Advocates handling the cases arising out of the Mtongwe disaster of 1994 jointly published a notice on the 22nd June 2017 in the Nation Newspapers informing affected persons that the Company was committed to settling all the outstanding cases by 31st December 2017. I therefore required affected persons with outstanding claims against the Company to report to the external Advocates within 60 days of the notice.

Although more than 70 persons had visited the offices of the external advocates at the end of the advertisement period, only 13 had requisite documents.

The external advocates then proposed that the 13 persons be compensated through an out of court settlement in the following terms:

a) Liability be apportioned at 70: 30 in favour of deceased or injured persons.
b) Damages to be a total of Kshs 750,000/= per person all inclusive, that is including quantum, filing charges and advocates fees.
c) The total amount payable to the 13 persons in the proposed settlement would be Kshs 9,750,000/=.

The management recommended to the Board to approve the payment of out of court settlement.

Due to cash flow challenges, the KFS would settle the amount through its external advocate in instalments. The first instalment of Kshs 3M was made to the external advocate in early October 2018. Progress report on this item would be given in subsequent periods

Committee Observations

The Committee observed that -

(i) These claims had remained inordinately long

(ii) Engagement of the law firm was a noble cause to settle the matter once and for all

Committee Recommendation

The Committee recommended that -

i) The KFS should settle the claims and close the matter; and

ii) The amount that has not been claimed should be taken to unclaimed asset authority.

314. **BUDGETARY CONTROLS AND PERFORMANCE (FY 2016/17)**

The Committee heard that the KFS had an over expenditure on various vote items Kshs 87,369,000 in the financial year under consideration with no approval of the budget by line Ministry.

Management Response

The KFS CEO informed the Committee that the KFS did not overspend on the listed budgetary items. However, the auditors did not use the final revised budget. Overall, the Company spent within the budgetary allocation levels for various main classes of expenditure as detailed in the statement of comparison between actual and budgeted amounts save for dry-docking expenses which was an accounting allocation/ book entries and did not involve cash movement/application.

	Component	**Budget**	**Actual**	**Difference**	**% Variance**
1	Printing, Advertising and Information Supplies	5,648,000	5,103,000	545,000	10%
2	Sports & Recreation	7,475,000	7,492,000	- 17,000	0%
3	Training Expenses	15,500,000	15,542,000	- 42,000	0%
4	IT Implementation	6,124,000	6,197,000	- 73,000	-1%
5	Legal Dues/Fees	9,000,000	8,572,000	428,000	5%
6	Contracted Professional Services	10,500,000	10,753,000	- 253,000	-2%
7	Fuel Oil & Lubricants	71,524,250	71,379,000	145,250	0%
8	Board Expenses	22,197,208	22,521,000	- 323,792	-1%
9	Dry Docking	30,000,000	63,041,000	- 33,041,000	-110%

10	Safety Equipment Repairs	8,500,000	8,676,000	- 176,000	-2%
	Total	**186,468,458**	**219,276,000**	**- 32,807,542**	

Committee Observation

This query was raised due to management's failure to explain the matter as they did to the Committee at the time of audit.

Committee Recommendation

The KFS should always submit documents/information for audit as and when required.

315. **SAFETY OF FERRY VESSELS**

The following was raised regarding safety of ferries:

(i) Dry-docking for MV Kwale and MV Likoni not done as scheduled
(ii) MV Kwale engine had operated for more than 30,000 hours without undergoing engine overhaul.
(iii) Pulleys on most ferries were defective causing prows are to be submerged in water
(iv) The ferry users are not insured therefore it may difficult to settle liabilities in case of accident.

Management Response

Management of KFS informed the Committee that KFSL had a fleet of 5 vessels. To operate optimally it required 4 vessels for Likoni and one for Mtongwe channel (Mtongwe channel was re-opened in March 2017 after closure for 5 years). While these vessels were scheduled for dry dock in March 2017, it was impractical to take them to dry dock because this would have meant complete withdrawal of service for a period of not less than 3 months. The Likoni channel would have operated with 3 ferries (deficit of one) and Mtongwe channel be closed down.

After taking into account demand for the ferry service and assessing the safety condition of the vessels, the KFS undertook minimal maintenance works on the said ferries and reviewed the major maintenance schedule to have the dry docking of the two vessels after delivery of M.V Jambo in July 2017. Consequently the two ferries were dry docked for major repair works in November 2017 for M.V Kwale and MV Likoni was dry docked during the same period.

The ferries are fitted with CAT C12 Engines, which according to its manufacturer's (CATERPILLAR PLC), the engines are to undergo major overhaul at a minimum of 8,000 hours. Indeed, total running hours as at the time of the audit was 3,000 hours operating at an average of 8 knots/ maximum speed since the previous maintenance. The engines had already undergone the major overhaul way back and were due for replacement. They have since been replaced with new engines.

The KFS had a program to repair the lifting systems of the ferry prows, which entails the pulleys and associated parts. Repairs on this were done to M.V Kilindini in January 2019 and M.V Likoni in June 2019. Plans were underway to repair M.V Nyayo (Scheduled for Dry Docking in September 2019.

The Company managed to undertake reasonable repair works on the engine to mitigate on hour overrun safety exposure. However, the engine was overhauled in the year under review and services were offered without any disruption.

All vessels have sea worthiness certificates issued by KMA (certificate no. 35) and since the vessels were non-deep sea going (international waters), the issuance of an international certificate was of no use. Further, KMA was the local representative of the International Marine Classification bodies.

All the ferry vessels were insured against Protection and third part indemnity liability as well as hull and all machinery.

Committee Observations

The Committee observed that -

(i) **The major reason of none mantainance of the ferries, according to the KFS CEO, was budgetary constraints.**

(ii) **M.V Kwale and MV Likoni was dry docked for major repair works in November 2017.**

(iii) **The lifting systems of the ferry prows, which entails the pulleys and associated parts have been repaired for M.V Kilindini in January 2019, M.V Likoni in June 2019 with plans to repair M.V Nyayo in September 2019.**

(iv) **Scheduled dry docking for repair works is delayed due to budgetary constraints at Kenya Ferry Service.**

(v) **Kenya Ferry Service has an annual expenditure of Kshs. 102,000,000 on fuel of which 25% is accounted for by machine inefficiency that increases consumption.**

(vi) **The ferries at Likoni and Mtongwe carry an average of 340,000 people and 5800 cars per day.**

(vii) **All the ferry vessels are insured against Protection and third part indemnity liability as well as hull and all machinery.**

Committee Recommendation

The Committee recommendations on Inquiry into the safety of ferries and adopted by the house in December 2019 should be implemented fully.

316. **TRADE & OTHER PAYABLES FY 2017/18**

The Committee heard that trade and other payable balance of Kshs.228, 905,000 excluded an amount kshs.162, 497,579 (USD 1,577,646.4) in respect to taxes charged on purchase of one ferry vessel (MV Jambo) completed and delivered in July 2017. The management did not avail evidence of payment of the above Tax to Kenya Revenue Authority as demanded through a letter reference H.O 1035 dated December 2016.

Under the circumstances, it was not possible to confirm the validity and accuracy of trade and other payable balance of Kshs. 228,905,000 as at 30th June 2018.

Management Response

The KFS CEO informed the Committee that exclusion of Kshs 162,497,579 in respect to taxes relating to MV Jambo did not affect the fairness statement of the payables as it was not a liability of KFS. Such taxes were payable by the shipyard at the port of entry when the vessel was being cleared by KRA. Further, KFS had neither capacity nor the mandate to enforce payment of taxes at the port of entry since it was the responsibility of other Government agencies. However, from documents provided, the contractor indicated that taxes were paid to KRA; the relevant Government agency that deals with this matter.

Committee Observations

The applicable taxes were paid by the contractor upon delivery of the ferry.

Committee Recommendation

The explanation offered was satisfactory and therefore the query was resolved

317. **INCOME FROM OPERATIONS FY 2017/18**

The Committee heard that the loaded motor vehicles were charged at different rates from unloaded ones. However the toll collectors rely on information provided by the drivers regarding the state of load in the motor vehicles. It was not evident that all cargo-carrying motor vehicles were inspected to confirm the state of load carriage before payment was made.

In the circumstances, the accuracy and completeness of income from operations amounting to Kshs 493,972,000 for the year ended 30th June 2018 could not be confirmed.

Management Response

The KLFS CEO informed the Committee that loaded vehicles were charged the same rate as unloaded plus a surcharge. Further, it was in order for the toll cashiers to engage the clients (motorists in discussion and ascertainment of the status of the load in a particular vehicle. This type of engagement provided a feedback mechanism on two parties. Ultimately the person responsible to bill the customer (vehicle) was the cashier while taking into account the requisite information before him/her. Once the customer was billed, the customer would be subjected to an inspection process where the validity of the ticket would be confirmed. The ticket was further subjected to spot checks on a random basis.

Committee Observations

The Committee observed that -

(i) **The annual revenue collection system employed by the KFS was susceptible to manipulation**

(ii) **The KFS had done a concept paper to the parent Ministry requesting to automate revenue collection. Acording to the KFS management, automation would increase revenue collection by 10%.**

Committee recommendation

The KFS should within six months of adoption of this report automate the revenue collection system.

318. **BANK & AND BANK BALANCE FY 2017/18**

The Committee heard that that statement of financial position as at 30th June 2018 reflected bank and cash balances amounting to Kshs 325,953.000 out of which Kshs 5,604,000 was held at National bank collection account as detailed in note 23 in the financial statements. However, the bank reconciliation availed for audit supported an amount of Kshs 4,879,258 resulting to un-reconciled variance of Kshs 724,742 as at 30th June 2018.

In the circumstances, the accuracy and completeness of the bank and cash balances of Kshs 325,953,000 as at 30th June 2018 could not be confirmed.

Management Response

The bank and cash reconciliation balanced and supporting evidence had been provided

Committee Observation

Reconciliation had since been done, verified and the matter resolved.

319. **BUDGETARY CONTROLS AND PERFORMANCE**

The Committee heard that the statement of comparison of budget and actual amounts for the year ended 30th June 2018 reflected budget of Kshs 1,294,662,000 and actual expenditure of Kshs1, 237,662,000 resulting to a net under absorption of Kshs 57,002,000 as summarized below:

	ITEM	Budget (Kshs '000')	Actual (Kshs '000')	Under – absorption (Kshs '000')	Over – absorption (Kshs '000')	%
1	Staff costs	536,472	519,259	17,213	-	3.2
2	Administration costs	107,458	108,372	-	914	0.8
3	Operation costs	340,936	243,180	97,756	-	28.6
4	Board costs	16,700	16,572	128	-	0.76
5	Repairs and maintenance	140,673	135,946	4,727	-	3.3
6	Depreciation	152,090	213,998	-	61,908	40.7
7	amortization	333	333	-	-	0
	TOTAL	**1,294,662**	**1,237,660**	**119,824**	**62,822**	**44.0**

The Kenya Ferry Services limited under spent to a tune of Kshs 119,824,000 or 9% of the total budget allocation. The funds could have been allocated to other deserving areas that could improve the ferry services to the public. This may also be an indication of improper planning and the management needs to rethink on its budget making process in view of focusing on more priority areas. Further, Kenya Ferry Services limited overspent the budget by Kshs 62,822,000. However, there was no evidence of authority to overspend or reallocate funds in line with section 48 (5) of the Public Finance Management (National Government) Regulations, 2015 which states that *'reallocations under this regulation shall be by the respective Accounting officer of the entity'*. Consequently, Kenya Ferry Services Limited was breach of the law.

Management Response

The KFS CEO informed the Committee that he ensured prudent financial management of financial resources throughout the year. Part of the operational cost included a provision for salary reviews expected to be implemented within the year. As at the close of the year, the CBA for union staff had been referred to the court and was still outstanding. Once the matter that was in court is determined, the same will be implemented and adjustments made accordingly.

Further to the aforesaid, the company did not receive full disbursements for funds allocated and posted a deficit in government subvention.

Committee Observations

The Kenya Ferry Service did not receive full disbursements for funds allocated hence the cause of underspending.

Committee recommendation

The National Treasury should endeavor to disburse funds appropriated to avoid queries

320. **LEGAL FEES (FY 2017/18)**

The Committee heard that Note 7 to financial statement for year ended 30th June 2018 reflected legal dues/fees, arbitration and services to the company in different cases. However, the management did not avail authority from the Attorney General approving the hiring and payment of legal fees to private law firms contrary to Attorney General circular *AG/CONF/6/E/247 VOL II which states that legal fee payable to any private advocate or law firm under such an arrangement must be approved and authorized by the Attorney General*. It further states that any procurement of legal services secured without the authority of the Attorney General constitutes a breach of law and may condemn the concerned officer to a liability of surcharge is provided by the article 226 (5) of the constitution.

The management was therefore in breach of the law.

Management Response

The CEO informed the Committee that the company procured legal services from the office of the Attorney General. In all cases, the company had always written to the AG for resources. Where the AG was not in a position to provide, the company engaged external lawyers and the office of the AG was enjoined and involved. External advocates, where required, were acquired as per the Public Procurement and Asset Disposal act 2015 and other laws governing such procurements. It was further noted that the requirement under Government circular number AG/Circular/2018 dated 1st March 2018 and titled, "Guidelines on provision of legal services by the office of the Attorney General & Department of justice" was quashed by the High Court of Kenya under application no. 364 of 2018 where the guideline was found to be in breach of section 134 and other sections of the Procurement and Asset Disposal Act 2015 as well as article 227 of the Constitution of Kenya.

Committee Observation

The explanation offered by the KFS was satisfactory and therefore the matter was resolved.

3.26 KENYA NATIONAL ASSURANCE (FY 2014/15-2017/18)

EXAMINATION OF REPORT OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF THE KENYA NATIONAL ASSURANCE FOR THE FINANCIAL YEARS 2014/15 THROUGH TO 2016/17

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.

321. **GOING CONCERN (FYS 2014/15 to FY 2016/17)**

The Committee heard that Note 5 of the financial statements indicated the Company was expected to be closed by 30th June 2015 (30 June 2017 for FY 2016/17). The financial statements had been prepared on a basis other than that of a going concern which included, where appropriate, restating of the company's assets to net realizable value.

Management Response

The Company was in the process of winding up pending determination of cases in Court. The delay in concluding the winding up was attributed to delay in conclusion of the court cases.

Committee Recommendation

The Company Secretary should apply for expeditious conclusion of the pending Court cases to pave way for winding up

3.27 KENYA INSTITUTE OF CURRICULUM DEVELOPMENT (FY 2013/14-2016/17)

EXAMINATION OF REPORT OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF THE INSTITUTE OF CURRICULUM FOR THE FINANCIAL YEARS 2013/14 THROUGH TO 2016/17

Dr. Julius Jwan, the Director 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.

322. **UNQUALIFIED OPINION (FYS 2013/14 TO 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.

Committee Recommendation

The KICD should always maintain financial prudence in its operations

323. **OTHER MATTER – DIVERSITY IN EMPLOYMENT OF STAFF FY 2016/17**

The Committee heard that that 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 Director of KICD informed the Committee that the over-representation of one community arose from recruitment processes dating years back. The Institute was addressing this through any recruitment exercise that might arise.

Committee Observations

The KICD was in breach of Section 7 of the National Cohesion and Integration Act 2008.

Committee Recommendation

The auditor gneneral should report on public service representations across all government departments

3.28 ENGINEERS BOARD OF KENYA (FY 2014/15-2016/17)

EXAMINATION OF REPORT OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF THE ENGINEERS BOARD OF KENYA FOR THE FINANCIAL YEARS 2014/15 THROUGH TO 2016/17

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.

324. **UNQUALIFIED OPINION (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.

Committee Recommendation

The should always maintain financial prudence in its operations

3.29 KENYA UNIVERSITIES AND COLLEGE CENTRAL PLACEMENT SERVICE (FY 2014/15-2016/17)

EXAMINATION OF REPORT OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF THE KENYA UNIVERSITIES AND CENTRAL PLACEMENT SERVICE FOR THE FINANCIAL YEARS 2013/14 THROUGH TO 2016/17.

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.

325. **UNQUALIFIED OPINION**

The Committee heard that the Corporation's audited accounts for the financial year 2013/2014 through to financial year 2016/2017 were unqualified.

Committee Recommendation

The Institute should always maintain financial prudence in its operations

3.30 COMMISSION FOR UNIVERSITY EDUCATION (FY 2016/17)

EXAMINATION OF REPORT OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF THE COMMISSION FOR UNIVERSITY EDUCATION FOR THE FINANCIAL YEARS 2016/17.

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.

326. **UNQUALIFIED OPINION**

The Committee heard that the Commission's audited accounts for the financial year 2016/2017 was unqualified.

Committee Recommendation

The Commission should always maintain financial prudence in its operations

3.31 KENYA MEDICAL TRAINING COLLEGE (FYS 2012/13 TO 2016/17)

EXAMINATION OF REPORT OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF THE KENYA MEDICAL TRAINING COLLEGE FOR THE FINANCIAL YEARS 2012/13 TO 2016/17.

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.

327. **TRADE AND OTHER RECIEVABLES FY 2012/14 to FY 2016/17**

The Committee heard that as similarly reported in the 2011/12, trade and other receivables balance of KSHS. 333,353,234 as at 30th June 2013 included 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. Available information indicted that the Board had recommended to write off the amount. However, approval in this respect had not been obtained from the parent Ministry as at 30 June 2013.

Further, the trade and other receivables balance of Kshs. 333,353,234 also included 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 showed that the rent had 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 had accumulated to stand at Kshs. 55,481,840 as at 30 June 2013.

Further, and 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 appeared inadequate .

In the circumstances, it was not possible to confirm that the trade and other receivables balance of Kshs. 333,353,234.00 as at 30th June 2013 was fairly stated.

Management Response

The College concurred that included in the non-exchange transaction receivable waa an amount Kshs 19,812,180 relating to Ministry of Medical services that had 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 had been following up on this grant from the parent Ministry for a long time.

The debt for Kenyatta National hospital related to staff trained at 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 were negotiating on how to settle this long standing debt.

The College further concurred with the audit observation that the exchange transaction receivables included an amount of Kshs.59,050,240 being rent arrears accumulated for about 20 years. The college had 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.

The fee balances were 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 needed to be written off) was considered by the management to be adequate. However, the College was reviewing this based on the audit observation.

Committee Observations

The Committee observed that -

(i) The Board of Kenyatta National Hospital had 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 had not been obtained from the parent Ministry.

(ii) 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 had not been implemented.

(iii) The College had issued an eviction notice to University of Nairobi through a letter dated 11th July 2018 but the University had not responded nor vacated the property.

(iv) The College had been invoicing the University every year but the University had not made any payment since last paying Kshs. 2,070,000 in the financial year 2012/13.

Committee Recommendations

The Committee observed that -

(i) The Committee reiterates the PIC's 19th Report recommendations on the matter.

(ii) The Implementation Committee should follow up implementation of the 19th Report Committee's recommendations pursuant to its mandate.

328. PROPERTY, PLANT AND EQUIPMENT FY 2012/13 to FY 2016/17

The Committee heard that the Property, Plant and Equipment balance of Kshs. 5,129,941,375.00 as at 30th June 2013 included 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. This was the case for the subsequent financial years up to 2016/17.

Consequently, it has not been possible to confirm the ownership status of the 22 parcels of land.

Management Response

Management informed the Committee that the process of obtaining title deed had been on going and the current status is as indicated below:

1. Nairobi Campus and Headquarters- Title available
2. Part of the South Hill Mess- upper hill Title available
3. Kisii Campus Title available
4. Nyeri Campus Title available
5. Thika Campus Title available
6. Machakos Campus Title available
7. Bomet Campus Titles available
8. Bondo (Masita) campus Title available
9. Port Reitz Campus Title available
10. Kakamega Campus Title available
11. Rachuonyo Campus Title available
12. Chwele Campus Title available
13. Mwingi Campus Title available
14. Meru Nyaki/Thuura/4128 and 1580 Title available
15. Rera Title available
16. Iten Title available

COLLEGE	PROGRESS
Nairobi MTC South hill	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 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.

	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
Karen college	L.R NO.1160/1039 – KAREN BLIXEN COLLEGE 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. The national land commission had not been able to issue titles saying the surrender documents had been misplaced in their offices.
Maanza MTC	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 measured 31actres. The College had since fenced the whole parcel and was processing the title.
Nakuru MTC	Nakuru Municipality Block 12/253. KMTC prepared a subdivision scheme plan which was forwarded to the cabinet secretary national treasury for signing and sealing. The National Treasury forwarded the plan to the National Land Commission for their comments. Management was waiting for action from the National Lands Commission.

Mombasa MTC	A part development plan (PDP) No. 12/2/CT/2009/3 dated 2nd June 2009 had 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 was subsequently approved by the Minister for Lands and the letter of allotments issued. The National land Commission wrote to KMTC allowing KMTC to carryout survey work. The said survey ws done and forwarded to survey of Kenya to process deed plans.
Homa bay MTC	There were two parcels of land in Homa Bay. One site covering the tuition block had its PDP prepared approved. The process of securing deed plan was going at the survey of Kenya The other covered 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 was being prepared. A ground survey 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 was issued. The process was on going
Garissa MTC	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. KMTC had purchased survey data for Garissa Block 4/42-60, 70, Block 3/475-483 and 207-216 and the survey works had been concluded and the process of titling was on going
Embu MTC	Embu Municipality /897 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. 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. KMTC has applied to the National Land Commission to issue allotment letter and is awaiting the letter from the National Land Commission.
Meru MTC	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. Management managed to get the PDP approved by the Ministry of Lands and has since carried out the ground survey. The National Land Commission issued a letter of allotment. On parcel Nos. Nyaki/Thuura/4128 and 1580 the title was issued
Kisumu MTC	Sub division was 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 had since been concluded and that Management was negotiating with the county government of Kisumu to conclude the subdivision
Muranga MTC	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 college. KMTC has applied to the National Land Commission for the allocation of the plot to Kenya Medical Training College.
Siaya MTC	A PDP No. 321/2012/06 – Siaya Municipality was prepared and circulated to the stake holders for comments on 21st November 2012. Management carried out the

	survey of the land and fenced it. The process was 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 was on going
Kitui MTC	The demarcation of land between the Hospital, MTC, and other Government institutions had been agreed. The preparation of part development plan had been completed. The PDP was forwarded to the Chairman National land Commission for approval
Kabarnet MTC	KMTC land fell 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 fell on the land allocated in letter of Allotment Ref. No.222986. KMTC wrote to National Land Commission applying for the allocation of the plots on approved plan to Kenya Medical Training College. The National Land Commission had, through the County land management Board has since, concluded that the land belonged to the private developer. The Management was 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 was issued but the hospital was contesting the land given to the College slowing down the process. However, KMTC had since agreed with hospital and the PDP had been prepared and forwarded to the National Land Commission for approval.

Eldoret MTC	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. The Director of survey amended the registry index map which was in KMTC's possession. MTRH was yet to surrender the original title to allow for the two tiles be issued. The Management was However in discussion with the Moi Teaching and Referral Hospital to resolve the matter
Kapkatet MTC	The Part Development Plan No. R1027/2011/1 for existing Kapkatet Hospital and proposed site for Kapkatet MTC had been done and forwarded to Director of Physical Planning but had not been approved.
Msambweni MTC	This was 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 would be carried out after the conclusion of the investigation.
Kwale MTC	Survey had been carried out and allotment letter issued in the name of KMTC. The College had forwarded tile document to the lands office for action. The process was on going
Mathare MTC	Management carried out a topographical survey of the plot. There was however a dispute between the hospital and KMTC on demarcation. The Management was negotiating with the Management of Mathare Hospital to resolve the dispute.
Bondo Campus	The parcel of land where the Campus sat belonged to county Government. This included 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 was on going
Bungoma Campus	The parcel of land where the campus was included the hospital and it was under hospital name. The county physical planner office was 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 was available. Allotment letter was being processed
Gatundu Campus	PDP had been prepared. The allotment letter was being processed.
Isiolo Campus	PDP available. Title deed process was ongoing
Kapenguria Campus	The county Government has allocated land to the campus. The process of preparing PDP is on gong
Karuri Campus	The PDP had been prepared. The process of acquiring allotment letter was on going
Kitale	The PDP for subdivision had been prepared.
Kuria Campus	The PDP had been prepared and advertisement was already done
Lake Victoria Campus	The land was co-owned with the hospital. KMTC was looking for mother title deed to facilitate separation.
Lamu Campus	The county Government had allocated land to the campus and subdivision was underway.
Lugari Campus	There was initial dispute of land demarcation but this had since been resolved. The subdivision of the parcel was on going
Makindu Campus	The PDP had been prepared and advertised.
Makueni Campus	The boundary demarcation had been done, the PDP had been prepared circulated and forwarded to the national commission for approval.

Migori Campus	The PDP had been prepared circulated and advertised. The process of acquiring tile was on going
Molo Campus	KMTC Molo was 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 Campus	The PDP had been prepared circulated and advertised. The process of acquiring tile was on going
Nyahururu Campus	The PDP had been prepared circulated and advertised. The process of acquiring tile was on going
Nyamache Campus	The process of separating the land from the hospital and acquiring a title deed was on going
Nyamira Campus	Follow up was ongoing to get PDP from the land county offices The PDP had been prepared circulated and advertised. The process of acquiring tile is on going
Nyandarua Campus	The PDP had been prepared circulated and advertised. The process of acquiring tile is on going
Othaya Campus	The land was 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 Campus	Allotment letter was available and title processing was underway
Ugenya Campus	The PDP had been prepared circulated and advertised. The process of acquiring tile was on going
Vihiga Campus	The county Government had since allocated land to the campus and the process of acquiring title was on going

Voi Campus	The county Government had since allocated land to the campus and the process of acquiring title was on going
Wajir Campus	The process of separating the land from the hospital and acquiring a title deed was 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 observed that -

i) **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.**
ii) **The Main Campus L.R209/14272 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 Recommendation

The Committee observed that -

i. **The College should fast track acquisition of titles for the properties without court cases within three months of adoption of this report.**
ii. **The college should apply for expeditious conclusion of court cases**

329. **CASH AND CASH EQUIVALENTS FY 2012/13 to FY 2013/14**

The Committee heard that the College Bank's reconciliation statement as at 30th June 2013 included 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 had remained outstanding for over one year. The management did not explain why the receipts were not subsequently banked.

In the circumstances, it was not possible to confirm that the cash and cash equivalents balance of Kshs. 87,037,574 as at 30 June 2013 was fairly stated.

Management Response

Management informed the Committee that reconciliation was done and the matter resolved. The issue had not recurred in the subsequent years.

Committee Observation

Reconciliation had since been done, relevant documentation provided and verified by the Auditors.

Committee Recommendation

The audit query is resolved.

330. **OPENING OF NEW CONSTITUENT COLLEGES FY 2013/14 to 2016/17**

The Committee heard that 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 opened colleges included: 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 not6 been made in an annual estimates.*

No response had been provided for failure to comply with the Expansion Policy and the State Corporations Act. Cap 446.

Management Response

Management informed the Committee that the eight (8) new colleges were not in the initial budget but their creation was necessitated by pressing training needs.

Nevertheless, the Auditor's observations had been noted and the same had been brought to the attention of the Board of Management. Consequently, any new expansion would adhere to the law.

Committee Observations

The Committee observed that -

i) **There was no money lost in opening new campuses.**
ii) **The KMTC obtained approval from the National Treasury through the supplementary budgets.**

Committee Recommendations

The Committee recommends that -

(i) **The KMTC should adhere to its expansion policy and the Provisions of Section 12 of the State Corporations Act on budget implementation.**
(ii) **The then managing director of the KMTC should be reprimanded for not adhering to the expansion policy of the KMTC.**

331. **REVENUE FROM EXCHANGE TRANSACTIONS - FRAUDULENT RECEIPTS FY 2016/17**

The Committee heard that the statement of financial performance for the year ended 30th June 2017 included tuition, boarding and application charges of Kshs. 2,962,923,630 which included 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 30th June 2017 could not be confirmed.

Management Response

Management informed the Committee that the amount of Kshs. 3,363, 260 was composed of Kshs. 1,396,600 from various campuses. I arose from students presenting fictitious bank slips. The balance of kshs 1,966,000 accounted for cheques received on 30th June 2017. All students that had fees arrears had since paid the full school fees and disciplinary action taken against them after reporting back from attachment in clinical sites. The uncredited cheques were subsequently banked in July 2017.

Further, management had implemented an ERP system with full integration with banks which had a real-time access with immediate update of student accounts.

Committee Observation

The explanation offered by management was satisfactory

Committee Recommendation

The matter was resolved and therefore the query is resolved.

3.32 NATIONAL CAMPAIGN AGAINST DRUG ABUSE (NACADA) ALCOHOLIC DRINKS CONTROL FUND (FYS 2013/14 TO 2016/17)

EXAMINATION OF REPORT OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF THE NATIONAL CAMPAIGN AGAINST DRUG ABUSE (NACADA) ALCOHOLIC DRINKS CONTROL FUND FOR THE FINANCIAL YEARS 2012/13 TO 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 Alcoholic Drinks Control Fund for the financial year 2013/14 to financial year 2016/17.

332. **UNQUALIFIED OPINION**

The Committee heard that the auditor General the Alcoholic Drinks Control Fund with a clean report for the Financial Years 2013/14 through to 2016/17.

Committee Observation

Having been issued with a clean opinion, the Committee commended the management of NACADA and urged for continued prudence in management of public resources.

3.33 NATIONAL TRANSPORT & SAFETY AUTHORITY (FYS 2015/16 TO 2016/17)

EXAMINATION OF REPORT OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF THE NATIONAL TRANSPORT SAFETY AUTHORITY (NTSA) FOR THE FINANCIAL YEARS 2015/16 TO 2016/17.

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.

333. **UNQUALIFIED OPINION (FYS 2015/16 & 2016/17)**

The Committee heard that the auditor General issued the NTSA with a clean report for the Financial Years 2015/16 to 2016/17.

Committee Observation and Recommendation

Having been issued with a clean opinion, the Committee commended the management of NTSA and urged for continued prudence in management of public resources.

3.34 EXPORT PROMOTION COUNCIL (FYS 2010/11 TO 2016/17)

EXAMINATION OF REPORT OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF THE EXPORT PROMOTION COUNCIL FOR THE FINANCIAL YEARS 2010/11 TO 2016/17.

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.

334. **UNQUALIFIED OPINION (FYS 2015/16 & 2016/17)**

The Committee heard that the auditor General issued the Export Promotion Council with a clean report for the Financial Years 2010/11 to 2016/17.

Committee Observation and Recommendation

Having been issued with a clean opinion, the Committee commended the management of Export Promotion Council and urged for continued prudence in management of public resources.

3.35 KENYA PLANT HEALTH INSPECTORATE SERVICE (FYS 2011/12 TO 2016/17)

EXAMINATION OF REPORT OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF THE KENYA PLANT HEALTH INSPECTORATE SERVICE (KEPHIS) FOR THE FINANCIAL YEARS 2010/11 TO 2016/17.

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.

335. **PROPERTY, PLANT AND EQUIPMENT FY 2011/12 to FY 2016/17**

The Committee Heard that Property, Plant and Equipment balance of Kshs.1,147,144,151 included 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 Minicipality. Except for the land in Karen, Kisumu and Kabete, the Inspectorate did not have ownership documents for the others.

Out of the 125.30 hectares of land in Kitale held by third parties, the Inspectorate had so far recovered 34.09 hectares while the balance of 91.21 hectares was still held by private developers or occupied by squatters.

Management Response

The Management informed the Committee that the Corporation did not have title deeds for parcels of land inherited from KARI (KALRO) at its inception in 1996. The following was the status of the parcels:

1. **Nakuru Municipality** – The land measured approximately 80 acres was within a larger parcel that was under KALRO. It had been surveyed awaiting KALRO to initiate subdivision.
2. **Muguga Kiambu –** This parcel measuring approximately 12 acres was within a larger parcel of land owned by KALRO. The process of subdivision and transfer was initiated and ongoing.
3. **Kitale Trans Nzoia -** Processing of title for the parcel and recovery of encroached land had been a challenge. The Corporations attempted to have the portion of land under her control approximated to be 42.336 hectares surveyed and titled had been futile. This was due to failure of the Director of Surveys to survey the land.

Further, the recovery of approximately 91.21 hectares held by third parties had not been done. This was in spite of several appeals to NLC and Ministry of Lands through various correspondences. The Corporation had obtained a list of names of some of the third parties occupying the land from NLC County Coordinator.

Committee Observations

The Committee observed that -

(i) **The land in Muguga had been fenced as per the recommendations of the 19th Report of the Public Investments Committee. The land had no dispute.**

(ii) **The total acreage of the land in Kitale was 330 acres but KEPHIS only had access to 120 acres which the Service had fenced.**

(iii) **The remaining 210 acres of the land in Kitale was occupied by private developers, some of whom had allotment letters for the land they occupy.**

(iv) **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.**

(v) **The Kenya Agricultural Research Institute had been allocated 10 acres from the 210 acres claimed by KEPHIS hence raising doubts on the validity of KEPHIS' claim to the land.**

Committee Recommendation

The National Land Commission should determine the ownership of all impugned pieces of land and issue ownership documents to settle the matter within three months of adoption of this report.

336. **BOARD EXPENSES FY 2011/12 to FY 2013/14**

The Committee heard that 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

Management informed the Committee that the Corporation made the payments in line with the practice prevailing in Government at the time. The Auditor General had since written clarifying that the payments were indeed legitimate and in order.

Committee Recommendation

The committee was satisfied with the explanation given and therefore the query drappped.

337. **EMPLOYEE COSTS FY 2014/15 to FY 2016/17**

The Committee heard that included in the employee costs figure of Kshs 468,968,000 as at 30th June 2015 was Kshs 5,884,496.68 paid to the managing Director who had 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. Management had not explained the outcome of the investigations and why the officer continued to draw salary and allowances without rendering services to the organization.

Management Response

Management informed the Committee that on August 2014, the then Managing Director was sent on compulsory leave through the Ministry of Agriculture letter Ref: MOA B.1/60A/4 VOL.I / (82). 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 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 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 both of which were not replied.

Committee Observations

The Committee observed that -

(i) **The parent Ministry failed to provide guidance to KEPHIS on whether or not the then managing director should be paid salary and allowances or not.**

(ii) **The then managing director earned from the public coffers without rendering any services to KEPHIS**

(iii) **During the time of suspension of the substantive Managing Director, the Ag. MD drew acting allowances for the MD's position.**

Committee Recommendation

The Committee recommends that -

i. **Future suspensions should be followed by speedy investigations and conclusion of any matter that may have led to suspension of an officer.**

ii. **The EACC should investigate on the matter with a view to prosecuting and recovery of lost money.**

338. **MATERIAL UNCERTAINTY RELATED TO SUSTAINABILITY OF SERVICES FY 2016/17**

The Committee heard that the statement of financial performance reflected 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 reflected 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, would affect the inspectorate`s ability to sustain its services in the long term.

Management Response

Management informed the Committee that the Corporation had addressed the challenge by widening its fees base which had successfully reversed the financial performance to a surplus by end of 2017/18 financial year.

Committee Observation and Recommendation

The explanation offered was satisfactory and therefore the matter resolved.

3.36 EWASO NYIRO SOUTH DEVELOPMENT AUTHORITY (FYS 2012/13 TO 2016/17)

EXAMINATION OF REPORT OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF EWASO NYIRO SOUTH DEVELOPMENT AUTHORITY FOR THE FINANCIAL YEARS 2012/13 TO 2016/17.

Mr. Sammy Naporos, the Managing Director of Ewaso Ngiro South Development Authority, accompanied by Mr. Jonathan Leiyan (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.

339. **UNQUALIFIED OPINION (FYS 2015/16 & 2016/17)**

The Committee heard that the Authority's audited accounts for the financial year 2012/2013 to financial year 2013/2014 were unqualified.

340. **CASH AND CASH EQUIVALENTS FY 2014/15**

The Committee heard that 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 were not availed for audit verification.

Management Response

Management informed the Committee that the missing reconciliations were done at the branch (basin) offices. Copies of the missing bank reconciliations and bank certificates 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 Recommendation

The audit query is resolved.

341. **FUEL AND LUBRICANTS FY 2014/15**

The Committee heard that the statement of financial performance reflected a balance of Kshs.15,122,442 in respect of administrative expenses that included 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 Observations

The Committee observed that -

(i) The query arose due to management's failure to provide documents at the time of audit.

(ii) The relevant documentation was provided by Management and verified by the Auditors.

(iii) The audit query is resolved.

Committee Recommendations

The Committee recommends that -

(i) Management should provide all relevant documentation for audit within the required timelines

342. **UNQUALIFIED OPINION (FYS 2015/16 AND 2016/17)**

The Committee heard that the Authority's audited accounts for the financial year 2015/16 and 2016/17 were unqualified.

3.37 KENYA NATIONAL COMMISSION FOR UNESCO (FYS 2014/15 TO 2017/18)

EXAMINATION OF REPORT OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF KENYA NATIONAL COMMISION FOR UNESCO FOR THE FINANCIAL YEARS 2014/15 TO 2017/18

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 Nyakoboke (Chief Accountant) and Mr. David Looremeta (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.

343. **UNQUALIFIED OPINION (FYS 2014/15 TO 2017/18)**

The Committee heard that the Commission received unqualified audited accounts for financial year 2014/15 through to financial year 2017/18.

The Committee commended the Commission for financial prudence and urged that the same continued.

3.38 KENYA LITERATURE BUREAU (FYS 2014/15 TO 2017/18)

EXAMINATION OF REPORT OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF KENYA LITERATURE BUREAU (KLB) FOR THE FINANCIAL YEARS 2014/15 TO 2017/18

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

344. **EMPHASIS OF MATTER - CONTINGENT LIABILITIES FY 2016/17 to FY 2017/18**

The Committee heard that as disclosed in note 24 (i) in the financial statements, a contingent liability existed 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 was still in dispute. The Bureau had explained that, it had engaged the Fund in fruitful discussions which were at advanced stage for waiver of the said penalty and interest, and that NSSF had agreed to halt any further demand notice and accumulation of the amounts.

Further, as disclosed in note 24 (ii) a contingent liability also existed 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 had also explained that. Discussions were 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 would suffer financial loss to the tune of over Kshs. 125,560,306.

Management Response

The Management informed the Committee that it 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.

KLB and KRA Management had 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 was the subject of discussion for consideration.

From the discussions already held, the outcome was expected to be favourable to the Bureau, given that the KRA Management was positively considering the abandonment of principal tax. KLB was hopeful that the matter woul be resolved in 2018/2019.

Committee Observations

The Committee observed that -

i) **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.**
ii) **KLB was following up on the exemption to pay Kshs. 125,000,000 principal tax for 2007-2010 as recommended by the Ministry of Finance.**
iii) **The Bureau did not receive funding from the Exchequer. It had 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 Recommendation

The KRA should consider waiving the principal tax amount as recommended by the Ministry of Finance.

3.39 COAST DEVELOPMENT AUTHORITY (FYS 2012/13 TO 2017/18)

EXAMINATION OF REPORT OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF COAST DEVELOPMENT AUTHORITY FOR THE FINANCIAL YEARS 2012/13 TO 2017/18

Mr. Mohamed K. Hassan, the Managing Director of the Coast Development Authority accompanied by Ms. Pamela Ngure (Manager, Finance and Accounts), Ms. Josephine Chikoloh (Senior Internal Auditor), Ms. Dorris Juli (Internal Auditor), Ms. Muzny Ahmed (Coordinator, Mombasa County), Ms. Dullu Amuma (Accountant), and Ms. Monicah

Chepkemoi (Accountant) appeared before the Committee to adduce evidence on the audited accounts of the Authority for financial year 2012/13 to financial year 2017/18.

345. **GOING CONCERN (FY 2012/13 & 2013/14)**

The Committee heard that as at 30th June 2013, the Authority realized a deficit of 191,532,553 (2011/2012 Kshs. 132,158,890) which reduced its total funds to Kshs. 560,248,722 (2011/2012-624,403,967). In addition, the statement of financial position reflected a net current liability of Kshs.27, 332,056 clearly indicating that the Authority was unable to settle its obligation as they fell due.

Included in the Kshs. 191,532,553 deficit was a loss of Kshs. 35,915,251 realized under the coral block project as compared to a profit of Kshs. 28,102,029 in the previous financial year. No explanation was provided for the huge loss. The financial statements had therefore been prepared on going concern bases, which assumed continued support from the Government and the donors.

Management Response

The deficit in the year under review was as a result of the following;

In 2011/2012, the Authority had undergone restructuring and recruited Chief Managers and Managers; however, the statutory payments were not remitted resulting in huge balances in payroll liabilities.

Coral block expenses incurred at the sites increased due to expenses from the previous year posted in the year under review.

Committee Observations

The Committee observed that -

(i) **The Authority received a supplementary budgetary funding of Kshs. 269,000,000 in financial year 2015/2016 and cleared pending liabilities.**
(ii) **The Authority has no pending liability at present.**

Committee Recommendation

The Authority should come up with revenue generating activities to supplement GoK support.

346. **COMPLIANCE WITH LAW (FY 2012/13 to 2017/18)**

Although the mandate and operating framework for the Authority was provided under Coast Development Authority Act, Cap 449, the Authority had undertaken activities that were in contravention of the Act and outside their mandate as detailed below:

The Authority Kshs. 1,018,317 to a private company with no clear lending and repayment terms. The private entity had since went under.

In a bid to broaden its financial base in its early years of its formation (1992-1993), the Authority registered a subsidiary company whose main objective was to venture into commercial activities and generate revenue to assist in financing Authority's operations. The then Managing Director wrote to the Solicitor General regarding the same (MD letter ref 020 of 15 Jan 1993) and a further reply from the Solicitor General on the same copy (PR/BPK SG01 on 19th Jan 1993). The company was later registered with the registrar of Company-Registration no.C.52001.

Authorized share capital of 1,000 shares each of Kshs. 1,000. The Parent Ministry then was to subscribe to one share and the Authority was to own 999 shares. In this regard, the Authority gave seed money to the company to support its initial operations. The same operations of the Pambazuko company were discussed in the PIC meeting of 19th September 1996 as quoted by the Auditor General (letter ref. PIC/CDA/167/ (10)) requesting for the financial statement for the same company as directed by PIC. The financial statement was forwarded to the Auditor General (letter ref.CDA1/2/8/VOL.11/29 dated 2/4/1997). However, the authority realized minimal return from this investment as per the financial statements of the year (1993/1994/1995 attached.)

There was also evidence of inter-transfers of funds from Pambazuko Company to CDA confirming the inter-linkages of the entities. Nonetheless, very minimal returns were realized and the Authority discontinued into this venture.

The Authority advanced Ksh 1.735,135 to an insolvent Local Authority for construction of a local stadium without any proper documentation on terms and conditions of advance. In addition, the Authority was unlawfully holding an uncharged title to public land as security for the advance for the Local Authority. The Local Authority is no longer in existence as it ceased on 4th March 2013 rendering the recovery of the amount doubtful.

Under the circumstances, the Authority applied public and donor funds on activities that were not within their mandate and in contravention of Coast Development Authority Act Cap 449.

Management Response

Ukunda showground was owned by the Kwale Harambee Show Committee and the then Managing Director was the Chairperson of the Show Committee. The show committee undertook to refurbish the showground based on the BQ's from the District Works Officer Kwale.

CDA entered into an agreement to advance the Show Committee Ksh 1,650,000 EL- Amin Trading Company was given the contract to refurbish the showground.

The Authority was holding the title of land as collateral.

Committee Observations

The Committee observed that -

(i) **The audit query was considered by the Public Investments Committee in 1996 and in the 19th report with recommendations that the Authority should invest in the Company.**
(ii) **There were no monies lost from the operations of the formed company**
(iii) **Though the CDA is holding the title to the land as per CDA's brief to the Committee dated 29th May 2020, there was no indication that CDA has done anything to avoid avderse possession.**

Committee Recommendations

The Committee recommends that -

(i) **The Committee on Implementation should follow up on the recommendations that were made with regard to this audit query in the PIC's 19th report.**

(ii) **Management should fast track the process of winding up the company.**

(iii) **The Managing Director of the Authority should evict squatters occupying the land and take possession of it.**

347. **NON-COMPLIANCE WITH VALUE ADDED TAX ACT (FY 2016/17)**

The Committee heard that the Authority was supposed to remit monthly returns to the Kenya Revenue Authority on all input and output tax incurred or charged by the Authority. The Authority constantly charged VAT on most of its sales and was also charged VAT on most of the purchases/ expenditure but had never filed the VAT returns as required by the law, neither did it maintain any records of both input and output taxes. Further, there was no provision to cover for unpaid principle VAT amount and the penalties that may be levied by KRA had been incorporated in the financial statements.

Management Response

Management informed the Committee that the Authority was registered as a Withholding Tax Agent on I-Tax. It withheld VAT from all supplier payments and filed the same promptly on I-Tax. The Withheld VAT was paid immediately to KRA.

Committee Observations

The Committee observed that -

(i) **The Authority remitted VAT to the Kenya Revenue Authority and had cleared all statutory dues with KRA.**

(ii) **I-tax was not in place at that particular period**

(iii) **The authority had not provided all documents required for audit during the audit period. The said documents had since been provided and verified by the auditors**

Committee Recommendation

The query was resolved

348. **INAPPROPRIATE PAYMENT OF BONUS FY 2012/13**

The Committee heard that the Authority paid bonus to staff and Directors amounting to Kshs. 2,590,000 however, the payment was not supported by achievements of previously set objectives, since the financial year deficit of Kshs. 191,532,553 would not warrant payment of any bonus. In addition, an amount of Kshs. 300,000 withdrawn for paying the bonus could not be adequately supported. Consequently, the propriety of the bonus expenditure of Kshs. 2,890,000 could not be ascertained.

Management Response

The Authority paid Kshs. 2,590,000 as bonuses to staff in the financial year under consideration due to improved performance. There were no target objectives upon which the bonuses were paid.

Committee Observations

Bonus should only be paid whenever there is a profit. This was not the case here indicating abuse of office and mismanagement of public resources.

Committee Recommendations

The Committee recommends that -

(i) **The then managing director should be reprimanded for approving payment of bonus when the authority had a deficit.**
(ii) **The beneficiaries of the bonus should be surcharged.**

349. **PROPERTY, PLANT & EQUIPMENT FY 2012/13 TO FY 2017/18**

The Committee that as reported in the previous years, property plant and equipment balance of Kshs. 205,156,009 as at 30th June 2013 excluded the value of four (4) parcels of land located at various places in the Coast Region. The following issues were noted in respect to these parcels:

- The land is yet to be surveyed, as the Authority is yet to settle the necessary survey fees.
- The Authority does not have in its possession any documentation as proof of ownership

The rates payable on the land have neither been determined nor has it been provided for in the financial statements. Consequently, the carrying values of the property plant and equipment as stated in the financial statements as at 30th June 2013 could not be confirmed.

Management Response

All the Authority plots had all been surveyed and survey fees paid.

All the parcels of land owned by the Authority had necessary land documentation issued as follows:

- Kwale plot- Title
- Kilifi plot-Leasehold
- Tana River- Title
- Ijara- Allotment letter
- Hola plot (IFPP) - Title deed
- Masalani- letter of allotment
- Kwale Mwavumbo- Title deed
- Kwale kidimu- Title deed

All land rates had been paid to the relevant County Governments.

Committee Observations and recommendation

The explation offered by the managment and verified by the office of the Auditor General was satisfactory and therefore the query resolved.

350. **TRADE & OTHER RECEIVABLES FY 2012/13**

(i) The trade and other receivables balance of Kshs 34,570,009 included an amount of Kshs. 30,655,905 in respect of outstanding imprest due from employees out of which Kshs. 7,006,888 was owed to the Authority by former staff. In addition, an amount of Kshs. 260,256 due from former staff has been outstanding for several years. Any provision that would have been necessary in relation to these uncertainties had not been incorporated in these financial statements.

(ii) Also as reported in 2011/2012 financial year, the trade and other receivables included an amount of Kshs. 123,733 advanced to Regional Development Authorities, which has been outstanding for more than three years. There was no documentary evidence availed for audit in support of how the lending was done, and the terms and conditions for the lending.

(iii) Similarly, as reported in the previous years, the trade and other receivables include an amount of Kshs 1,756,135 being funds advanced to Kwale County Council for the construction of a stadium at Ukunda showground. Information available however indicated that the construction work stalled owing to lack of funds. Although the Authority was holding uncharged land title deed for the showground as a security for the advance amounting toKshs.1,756,290, the recovery of the debt remained doubtful as realization of the security was legally enforceable

(iv) In addition, and as reported in the previous years, in 1997 the Authority had advanced an amount of Kshs. 1,018,317 to Pambazuko Development Co. ltd, a private Company who had since ceased operating. The recovery of the advance to the Company is not clearly doubtful as the advance had clear lending terms nor was there any security to safeguard the Authority in case of default.

Under the circumstances, the accuracy and validity of the trade and other receivables balance of Kshs. 34,570,009 as at 30th June 2013 could not be confirmed.

Management Response

Management concurred with the audit observation that the Ex staff had pending imprests. These officers resigned from the Institution to take up jobs from other entities. However, they did not come back to clear with CDA. Follow up letters were sent to them advising on status of outstanding imprest and requesting them to immediately settle/ surrender on the same and necessary follow up are put in place on the same.

The debt was incurred during a meeting to prepare the Ministry and RDAs Strategic Plans in 2008 in a Mombasa Hotel. This was a share of conference charges among Regional Development Authorities as paid by CDA on behalf of the other Regional Authorities as directed by the PS of the Parent Ministry. All the RDAs undertook to refund the Authority. The

Authorities had not refunded the amounts yet despite reminder by the Permanent Secretary. The amounts outstanding were:

- Ewaso Nyiro North Development Authority- Kshs 58,000
- Lake Basin Development Authority- Kshs 35,000
- Tana and Athi River Development Authority- Kshs 30,733

Ukunda showground was owned by the Kwale Harambee Show Committee and the then Managing Director was the Chairperson of the Show Committee. The show committee undertook to refurbish showground based on BQ's from the District Works Officer Kwale.

CDA entered into an agreement to advance the Show Committee Ksh 1,650,000 EL- Amin Trading Company was given the contract to refurbish the showground. The Authority is holding the title of land as collateral.

The Authority in a bid to broaden its financial base in its early years of its formation (1992-1993) registered a subsidiary company whose main objective was to venture into commercial activities and generate revenue to assist in financing Authority's operations. The then Managing Director wrote to the Solicitor General regarding the same and a further reply from the Solicitor General on the same copy letter (PR/BPK SG01 on 19th Jan 1993)

The company was later registered with the registrar of Company-Registration no.C.52001. Authorized share capital of 1,000 shares each of Kshs. 1,000. The Parent Ministry then was to subscribe to one share and the Authority was to own 999 shares. In this regard, the Authority gave seed money to the company to support its initial operations.

The same operations of the Pambazuko company were discussed in the PIC meeting of 19th September 1996 as quoted by the Auditor General letter ref. PIC/CDA/167/ (10)) requesting for the financial statement for the same company as directed by PIC. The financial statement was forwarded to the Auditor General letter ref.CDA1/2/8/VOL.11/29dated 2/4/1997). However the authority realized minimal return from this investment as per the financial statements of the year.

There was also evidence of inter-transfers of funds from Pambazuko Company to CDA confirming the inter-linkages of the entities. None the less, very minimal returns were realized and the Authority discontinued into this venture.

Committee Observations

The Committee observed that -

(i) **The Authority had outstanding imprest due from employees out of which Kshs. 7,006,888 is owed to the Authority by former staff.**

(ii) **Kshs. 123,733 advanced to Regional Development Authorities had been outstanding for more than three years. There was no documentary evidence availed for audit in support of how the lending was done.**

(iii) **The recovery of the amount of Kshs 1,756,135 being funds advanced to Kwale County Council for the construction of a stadium at Ukunda showground is doubtful as realization of the security is not legally enforceable. The Authority is holding uncharged land title deed for the showground as a security for the advanced amount.**

Committee Recommendations

The Committee recommends that -

(i) **The Current managing director of the Authority should write to the current employers of the staff who left without clearing imprest and seek surcharge for the respective amounts.**

(ii) **Management should follow up with the Regional Development Authorities for recovery of the amounts due to CDA.**

351. **TRADE AND OTHER PAYABLES FY 2012/13**

The Committee hard that trade and other payables balance of Kshs. 98,337,921 as at 30th June 2013 included creditors amounting to Kshs. 26,203,533 which had been outstanding for more than a year. In addition, trade and other payables balance include an amount of Kshs. 9,418,110 being unremitted VAT payable, which had no supporting evidence. The balance decreased from

Kshs. 17,241,584 as at 30th June 2012 to Kshs. 9,418,110 as at 30th June 2013 but the movement of Kshs. 7,823,474 could not be explained or supported.

Under the circumstances, it was not possible to ascertain the accuracy and validity of the trade and other payables balance of Kshs. 98,337,921 as at 30th June 2013.

Management Response

After restructuring in 2011/12, the authority had experienced some funding challenges and hence was not able to clear its pending bills for several years, these included PAYE, Pension and other suppliers. The same was communicated to the parent Ministry which forwarded to the treasury. However, CDA was not able to get additional funding to pay these debts as per then. Management was putting all possible efforts to pay these debts from savings. CDA was advised that all pending bills accrued before 2014/15 be forwarded to the Ministry for transmission to the pending bill committee.

The VAT outstanding was with respect for supply of goods and services for the MISHDIP that was being financed by the Italian Government. The Financing agreement committed the Government of Kenya to exempt all taxes on the project. The amount was reflecting as outstanding because Treasury was yet to clear the DA1 forms submitted to them by the Authority

The amount outstanding decreased to Kshs 9,4187,110 from Kshs 17,241,584 in 2011/2012 financial report due to posting of approved DA1 forms by the National Treasury.

Committee Observations

Exchequer issues caused the liabilities in the query. These liabilities have since reduced.

Committee recommendation

The National Treasury should release funds to MDAs promptly to avoid unnecessary queries

352. **PREPAYMENTS (FYs 2012/13 to 2017/18)**

As reported in the previous years, included in the prepayments balance of Kshs. 1,297.332 as at 30th June 2013 is an amount of Kshs. 221,250 being an advance payment for purchase of computers in the year 2009/2010. The computers have not been received to date. Available information indicates that the supplier has since closed down the business. In the circumstance, the recoverability of the amount of Kshs 221,250 or receipt of the computers is uncertain.

Management Response

In October 1996, the Authority ordered Olivetti typewriter valued at Ksh 537,827 from a supplier based in Mombasa and a down payment of Ksh 250,000 was made. Subsequently an Olivetti typewriter was delivered costing Ksh 28,750 and the firm closed their offices thereafter. All efforts to trace the Company and the owners have been futile. The same was communicated to Ministry as it kept recurring in CDA annual audit queries. The National Treasury has requested PPRA to debar following recommendation from the PIC as per the letter written to CDA by PPRA.

Committee Observations

The Committee observed that -

(i) **The matter was previously handled by the Public Investments Committee.**
(ii) **The company was barred from conducting business with government by the PPRA.**

353. **CASH AND BANK BALANCE FY (2012/13 to 2017/18)**

The Committee heard that included in the net cash and bank balance of Kshs 24,334,399 as at 30^{th} June 2013 was an amount of Kshs. 2,626,114 in respect of cash in hand at the coral block sales office whose cash count certificate and supporting documentation were not availed for audit.

In addition, as at 30^{th} June 2012 the coral block sale office cash in hand of Kshs. 11,232,565 could not be supported and had not been supported as at 30^{th} June 2013 thereby invalidating the opening balance of the financial statements. Under the circumstances, the accuracy of the net cash and the bank balance of Kshs 24,334,399 as at 30th June 2013 could not be confirmed.

Management Response

The Management informed the Committee that CDA ventured into income generating activities in order to broaden its revenue base. Coral block production was one of those activities within Kilifi. The expenses incurred from the production site were not availed for posting in time. This delay caused the stated discrepancies. However, reconciliation was later done.

Committee Observations

The Committee observed that -

1. **(i) The amounts were reconciled and posted correctly.**
2. **(ii) The audit query was brought up due to delayed submission of relevant ledgers to the auditors during the audit cycle.**

Committee Recommendation

The accounting should always submit documents for audit within the required timelines

354. **NON-COMPLIANCE WITH STATUTORY REQUIREMENT FY 2013/14**

The Committee head that included in the balance of employee benefits obligation of Kshs. 81,866,239 as at 30th June 2014 under note 26 to the financial statements was unremitted staff pension contribution amounting to Kshs. 22,567,319. Similarly, possible penalties for non-compliance had not been accrued in the financial statements. In the circumstances, the management was in breach of the law.

Management Response

Management informed the Committee that after its restructuring in 2011/12, the authority experienced some funding challenges and hence was not able to remit staff pension contribution on time for several years. Continuous efforts to offset this shortfall were communicated to national treasury through the parent ministry. The authority paid the entire outstanding staff pension contribution amount upon receiving supplementary budget 2016/17.

Committee Observation

The Authority received a supplementary budgetary funding of Kshs. 269,000,000 in financial year 2015/2016 and cleared the statutory payments due.

Committee Recommendations

The Committee recommends that -

(i) **The authority should live within its means**
(ii) **The National treasury should endeavor to honour all the non-discretionary expenditure in any given fiscal year**

355. **RECEIEVABLES FROM EXCHANGE TRANSACTION FY 2013/14**

The Committee heard that the balance of outstanding imprest of Kshs 35,507,001.00 included multiple imprests held by 9 (Nine) staff amounting to Kshs. 22,816,171. The audit revealed that the Imprests were issued before surrender of the previously issued imprest. It was not clear why the Imprest was issued before the previous imprests were surrendered contrary to the government Financial Regulations and procedures. In the circumstance, the propriety of outstanding imprest of Kshs 22,816,171.00 as at 30th June 2014 could not be confirmed.

Management Response

The accounting officer stated that the imprests were issued on special circumstance to several project field staff who were in the Income Generating Activities projects which were under strict timelines in distant and remote locations. The said imprests were fully surrendered/recovered from these officers.

Committee Observations:

The Committee observed that -

(i) **The imprests were fully surrendered/recovered from the officers.**
(ii) **It was unclear how one could be issued with an imprest while holding another as the IFMIS does not support. This suggested that the said officers may have been temporarily cleared for the first imprest issued only to be reinstated later on.**

Committee Recommendations

The Committee recommends that -

(i) **The accounting officers should adhere to PFM regulations that impresets should be surrendered within 7 days of completion of the activity in which it was meant for**

(ii) **The then accounting officer should be reprimanded for approving issuance of imprest with pending surrender of previously issued imprest**

356. **EXCESS EXPENDITURE FY 2014/15**

The Committee heard that that the statement of comparison and actual amount indicated that the authority approved a total budget of Kshs, 208,900,000. However during the year under review, the Authority spent Kshs. 481,000,000 resulting to excess expenditure of Ksh. 272,100,000. There was no evidence availed for audit review to confirm that parent Ministry authorized the excess expenditure and approved by the National Treasury in line with Public Finance Management Act, 2012. In the circumstances, the management was in breach of the law.

Management Response

The accounting officer stated that after restructuring in 2011/12, the authority had experienced some funding challenges and hence was not able to clear its pending bills for several years. These included PAYE, Pension and other suppliers. The same was communicated to the parent Ministry which forwarded to the Treasury. However, CDA was not able to get additional funding to pay these debts despite requests to PS for Planning and PS for Treasury. The Authority's total expenditure for 2014/2015 included both capital and recurrent expenditure (Kshs. Kshs.206M Development Grants, 58M Recurrent, 8.7M Donor Funds KCDP and 50M AIA). The deficit of 157M arose as a result of underfunding leading to unremitted statutory deduction. There were also expenditure incurred in the previous year whose payments were posted in current year under review.

Committee Observations

The Committee observed that -

(i) **The excess expenditure of Ksh. 272,100,000 was used to clear pending bills accumulated over several years and included payments for PAYE, Pension and other suppliers.**

(ii) **The authority had not obtained approval from the National Treasury therefore I breach of the law.**

Committee Recommendation

The authority should always operate within the approved budget estimates. It the event of deviation, it should seek approval from the parent Ministry and the National Treasury pursuant to Section 12 of the State Corporations Act.

357. **PROPERTY, PLANT & EQUIPMENT FY 2014/15**

Motor Vehicles

The Committee heard that 3 motor vehicles were reposessed by Auctioneers during the year under review for non- settlement of debt owed by the Authority. The matter was still pending in court and the possible cost associated with this litigation had neither been disclosed nor provided for in the financial statements.

Consequently, the accuracy of the current value of property, plant and equipment balances of Ksh. 203,775,626 as at 30th June 2015 could not be confirmed.

Management Response

The accounting officer stated that Murphy Merchants Auctioneers took possession of the motor vehicles over a non-settlement of debt owed to MS Kithimba & Associates amounting to Kshs 5.5m The Authority cleared the outstanding amount of Kshs 5.5m after losing the appeal in court. Thereafter the Auctioneer demanded accumulated storage fees for the withheld motor vehicles amounting to Kshs.11m.The Authority disputed the amount and the matter was still pending in court. (Evans M. Maabi T/A Murphy Auctioneer vs CDA). The Authority sought guidance from the Attorney General who gave direction. The Auctioneer had since proposed to the Authority a sum of Kshs.4.5m which the Authority was considering to negotiate downwards.

Committee Observations

The Committee observed that -

(i) **The Attorney General had advised the Authority to settle the amount with the auctioneers and conclude the matter.**
(ii) **The vehicles in question have decreased in value over time.**
(iii) **CDA's brief to the Committee dated 29th May 2020 indicated that the vehicles were still with the auctioeers; the mater was pending in Court and that the auctineers were claiming Kshs. 4.5 million. Continued stay of the vehicle with the auctioneers will continue accruing storage charges.**

Committee Recommendation

The Authority should negotiate with the auctioneers and settle the matter urgently.

358. **COMPENSATION TO EMPLOYEES FY 2015/16**

Compensation of Employees

The Committee heard that the statement of receipts and payments for the financial year ended 30th June 2016 reflected employees' costs of Kshs. 129,153,256. However, the amount budgeted for compensation of employees for the year under review was Kshs. 58,000,000, thus resulting in an over expenditure of Kshs. 71,153,256. The management did not provide satisfactory explanation for the excess expenditure of Kshs. 71,153,256 and further for the over-expenditure has not been availed for audit review.

Consequently, the validity and legality of the expenditure of Kshs. 71,153,256 on employees cost for the year-end 30th June 2016 could not be confirmed.

Management Response

The Authority, after its restructuring in 2011/12, had experienced some funding challenges for several years. Efforts to offset this shortfall was communicated to national treasury through the parent ministry.

The over expenditure was funded through a supplementary budget and the recurrent printed estimates were enhanced in the subsequent years. (Annex 2 Ref PS –Planning letter and PS Treasury reply).

Committee Observations

The over expenditure was funded through a supplementary budget and the recurrent printed estimates were enhanced in the subsequent years.

The accounting officer was in breach of the law for spending outside the budget without treasury's approval

Committee recommendation

The Accounting officer should be reprimanded for over-expenditure without the requisite approvals.

359. **PROJECT EXPENSES FY 2015/16**

The Committee heard that Note 10 to the financial statements for the year ended 30th June 2016 reflected project expenses balance of Kshs. 45,808,738. However, the schedules availed for audit review indicated an amount of Kshs. 47,463,898, resulting in an explained variance of Kshs. 1,655,160.

In addition, budgets for the projects were not availed for audit and as a result, it was not clear how the funds were allocated to the projects.

Further, Note 6 to the financial statements reflected other income of Kshs. 31,344,546, which directly related to these projects. There was therefore a net outflow of resources from the projects of Kshs. 16,119,352. This brought into question the viability and sustainability of the projects.

Further, requisitions and approval for the recruitment of the casual workers at a cost of Kshs. 11,970,437 and which costs were included in the project expenses were not availed for audit review. In consequence, the accuracy, validity and propriety of the projects expenditure of Kshs 45,808,738 for the year ended 30th June 2016 could not be ascertained.

Management Response

The managment informed the Committee that the CDA ventured into income generating activities in order to broaden its revenue base. The projects were budgeted in the annual budget

2015/16 under the development budget of Kshs. 8.8B as part of Capital Projects for the financial year

The project expenses balance related to income generating projects and totals to Kshs 45,808,738. However during the audit exercise schedules provided were not matching the financial statement. The correct matching schedules had since been provided.

The casuals were engaged as part of community support programme to provide employment to the local youth in the project sites. This initiative had helped reduce incidences of crime and drug abuse in the area.

A requisition from the Ag. manager Business development department to the Managing Director was done on 1st July 2016 for the youth engagement.

Committee Observations

The Authority provided two sets of schedules which did not tally; the first one was provided during the audit exercise schedules did not match the financial statement and subsequent matching schedules were provided. The auditors verified the documents and the matter resolved.

Committee Recommendation

The Committee recommends that Accounting officer should always provide all the documents requested for audit within the required timelines.

360. **AUDIT FEES (FY 2015/16 & 2017/18)**

The Committee heard that trade and other payables from exchange transactions balance of Kshs. 39,175,235 as at 30th June 2016 included an audit fees payable balance of Kshs. 1,429,360 owed to the office of the Auditor General. However, this amount had not been disclosed separately in the financial statements and further had been outstanding since the 2013/2014 financial year.

Management Response

The accounting officer stated that the amount of Kshs. 1,429,360 owed to the office of the Auditor General was reflected as part of creditors under trade and other payable from exchange transactions Kshs. 39,175,235. All audit fees had since been paid.

Committee Observations

The amount of Kshs. 1,429,360 owed to the office of the Auditor General was reflected as part of creditors under trade and other payable from exchange transactions. The amount has since been cleared.

Committee Recommendation

The matter was resolved

361. **COMMUNITY PROJECTS FY 2015/16**

The Committee heard that Note 18 to the financial statement reflected community projects/ work in progress balance of Kshs. 561,887,759. However, analysis of this items /projects indicated that some of them had been outstanding for over three years. Management had not explained the reasons why projects totaling Kshs. 79,531,920 had not recorded any movement at over the years and why they had not been handed over to the communities they were intended to benefit. Further, as most of the projects took more than one year to complete, they had been wrongly classified under current asset, rather than under property, plant and equipment as prescribed under the International Public Sector Accounting Standard 1. Consequently, the accuracy, validity and completeness of the community project balance of Kshs. 561,887,759 as at 30th June 2016 could not be ascertained.

Management Response

The Committee heard that the amount of Kshs. 561,887,759 related to projects implemented for and on behalf of the community. After completion, these projects wee handed over to the community and subsequently removed from the Authority's books.

The projects with no movements had not received adequate funding and were incomplete. The budget allocation for capital project was project specific and transfer of funds from project was strictly prohibited by the National Treasury and required approval. Furthermore, the amounts allocated were inadequate to complete the projects.

Committee Observation and recommendation

The explanation offered was satisfactory and therefore the matter resolved.

362. **RECEIVABLES FROM NON-EXCHANGE TRANSACTIONS FY 2017/18**

The Committee heard that the statement of financial position reflected receivables from non-exchanged transactions balance of Kshs, 51,965,210 as detailed in note 17 of the financial statement for the year ended 30th June 2018. Included in the balance was Kshs. 2,172,938 PAYE, Kshs.4, 800 Union, Kshs, 380,945 VAT receivable. However, ledgers availed for audit review reflected negative balances of the same figures. This resulted to netting off assets and liabilities which was prohibited by the IPAS1 paragraph 48 which states that *assets and liabilities, and revenue, and expenses shall not be offset unless required or permitted by an IPAS.*

In the circumstance, the accuracy and validity of the receivables from non-exchange transactions balance of Kshs.51, 965,210 as at 30th June 2018 could not be confirmed.

Further, the statement of financial performance reflected Board expenses balance of Kshs.7,134,558 as detailed in note 9 to the financial statements for the year ended 30th June 2018. However, re-computation of the board expenditure schedule amounted to Kshs.6,282,708 resulting to a variance of Kshs.851,850 and which had not been explained or reconciled.

In the circumstances, the accuracy and completeness of board expenses balance of Kshs. 7,134,558 as at 30th June 2018 could not be confirmed.

Management Response

The balances on PAYE and KUCFAW relate to double posting of monthly staff deductions which have been reconciled and corrected.

The VAT balances receivables relates to the VAT element for the supplier invoice booked in the system. The same has not been claimed from KRA.

The Board expenses for FY 2017/2018 was Ksh 7,134,558. The correct detailed board expenses analysis schedule has been availed for verification. (Annex 3.3 -Board Expense Analysis).

Committee Observations

The Committee observed that -

- **(i) The balances on PAYE and KUCFAW related to double posting of monthly staff deductions which had since been reconciled and corrected.**
- **(ii) The VAT balances receivables related to the VAT element for the supplier invoice booked in the system.**
- **(iii) The analysis schedule for the board expenses of Ksh 7,134,558 had been availed for verification.**

Committee Recommendation

The audit query had been resolved.

363. **PROPERTY, PLANT AND EQUIPMENT FY 2017/18**

Land Balance Payables

The Committee heard that the statement of financial position reflected trade and other payables from exchange transaction balance of Ksh. 25,874,990 as at 30th June 2018. Excluded in this balance was Ksh. 5,199,500 with respect to land balance payables. Records availed for audit reveal that the purchase price on one of the pieces of land (Mwapula/Magogoni plot No. 432/1211) of 49 acres was for Ksh. 9,800,000 as per the sales agreement, and the Authority paid Ksh. 4,600,500 and had an outstanding balance of Ksh, 5,199,500 as at 4th August 2014. However, as per Land report tabled at the 76th Full Board meeting held in September 2018, it was reported that the total purchase price of Ksh. 9,800,000 had been paid but the land was unscrupulously sold by a squatter to a private investor. The case was pending in Court.

Consequently, the accuracy and completeness of the carrying values of the property, plant and equipment totaling to Ksh. 410,600,629 as at 30 June 2018 could not be confirmed.

Management Response

The accounting officer informed the committee that the Authority purchased two pieces of land Mwapula/Magogoni plot no 432 measuring 22 acres at a purchase price of Ksh 4.4m and plot no 1122 measuring 27acres at a purchase price of Ksh 5.4 M at Jaribuni, Kilifi County. The land was to be used as a proposed Ballast Crushing project. The Sale Agreements were signed on 27th Feb 2012 for the two plots. The first instalment of kshs. 4,000,000,000 was paid after signing the agreement. The balance was to be paid in quarterly basis after the first installment.

After the initial payment, the Authority took possession of Plot No 432 to start boulders extraction. Immediately thereafter, conflict on the ownership of land among the community members followed and CDA staff were attacked and chased by rowdy community members from the site. The same matter on the ownership dispute went to the High Court of Malindi.

The court ruled in the community member's favour. The Authority appealed against this judgement in the Court of Appeal. (Case No.ELC No.35 & 146/2014)

Committee Observations

The Committee observed that -

(i) The matter was pending in Court

(ii) The Authority may not have done proper due diligence before purchasing the impugned land.

Committee recommendations

The Committee recommends that -

(i) **The authority should apply for speedy conclusion of the matter in Court**

(ii) **The accounting officer should always do a proper due diligence before committing the taxpayers' money in any investment**

364. **MEDICAL EXPENSES FY 2017/18**

The Committee heard that Note 7 to the financial statement for the year ended 30th June 2018 reflected medical expenses of Kshs.5, 305,995.75. Review of payment voucher no. 10775 revealed procurement of medical cover for staff through tender number REF: CDA T-10/2017-

2019 and contract of Kshs. 13,304,522 was awarded to AAR Insurance. However, approved budget for the same was not availed for audit review. Consequently, the propriety of the medical expenses of Kshs.5, 305,995.75 for the year ended 30 June 2018 could not be ascertained.

Management Response

The accounting officer informed the Committee that the medical Cover for staff is included in the staff expenses budget for 2017/2018 under PE. The Budget for 2017/2018 was availed for audit review. The annual cost for the medical contract was Ksh. 13,304,522. However, as the contract was entered into five months to the end of financial year, the expenses were apportioned pro-rata for the remaining five months (13,304,522/12). The amount of 5.305,995.75 reflected in the financial statement was the outstanding amount which was cleared in the following financial year.

Committee Observations

The Committee observed that -

(i) **The budget for 2017/2018 was availed for audit review. The annual cost for the medical contract was Ksh. 13,304,522.**
(ii) **As the contract was entered into five months to the end of financial year, the expenses were apportioned pro-rata for the remaining five months (13,304,522/12). The amount of 5.305,995.75 reflected in the financial statement was the outstanding amount which was cleared in the following financial year.**

Committee Observation and recommendation

The explanation offered was satisfactory and the query was resolved.

365. **OTHER MATTER (Budgetary Control and Performance) FY 2017/18**

Revenue Budget

The Committee heard that during the year under review, the Authority`s revenue budget amounted to Kshs. 313,274,000 against actual disbursement of ksh .307,969,000 (98%), thus resulting to net under disbursement of ksh.3,305,000 or 2%.

The Authority had a slightly negative balance of kshs. 5,305,000 or 2% on its revenue budget during the year under review.

Management Response

The accounting officer informed the Committee that the stated public contributions and donations were funds received from donor agencies through the implementing entities and were based on approved workplans. The amounts were affected by exchange rate fluctuations between the time of budget and when funds are disbursed. The Authority had no control over this. Further prices of goods change during the year due to various factors.

Expenditure Budget

The Committee heard that during the year under review, the Coast Development Authority had a final budget of Kshs. 313,274,000 against actual expenditure of Kshs.300,296,000, resulting to an overall under absorption of Kshs.12,978,000 or 4%.

Underutilization of budgeted amount of kshs.23,656,000 or 4% was an indication of non-implementation of planned development projects negatively affecting community development and empowerment. Further, approval for the over expenditure of Kshs.23,656,000 was not availed for audit review as per Section 12 of the state Corporations Act, Cap 446 *which states that no state corporation shall, without prior approval in writing of the Minister (Cabinet Secretary) and the treasury ,incur any expenditure for which provision has not been made in annual estimate prepared and approved in accordance with section 11.* The management was therefore in breach of the law.

Management Response

The accounting officer averred that the amounts reflected as underutilization of budgetary allocation related to:

(i) Staff medical Scheme was budgeted for 30Million but actual expenditure was 13,304,522 Million. This was through a competitive bidding by service providers where CDA managed an affordable bid.

(ii) A Senior Manager had retired during the period and was not replaced hence reducing the actual expense on Employee Compensation.

Committee Observations

The Committee observed that -

(i) The variation in the budget was below the 10% threshold provided by law.

(ii) The under expenditure of Kshs. 17,000,000 in the financial year under consideration was due to a cheaper medical cover and absence of senior staff who hadn't been replaced.

Committee recommendation

The matter was resolved.

3.40 COAST WATER SERVICES BOARD (CWSB) (FYS 2015/16 TO 2017/18)

EXAMINATION OF REPORT OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF COAST WATER SERVICES BOARD FOR THE FINANCIAL YEARS 2012/13 TO 2017/18

Mr. Jacob Torrut, the Managing Director of the Coast Water Services Board accompanied by Ms. Harriet Ngeera (Finance Manager), Mr. Martin Tsuma (Technical Manager) and Mr. Stanslaus Jira (Procurement Manager) appeared before the Committee to adduce evidence on the audited accounts of the Coast Water Services Board for financial year 2015/16 to financial year 2017/18.

366. **OTHER MATTER PROPERTY PLANT & EQUIPMENT (FY 2015/16)**

The Committee heard that Property, Plant and Equipment balance of Kshs 1,356,447,793 as at 30th June 2016 excluded assets of undetermined value transferred to the board from the Ministry of Water and irrigation and National Water Conservation and Pipeline Corporation pursuant to Legal Notice No.101 of 12th August 2005.

Additionally, land for WaSSIP project (Mkanda dam) was not factored in the financial statements and was not updated in the fixed asset register. Further, more than a third of the Board's land in Shanzu had been encroached by private developers.

In the circumstances, the property and equipment balance of Kshs 1,356,447,793 as at 30th June 2016 could not be ascertained.

Management Response

The accounting officer told the Committee that Coast Water Services Board inherited assets previously owned by Ministry of Water and Irrigation and National Water Conservation and Pipeline Corporation as per Act 2002. However, the inherited assets were not verified and also the handing over documents were not signed and therefore the asset listing had not been confirmed.

The board compiled an asset inventory of all assets handed over for verification. Also the board had in place an asset register of all assets acquired since inception and this had been incorporated in the Financial statements.

The final process of verification for handover was being handled by a task force composed of members from the ministry of water, CWSB and National pipeline corporation and the final report was awaiting directions from the Ministry

The land acquired under Mkanda Dam was meant for wayleave for the dam from people who had encroached the same as a result the Dam now has a large service area which has been fenced off by the board. No title was pursued as this was a community project which had already been handed over back to the county after rehabilitation. The acquisition was factored in the financial statements under resettlement compensation expense both for WaSSIP and Mkanda Dam.

The Shanzu land under private developers is in the Asset Inventory for assets handed over so as to facilitate the process of transfer. CWSB had since obtained CAVIETS on the Shanzu land among others and the process of recovery was ongoing. CWSB jad engaged NLC on land issues and the caveats had been placed on all land.

Committee Observations

The Committee observed that -

i) **The inherited assets previously owned by Ministry of Water and Irrigation and National Water Conservation and Pipeline Corporation were not verified and also the handing over documents were not signed and therefore the asset listing had not been confirmed.**
ii) **The matter was handled in the 21st Report of the Public Investments Committee on audited accounts of State Corporations.**
iii) **CWSB has engaged NLC on land issues and caveats have been obtained on all their land as per the recommendations of the 21st PIC Report. Of the 53 contested pieces of land, 40 were in the Shanzu area.**
iv) **The Mkanda dam project was a community project that was completed and handed over to the community.**

Committee Recommendations

The Committee recommends that -

(i) **Management should follow up the matter with the National Land Commission to secure titles for the land within three months of adoption of this report.**
(ii) **The Committee on Implementation should follow up the matter pursuant to its mandate**

367. **TRADE AND OTHER RECIEVABLES FY 2015/16 TO FY 2017/18**

Water Debts

The Committee heard that the amount owed to the board included long overdue debts of Kshs 84,427,767 due from Mombasa water Company with no reason provided for non-recovery.

Salary Advances and Imprest

Included in the receivables was Kshs 4,807,409 overdue imprest which was yet to be recovered. Salary advances totaling Kshs 2,312,284 were outstanding as at 30th June 2016.

Management Response

The accounting officer informed the Committee that the board had been facing huge challenges in collecting the pending water bills and when pressure was exerted to the water providers to pay by way of disconnection, the matter got political and this made it difficult for the board to collect. In 2016, the board engaged directly with the counties in an effort to collect the debt and the counties made undertakings to clear the bills. However, the counties failed to owner their undertaking despite several follow ups. The board resolved to engage the services of a debt collector to assist in collecting the old debt and currently the progress ws being awaited from the debt collector.

Out of the outstanding imprest of Kshs 2,687,640.00 was in respect to staff who had left the Board through natural attrition and other ways and this had been provided for in the Financial statements accordingly. The balance of Kshs 2,119,769 had been accounted for accordingly as it related to staff who were out of station on official duty at close of the Financial Year.

Salary Advances was given to the staff on a continuous basis as per the existed Human Resource Policy and recovery was a continuous process through the payroll. The balances not recovered as at 30th June 2016 were shown in the financial stalemates as debtors.

Committee Observations

The Committee observed that -

(i) **The Board engaged directly with the counties which made undertakings to clear the bills. However, the counties failed to owner their undertaking despite several follow ups.**
(ii) **The board resolved to engage the services of a debt collector to assist in collecting the old debt and currently the progress is being awaited from the debt collector.**
(iii) **Of the outsanding imprests queried, Kshs 2,119,769 had been accounted for by staff who were out of station on official duty at close of the financial year. Kshs 2,687,640.00 was in respect to staff who had left the Board through natural attrition.**

Committee Recommendations

The Committee recommends that -

(i) **The Board should sue Counties which undertook to clear their long outstanding water bills but had failed to do so.**

(ii) **The presidential directive on clearance of all pending bills should be implemented**

(iii) **Management should seek write off for imprest held by deceased staff after ascertaining that it cannot be recovered from their estate.**

368. **TRADE & OTHER PAYABLES FY 2015/16 TO FY 2016/17**

Unremitted Deductions

The Committee heard that as at 30th June 2016, there was unremitted statutory and other deductions of Kshs 61,587,916 and also Kshs 94,496,967 in respect to the paymaster general.

Audit Fees

The audit fee was not reconciling with an amount of Kshs 396,519 between the records of the Auditor general and the records maintained by CWSB.

Management Response

The accounting officer informed the Committee that the situation was greatly contributed by the failure by WSPs to pay their bills in full with collection efficiency being about 50%. The board was not receiving any recurrent budget support from the Treasury and there was no other way of settling the bills. During the F/Y 2018-2019, the board was allocated a recurrent budget support which greatly supported clearance of the outstanding statutory obligations.

The office of the auditor general was requested to submit their statement for reconciliation. The amount would be settled once reconciliation was complete.

Committee Observations

The Committee observed that -

(i) **The Board's financial situation affected the ability to settle audit fees.**

(ii) **Reconciliation between the Board and the auditor was underway to determine the audit fees due.**

(iii) **The Board was currently meeting its statutory obligations.**

Committee recommendation

The authority should expeditiously reconcile the audit fees and settle the matter

369. **WORLD BANK LOAN FY 2015/16 TO FY 2017/18**

The Committee heard that the repayment of a loan from World Bank was yet to commence despite falling due and that the said loan 373 as being translated using transactional rates rather than closing rate.

Management Response

The accounting officer informed the Committee that the repayment of the loan was pegged on water payment by Water Service Providers (WSPs) and a loan repayment component was factored in the approved water tariff. However, WSPs had not been meeting their obligations in respect of bulk water payments.

This situation made it difficult for CWSB to service the loan since there was no other source of income to be applied for loan repayment. Provisions were made through water Act 2016 and tariffs for the period 2017-2018 to 2019-2020 for WSPs adjustment for bulk water to allow to loan repayment. However, the water companies could not remit any amount on loan.

Repayment was expected to commence once the appointed Debt collector fulfilled his obligation.

On loan translation, the loan amount was recognized by CWSB based on actual amount in Kshs currency.

Committee Observations

The Committee observed that -

(i) **The Board's financial situation affected the ability to service the loan obligations.**

(ii) The loan amount was recognized by CWSB based on actual amount in Kshs currency

Committee Recommendation

The Committee observed that -

i) **The Board should disconnect water to entities that were not paying their water bills as the lack of revenue was impacting the Board's ability to meet its financial obligations.**

ii) **All the counties that owe CWSB should pay all the pending pills as per the presidential directive and treasury circular**

370. **BOARD EXPENSES FY 2015/16 TO FY 2016/17**

The Committee heard that the statement of comprehensive income indicated that Kshs 19,617,680 had been incurred as board expenses against a budget of Kshs 15,000,000,000. The approval for the excess expenditure of KShs. 4,617,680 was not availed for audit verification.

The board members were observed to have attended public events and other unplanned activities thus incurring expense outside the board calendar amounting to Kshs 5,129,931 for the year ended 30th June 2016.

The number of board members was also noted to be in excess of the maximum of 7 that is required by Mwongozo code.

Management Response

The accounting officer stated that the board expenditures were based on approved Board calendar for the Year. The budget for the board was adjusted by five million after the board was fully constituted and the same was approved by the full board.

Board members were appointed through the parent ministry. CWSB did not have any direct role in the appointment of board members. This was by the appointing authority as the law provides. However, State Corporation Act section 6(1) has a provision of seven board members in addition to the Chairman, Chief Executive and representatives from the National Treasury and the parent ministry. Mwongozo basically provides guidelines for the best practices but it is not law. The current board was composed of eleven members including the representative of the national treasury and the parent ministry. It was also noted that in the introductory page of the MWONGO code of governance for state corporations, it is stated that 'in the event that the provision of this code are in conflict with any sector specific code of governance, the higher standard shall prevail.

Committee Observations

The Committee observed that -

(i) **The Board did not seek permission from the National Treasury to adjust the budget contrary to Section 12 of the State Corporations Act.**

(ii) **Though the Mwongozo code gives an ideally number of Board membership to be 7, it does not oust the provisions of Section 6(1) of the State Corporations Act and therefore CSWB was not in breach of the law.**

Committee Recommendations

The then board of CWSB should be reprimanded for over expenditure without approval fromm the National Treasury pursuant to Section 12 of the State Corporations Act

371. **OTHER MATTER FY 2015/16**

Staff acting for More than 6 months

The board had 6 staffs in acting capacity for more than 6 months which was against the operating guidelines.

Management Response

The staff were in acting capacity awaiting appointment of a full board of Directors to undertake recruitment for the position. These positions had since been substantially filled.

Committee Observations

The Committee observed that -

(i) **It was against the established Human resource practice to have staff acting in positions for more than 6 months.**

(ii) **The positions have since been filled**

Committee recommendation

The Board should desist from having staff acting for more than 6 months.

372. **OTHER MATTER FY 2016/17**

Revenue Budget

The Committee heard that during the year under review, the Board's revenue budget was Kshs 1,411,185216 against actual collections of Kshs 2,063,618,780 (146%), thus resulting to over collection of Kshs 652,433,564. Collection grants received form the Government was more than double the budget amount by 601,676,066 or 166%. Also, other total income exceeded the budgeted amount by Kshs 3,874,909 of 93%.

Management Response

The accounting officer concurred with the audit observation but stated that the budget for revenue was within expenditure forecast. However, during the year under review, more funds were received from the treasury through the parent ministry to cater for emerging issues like drought, Equalization funds, priority projects among others hence the difference in receipts as these funds were not captured in the forward budget.

Committee Observation and recommendation

The explanation given was satisfactory and the query resolved.

Over-Expenditure

The Committee heard that during the year under review, the Board had budgeted to spend a total of Kshs 1, 487463,891 on its various programs and activities. However, the Board spent Kshs 1,741,801,426, thus exceeding the overall budget expenditure by Kshs 254,337,535 or 17%.

During the year under review, the Board had budgeted to spend Kshs 15,948,000 on four (4) activities and programs but ended up spending KShs. 245,075,285 resulting to over absorption of Kshs 229,127,285 or 1,437%.

The Board did not provide a revised budget for approval of the over expenditure of Kshs 229,127,285 or 1,437%.

Management Response

The accounting officer informed the Committee that this was not over expenditure but project related costs under World Bank Funding and the same had been approved under the World Bank budget approval under GOK counterpart funding for World Bank operations and the Contracted Professional services relating to Consultancy services for supervision of the said projects.

Under Expenditure

The Committee heard that the Board had budgeted to spend Kshs. 340,070,304 on 28 activities and programs but ended up spending Kshs 227,995,225 resulting to under absorption of Kshs 112,075,079 or 33%.

The management did not provide satisfactory explanation for the failure to utilize all approved budgetary provisions. Underutilization of budget resulted in non-implementation of planned activities and programs.

Management Response

The under expenditure was as a result of less revenue received from sale of Bulk water to water companies. Due to partial payments, the Board had no other source of revenue to meet the said budgeted expenditure as per the approved budget.

Committee Observation and recommendation

The explanation offered by the accounting officer was satisfactory and therefore the query resolved.

373. **FINANCE COSTS FY 2017/18**

The Committee heard that the statement of financial performance included finance costs consisting of interest incurred on three loans as per interest amortization schedule availed to support the expenditure. Two of the loans were from World Bank –IDA. However, only two loan amortization scheduled for loans obtained from World Bank-IDA were availed.

Comparison of the loan amortization schedule and finance costs schedule supporting financial statements for the loans revealed a variance of Kshs.37,618,420 between interest as per loan amortization schedule and as disclosed in financial statements.

Management Response

The accounting officer informed the Committee that loan interest of KShs 72,169,028 was calculated by the board as observed using interest rates applicable as per loan agreements but not as per the treasury loan schedules and hence the difference. The interest difference would be adjusted in the next financial year (2019) as per treasury amortization schedules.

Committee Observations

The difference arose from use of different amortization schedules

Committee recommendation

The board should use an amortization schedule provided by treasury and adjust its books accordingly.

374. **ADMINISTRATIVE EXPENSES FY 2017/18**

Depreciation charge of Kshs.170,143,747

The Committee heard that the audit recalculation of depreciation charge for year amounted to Kshs.110,278,473 resulting to unexplained variance of Kshs.59,865,274.

Management Response

Management indicated that the recalculation for depreciation was based on straight line basis. However, the depreciation charges reflected was computed on Reducing balance basis hence the difference.

Committee Observations

The Board was fond of using different accounting methods hence the variance.

Committee recommendation

The Board should stick to one method of depreciating its assets for constancy as provided for under the IPSAS.

3.41 KENYA MARITIME AUTHORITY (KMA) (FYS 2015/16 TO 2016/17)

EXAMINATION OF REPORT OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF KENYA MARITIME AUTHORITY FOR THE FINANCIAL YEARS 2015/16 TO 2016/17

Maj. (Rtd.) George Okongo, the Director General of the Kenya Maritime Authority accompanied by Mr. Joash Akuma (Chief Finance Officer), Mr. Seth Oluoch (Procurement Manager), Mr. John Omingo (Head of Commercial Shipping), Mr. Cosmas Cherop (Head, Corporate Services), Mr. Bakari Mwakuyu (Internal Audit Officer), Mr. Juma Ahmed (Research Officer), Mr. Salim Muslih (ICT Officer) and Ms. Raya Salim (Legal Officer) appeared before the Committee to adduce evidence on the audited accounts of the Authority for financial year 2015/16 to financial year 2016/17.

375. **TRADE AND OTHER PAYABLES FROM EXCHANGE FY 2015/16**

The Committee heard that the Authority's statement of financial position as at 30th June 2016 reflected a balance of Kshs 43,431,930 in respect of trade and other payables from exchange which had been arrived at after set-off against various debit balances totaling Kshs 2,497,467. The set off contravened International Public Sector Accounting Standard No.1 which prohibit netting off debit and credit balances.

Consequently, the accuracy and completeness of trade and other payables from exchange of Kshs 43,431,930 as at 30th June 2016 could not be confirmed.

Management Response

The accounting officer acknowledged the advice from the OAG and reversed all items that had been netted off against the outstanding payable balance to comply with IPSAS 1.The Authority dealt with the negative payables balances through adjustments of the creditors' accounts.

Committee Observations

The Committee observed that -

(i) **The authority failed to adhere to the reporting standard prescribed by the IPSAS**
(ii) **All items that had been netted off against the outstanding payable balance were reversed to comply with IPSAS 1**
(iii) **The Authority adjusted the creditors' accounts to deal with the negative payables balance.**

Committee Recommendation

The Authority should adhere to the reporting standard under IPSAS at all times

376. **CASH AND CASH EQUIVALENTSFY 2015/16**

The Committee heard that Note 16 to the Financial Statements reflected Cash and Cash Equivalents balance of Kshs. 1,093.971,702 as at 30th June 2016. Audit examination of the bank reconciliation statements revealed that included in the reconciling items were stale cheques totaling Kshs 2,480,014.50 outstanding for more than twelve months reversed in the cash book. In addition, receipts in bank amounting to Kshs 238,715.10 were not recorded in the cash book. The management attributed their non-clearance to lack of information on the depositors and as a result it was not clear how long the transactions would remain unrecorded.

In the circumstance, the accuracy and completeness of cash and cash equivalents balance of Kshs 1,093,971,702 as at 30th June 2016 could not be confirmed.

Management Response

The accounting officer informed the Committee that the bank reconciliations as at 30th June 2016 did not have stale cheques as these are reversed on the date/month they become stale. The items which were outstanding for more than twelve months, totaling Kshs 2,480,014.50, were direct deposits into the Authority bank account without sufficient depositors' details to enable matching with relevant invoices.

The cashbooks were updated with the deposits by recognizing them as liabilities. Whenever complete details of such deposits were received, the customer account was credited with a corresponding entry to the liability account (Un-presented Deposits).

Committee Observations

The Committee observed that -

- **(i) The explanation offered was satisfactory**
- **(ii) There was no offsetting debit balances in 2016/17**
- **(iii) The audit query was resolved**

Committee Recommendations

The Committee recommends that the Authority should make changes to its payment system to provide for traceability of payments received including use of proforma invoice and/or automation of payment.

377. **BOARD OF DIRECTORS COSTS FY 2015/16**

The Committee heard that Note 11 to the financial statements reflected a balance of Kshs 48,244,651 in respect of Board of Directors costs for the year ended 30th June 2016. Analysis of the expenditure revealed that the Board held thirty (30) sittings during the financial year and as a result, meeting costs rose by Kshs 31,230,001 or 184% of the expenditure balance of Kshs 17,014,650 reported in the year 2014/2015. In addition, examination of expenditure records revealed that the sitting allowances totaling Kshs 4,400,000 were paid to several board members but minutes of the meetings were not presented for audit. In addition, available evidence indicated that the meetings related to attendance at Agricultural Society of Kenya shows, KECOSO games and boat launches in Kisumu and Lamu counties, which were administrative functions for execution by management.

Consequently, the propriety and regularity of Board of Directors costs totaling Kshs 4,400,000 for the year ended 30th June 2016 could not be confirmed.

Management Response

The management informed the Committee that the Board of Directors held more meetings because most of the board members were new and had to meet regularly to address a number of pending issues. Among this issue were staff unrest relating to promotion and staff recruitment that had reached the media and the Ministry level.

The said activities under query, which the Board members attended, that is - KECOSCO & ASK shows were not merely Management functions but as well opportunity for the Board to build cohesion and integration with other stakeholders in the Ministry of Transport & Infrastructure. The KECOSCO (Kenya Communications Sports Organization) games are held annually and is a premier event of the year attending by the following entities:

1. Kenya Maritime Authority
2. Ministry of Information Communication & Technology
3. Ministry of Sports, culture & the Arts
4. Postal Corporation of Kenya
5. Kenya Ports Authority
6. Kenya Airports Authority
7. Kenya Civil Aviation
8. Communications Authority of Kenya
9. Kenya Ferry Services
10. Kenya Broadcasting Corporation
11. Kenya Film Classification Board.

The KECOSCO games originated from the East African community which organized the first games under the East African Community's inter Corporations and Associated Organizations (EACASO). The authority had won several accolades and brought honor as a dynamic and worthy participant in various games. The attendance and participation of the Board and senior management had been an exceptional boost to the morale and results.

As regards the A.S.K shows, the Board of Directors had been participating alongside Management in the Shows under the publicity and awareness programs for about eleven years running. The Board, as strategic policy maker, was an important participant in the task of enhancing the public image, identity, creating awareness, sensitizing the public on the role and mandate of the Authority. The forum creates an opportune arena for the dissemination of maritime matters and a feedback platform. Notably, the President of the Republic of Kenya graced the show and awarded the best performing exhibitionists after a Luncheon where Directors of State owned Organizations attend and interact with the Head of State. Undoubtedly this was a mandatory meeting that our Board of Directors must attend and it was usually only the closing and opening ceremonies presided over by the Cabinet Secretary.

In all these functions the Board members had been invited by way of an invitation letter as instructed in the Guidelines on the terms and conditions of service for state Corporations 23rd November 2004. Clause C' and the circular letter dated 14th January 2008 ref OP/CAB.17/34A stated thus *"an activity that bears directly on the business of the State Corporation for which the Chairman or Board member is invited in writing by the Chief Executive Officer to attend."*

Further, these activities did not require Minutes ordinarily as reports were prepared capturing the gains made during the forums.

Committee Observations

The Committee observed that -

(i) Board members attended these functions, that is - KECOSCO & ASK shows, having been invited by way of an invitation letters. There were no minutes taken in such meetings.

(ii) Board meetings increased partly because the Membership was new and needed induction.

Committee Recommendation

The Salaries and Remuneration Commission, in consultation with the Inspectorate of State Corporations should put a caveat on the number of meetings that can be remunerated within a particular quarter.

378. **PUBLICITY AND AWARENESS FY 2015/16**

The Committee heard that the general office expenditure balance of Kshs 337,595,541 reported in Note 15 to the financial statement included publicity and awareness costs balance of Kshs 64,890,008. However, audit verification revealed that the payments were made to various media firms for print, outdoor and television advertisements contrary to circular Ref. MIC/G/2/4 dated 03 March 2016 by Ministry of Information, Communication & Technology which required all government entities to place their advertisements through the Government Advertising Agency. In addition, there was no documentary evidence showing that the media firms were identified and selected in accordance with the requirements of the Public Procurement and Asset Disposal Act, 2015.

The Authority breached the government regulations on placement of medical advertisements and as a result the propriety and regularity of publicity and awareness expenditure balance of Kshs 64,890,008 for the year ended 30th June 2016 cannot be ascertained.

Management Response

The management informed the Committee that prior to March 2016, selection of Media houses to run KMA advertisements were done through the Authority's Procurement section, in line with the existing procurement guidelines.

From March 2016, all the Authority's advertisements were handled by the Government Advertising Agency as directed by the official communication to the Authority from vide Government Circular, Ref. MIC/G/2/4 dated 3rd March, 2016, from the Ministry of Information, Communication and Technology, Office of the Principal Secretary. Payments were made to the media houses in accordance with GAA's directive that appeared on the invoices and circular.

Committee Observations

The Committee observed that -

(i) **There was no evidence to show that the procurement process was followed.**

(ii) **The adverts from March 2016 had been paid in line with the Government Advertising Agency's approval.**

Committee recommendations

The Committee recommends that -

(i) **The then Director General of KMA should be reprimanded for non-adherence to the procurement law and Article 227(1) of the Constitution on competitive procurement.**

(ii) The Director General should adhere to the procurement law at all times

379. **DUTY TRAVEL ALLOWANCES FY 2015/16**

The Committee heard that the general expenditure balance of Kshs 337,595,541 reported under Note 15 to the financial statements included duty travel allowance payments totaling Kshs 66,195,601 paid in the year under review. Expenditure under the account increased by Kshs 34,374,540 or 108% of the balance of Kshs 31,821,061 reported in the previous (2014/2015) financial year. In addition, records presented for audit revealed that during the year under review, foreign travel allowances totaling to Kshs 13,454,426.40 were paid to various staff without evidence of travel authority from the Permanent Secretary of the parent Ministry. This was contrary to the revised code of Regulations, 2006 and Circular OP/CAB.9/9 by the Head of Public Service which require officers traveling abroad to seek clearance from the Permanent Secretary of the Parent Ministry.

In the circumstances, the propriety of the duty travel allowance expenditure totaling to Kshs 13,454,426.40 for the year ended 30th June 2016 could not be ascertained.

Management Response

The management informed the committee that the Authority's interpretation of the circular was that is only the CEO and Board members who were required to seek travel clearance from the Permanent Secretary of the parent Ministry. All the foreign travel for the Director General and the Board members were sought from the Permanent Secretary. The observations were noted by the management and Government circulars which provide such guidelines are adhered to.

Committee Observations

The Committee observed that -

(i) Through his brief to the Committee dated 29th May 2020, the Director General of KMA submitted clearance letters for Director General and the Board's travel to London between 2nd and 6th November 2015 from the parent Ministry and Head of Public Service.

(ii) **There was no justification for a marked increase of foreign travels.**

Committee Recommendation

The Committee recommends that -

(i) **The Board and the DG should always seek permission from parent Ministry before travelling abroad.**

(ii) **The EACC should investigate whether there was any money lost in the impugned travels.**

380. **PROPERTY, PLANT AND EQUIPMENT FY 2016/17**

The Committee heard that the statement of financial position reflected a balance of Kshs 396,495,684 as at 30th June 2017 in respect of property, plant and equipment as detailed in Note 22 to the financial statements. Audit verifications revealed the following anomalies.

a. Construction of office block Kshs. 1.825billion

Trade Receivables from exchange transactions balance of Kshs 266,166,914 at note 17 to the financial statements included other non-trade figure of Kshs 183,837,788 as at 30th June 2017. The balance of Kshs 183,837,788 included advance payment of Kshs 182,523,994 to the contractor for construction of office headquarters. Information available indicated that the contract was awarded to the winning bidder at the price of Kshs 1,825,239,939. However, audit verification of the procurement records revealed the following:

b. Correction of the tender sum

The tender sum was corrected upwards by the tender evaluation committee leading to an increase of Kshs 97,063,521 on the bidders' quote of Kshs 1,728,176,418 to award price of Kshs 1,825,239,939. This was contrary to Section 82 of the Public Procurement and Assets Disposal Act, 2015 which states that "*the tender sum as submitted and read out during the tender opening shall be absolute and final and shall not be the subject of correction, adjustment or amendment in any way by any person or entity*". Although the management argued that the decision was based on section 50 of the public Procurement and Disposal regulations, 2006, however, section

82 of the Public Procurement and Asset Disposal Act, 2015 is not subject to application of regulations. As a result, the decision was irregular. Consequently, the irregularity led to the loss of Kshs 97,063,521 of public funds.

Management Response

The tender for the development of the KMA office block was preceded by prequalification of main contractors. The prequalification document was detailed enough with preliminary and technical evaluation criteria in the prequalification document. Four firms were prequalified and thus invited to tender i.e.Dinesh Construction Ltd, EPCO Builders Ltd, Parbat Siyani Construction Ltd and China Zhongxing Construction Co. Ltd.

Having considered the preliminary and technical evaluation criteria, the firms were invited and issued with bills of quantities for the proposed works. This involved filling in the BQs and the tender prices. This evaluation involved verification of the unit prices and quantities in the BQs from all the bidders to ensure that all tender sums submitted by all bidders are correct.

Section 82 of the Public Procurement and Asset Disposal Act, 2015 states *that the tender sum as read out in the tender opening is absolute and cannot be changed.* The evaluation and error correction was based on section 50 (3) of the Public Procurement and Disposal Regulations, 2006.

The Authority was guided that the Public Procurement and Asset Disposal Act, 2015 prevails upon the Public Procurement and Disposal Regulations, 2006 irrespective of the Interpretation and General Provisions Act (2014) and that as a result of the development, the amendment of the contract becomes necessary to revert the contract sum from corrected sum to the figure read out at tender opening. Even after reversion, the contractors' tender remains the most financially responsive either way and does not affect the award of the contract.

The Authority (KMA) embarked on the process of correcting the tender from Kshs. 1,825,239.939.24 to Kshs. 1,728,176,418.00 which was the amount that was read out at the tender opening. This was acceptable to the Authority (KMA) and EPCO Builders Limited and the principal agreement was amended by way of addendum no. 01 thus reverting the tender sum that was read out at time of tender opening in accordance.

Committee Observations

The Committee observed that -

i) **The contract for the project was signed on 30th January, 2017 and an addendum to the contract done on 26th July, 2018.**

ii) **The project was advertised in August 2016 with 12 firms submitting proposals for pre-qualification. Following evaluation, four firms were found to be responsive and these four were invited to tender on 29th November, 2016. The tender was closed on 23rd December, 2016.**

iii) **Due diligence on the lowest evaluated bidder was carried out on 2nd January, 2017 and the contract award was done on 11th January, 2017.**

iv) **The tender sum was corrected upwards by the tender evaluation committee leading to an increase of Kshs 97,063,521 on the bidders' quote of Kshs 1,728,176,418 to award price of Kshs 1,825,239,939.**

v) **The Management based the decision to adjust the tender sum on section 50 of the Public Procurement and Disposal Regulations (2006). The contract was however signed on 30th January, 2017 and was therefore governed by the provisions of the Pubic Procurement and Disposal Act (2015).**

vi) **The decision to adjust the tender sum was contrary to Section 82 of the Public Procurement and Assets Disposal Act, 2015 which states that "the tender sum as submitted and read out during the tender opening shall be absolute and final and shall not be the subject of correction, adjustment or amendment in any way by any person or entity".**

vii) **The information on the changes to the tender sum was communicated to all the bidders (bidders confirmed this to the Committee) who were agreeable to the change. The matter was also captured in the letter of award for the contract.**

viii) **The Public Procurement Regulatory Authority visited the site of the project in October 2017 and advised the Authority to reconcile the arithmetic error and the contract sum be maintained at Kshs. 1,728,176,418.**

ix) **The matter was investigated by the EACC , forwarded files to the DPP who, on 9th June 2020, approved prosecution of the tender evaluation committee members and the then Acting Managing Director of the KMA**

Committee Recommendation

The Committee recommends that -

i) **The then tender committee should be reprimanded for negligence and failure to apply the procurement law to the latter.**
ii) **The DPP should apply fpr speedy prosecution of all the parties charged in court regaring the matter**

i. Non-disclosure of conflict of interest.

Information available indicated that project's lead consultant and who was part of the bid evaluation team had previously worked with one of the bidders that eventually won the contract. However, the consultant did not declare the conflict of interest as required by Section 66 (6) of the Public Procurement and Assets Disposal Act, 2015.

Management Response

The contractor, Lins Consult and Hill Associates were the main contractor's lead consultant and environmental consultant in the Kibera Slum Soweto East Zone A upgrading under the Ministry of Housing valued at Kshs 2.9 billion. However, this was an independent project from the KMA's office block construction. The firms were thus independent entities that may be able engage in various projects or contracts based on their technical expertise and the assignment.

Committee Observations

The Committee observed that -

i) **The project's lead consultant, who was part of the bid evaluation team, had previously worked with one of the bidders who eventually won the contract. However, the consultant did not declare the conflict of interest as required by Section 66 (6) of the Public Procurement and Assets Disposal Act, 2015 after the contractor was finally awarded. However, lins consultant's brief to the committee**

dated 2nd June 2020 and referenced LC/KMA/NA/2020/153 denied participating in the procurement of the contractor. They indicated that the lead consulatant was appointed way before the contractor was appointed and had whatsoever no role in the procurement process of the contractor. Evidence of the tender evaluation report submitted by the KMA and signed by its members on 1st January 2017 indicates that QS. Robinson Kiraguh from Lins Consult was part of the tender Evaluation Committee and duly signed the said report.

ii) **Having worked with the winning bidder before, the lead consultant could have shared confidential information with the winning bidder that would disadvantage other bidders.**

iii) **The Board of KMA deliberated on the tender for the project and expressed concern about the arithmetic errors in the tender sum.**

iv) **The Ministry of Land had valued the land purchased for construction of the headquarter at Kshs. 150,000,000 and not Kshs. 190,000,000**

Committee Recommendations

The lead Consultant, Lins Consult and Hill Associates, should be reported to PPRA and barred from doing any business with the government of Kenya for professional misconduct and misleading the committee of its non involvement in the procurement process.

c. Purchase of Land for Search and Rescue Centers

The Committee heard that the property, plant and equipment balance of Kshs 396,495,684 included a figure of Kshs 242,726,737 in respect of land and building as at 30th June 2017. The figure of Kshs 242,726,737 included additions of Kshs 35,180,040 that related to purchase of three pieces of land for search and rescue centers as shown below;

Location	Acres	Amount
Kwale	3.13	19,500,000
Kisumu	0.8	14,280,040
Deposit for Kwale Land		1,400,000

Total		35,180,040

Audit verification of the procurement documents revealed the following anomalies:

According to the head of procurement's professional opinion for Kwale land prepared on 10th June 2017, it was indicated that the head of procurement compared the prices quoted against the valuation report for each piece of land although the valuation reports were dated 21 July 2016. It implied that the valuation report which was received after the head of procurement had issued his professional opinion did not provide guidance in determining the value of the land. This was in violation of Section 84 (1) of the public Procurement and Asset Disposal Act, 2015 which provides *the head of procurement shall alongside the report of the evaluation committee, review the lender valuation report and provide a signed professional opinion to the accounting officer on the procurement or asset disposal proceedings.* Therefore, the head of procurement's professional opinion report was misleading.

According to a correspondence from the Ministry of Land and Physical Planning attached to draft valuation report, specifically a letter reference KMA/PRO/41 dated 13th October 2015 by Kenya Maritime Authority requesting for valuation of the same pieces of land implied that the selected plots had already been identified before the advertisement for expression of interest on 25 February 2016. In addition, the letter was not availed for audit verification despite several requests. It was an indication of predetermined supplier.

According to the advertisement for Kisumu land, the land was expected to measure 1 acre and within the vicinity of the port. However, the tender was awarded to a bidder whose land measured 0.8 acres and was 7.1 kilo meters from Kisumu Port. This is contrary to the Section 80 (2) of the Public Procurement and Assets Disposal Act, 2015 which provides that the evaluation and comparison shall be done using the procedures and criteria set out in the tender documents.

Management Response

Valuation report having being received after the procurement professional opinion.

The pieces of land in question were two and not three as reported. The purchase prices were also as indicated in the table below:

Location	Acres	Audit Report Amount	Purchase Price
Kwale	3.13	19,500,000	19,500,00
Kisumu	0.8	14,280,040	14,280,040

It was reported that the head of procurement professional opinion was prepared on 10th June 2017 while the valuation report were dated 21 July 2016. It should be noted the Professional opinion was prepared on 10th June 2016 and not 10th June 2017. The valuation was dated 31st May 2016 and not 21st July 2016 as reported. The valuation report (dated 31st May 2016) was therefore received before the professional opinion was prepared on 10th June 2016.

Request for valuation of identified lands done on 13th October 2015

The Authority identified suitable areas as early as 2014 (Report Ref: KMA/SS/2/21 dated 28th August 2014 attached). However the request to Ministry of Lands was not honored owing to the approach KMA had taken of identifying general areas and not specific areas. The Ministry further informed KMA that valuation was normally done only when the authority submit documents of specific Title since it involves the Ministry carrying out its own search in their offices. The Authority was further advised to first express interest then once the interested bidder had supplied documents of ownership then only then the exercise would be undertaken. The exercise was later conducted on those parcels where the Authority confirmed were suitable.

Kisumu land measuring 0.8 acres and 7.1 Km

The distance of 7.1 kilo meters given by the OAG was done by measuring road distance while for purposes of boat operations the distance over water was approximately 3 KM from the Port of Kisumu hence it was within the proximate distance given. The ground trothing exercise conducted by the Government Surveyor at the time of valuation showed the piece of land measured approximately one acre.

Committee Observations

The Committee observed that -

i) **The Professional opinion was prepared on 10th June 2016 and NOT 10th June 2017. The valuation was dated 31st May 2016 and NOT 21st July 2016 as reported.**
ii) **The valuation report (dated 31st May 2016) was therefore received before the professional opinion was prepared on 10th June 2016.**
iii) **The errors in dates should have been corrected during the audit process and should not have escalated to an audit query.**
iv) **The KMA's justification for requesting valuation of land even before advertising for Expression of Interest was not satisfactory.**
v) **The explanation with regard to acreage and proximity of the Kisumu land was satisfactory though the advert was vague as it did not indicate the distance from where measurements were to be taken.**

Committee Recommendation

The Committee observed that -

(i) **The then director General should be reprimanded for not following the procurement law when requesting for a valuation of the land before advertising for expression of Interest**
(ii) **The Director General should always be clear whenever advertising for Expression of Interest to avoid exploitation of vagueness that may be in such advertisements**

381. **Mortgage Guarantees FY 2016/17**

The Committee heard that the statement of financial position reflected a balance of Kshs 156,655,845 in respect of Mortgage guarantees. Information available indicated that the Authority has as staff car loan and mortgage schemes operated by Family Bank and Kenya Commercial Bank respectively. However, financial statements were not submitted to the Auditor-General for Audit contrary to section 81 (1&4) of the Public Finance Management Act, 2012 which requires that at the end of each financial year, the accounting officer for a national government entity shall prepare financial statements in respect to the entity and submit the same to the Auditor General. in addition, according to paragraph 5 of part 4 of the Salaries and Remuneration Commission's circular SRC/ADM/CIR/1/13 Vol.III (128) dated 17 December

2014 on the management car loan and mortgage schemes for state officer requires each scheme to be subjected to annual audit of the government. As a result, the accuracy, completeness and legality of mortgage guarantees balance of Kshs 156,655,845 as at 30 June 2017 could not be confirmed.

Management Response

Management informed the Committee that the Authority advanced funds to KCB and Family bank to administer the Staff Mortgage and Car loan schemes respectively. The funds advanced to the financial institutions are security backing to the loans the financial institutions have advanced to staff under the two schemes. The two financial institutions also hold ownership documents, such as log book for cars and land titles for houses/plots, on behalf of the Authority. This is to guard against loss/default thus a default risk mitigation factor. The financial institutions send reports which shows the amount loaned to staff, loan balances and the funds balances.

The Authority was in the process of streamlining the Staff Mortgage and Car loan schemes to comply with the Public Finance Management Act 2012 and the SRC Circular No. SRC/ADM/CIR/1/13 Vol.III(128) of 17th Dec 2014. A committee was appointed on 22nd February 2019 to look into the issues of the two schemes. The Authority has also embarked on preparation of the financial statements for the Car and Staff Mortgage schemes from their inception to date. These shall be submitted for audit by 30 September 2019.

Committee observations

The Committee observed that -

i) **Noncompliance with section 81 of the Public Finance Management Act 2012 and the SRC Circular No. SRC/ADM/CIR/1/13 Vol.III (128) of 17th Dec 2014 show incompetence of the KMA**
ii) **It is inconceivable that KMA gives financial institutions money for them to lend at interest rates thus earning interest to third parties.**
iii) **There was need to reprimand whoever that drafted this policy**

iv) **The Scheme was initiated when the current PS, Nancy was the DG but concluded after her exit. The matter was advertised, and KCB won. All the proposals were approved by the Board**

v) **The OAG confirmed that it had not received policies on the two schemes despite KMA saying so**

vi) **Kshs. 30.5M and Kshs. 170M advanced to car loan and mortgage respectively as at the time of appearance before the Committee.**

Committee Recommendation

The Committee recommends that -

i. **State corporations should also adhere to the law and government circulars when implementing car loans and projects**

ii. **Corporations should engage financial institutions in providing guarantee loans and management**

382. **Merchant Shipping Levy FY 2016/17**

The Committee heard that the statement of financial performance reflectd a figure of Kshs 1,327,603,245 in respect of Merchant Superintendent Shipping Levy (MSS) for the year ended 30 June 2017. Records availed for audit indicated that Kenya Maritime Authority had outsourced the collection of merchant shipping levy to the Kenya Revenue Authority. However, audit verifications revealed that the management had not put in place a system for determining merchant shipping levy collectable although Kenya Revenue Authority has been remitting copies of the cargo manifests to Kenya Maritime Authority. It was observed that the management only relies on revenue reports remitted by Kenya Revenue Authority without any evidence of reconciliation between the expected revenue as per the cargo manifest against remittances by the Kenya Revenue Authority.

Consequently, the accuracy, validity and completeness of levies figure of Kshs 1,327,603, 245 for the year ended 30 June 2017 could not be confirmed.

Management Response

Management informed the Committee that using manifest data, KMA's independent calculation for the 2017 financial year was Kshs. 1.667 billion against KRA's actual remission of Kshs. 1.535 billion within the same period. The shortfall of Kshs. 132 million was raised with KRA on 9th May, 2018 which also pointed out a number of issues KMA needed KRA to address possible attributes to the shortfall:

a) KMA's calculation is based on cargo manifest, which is a summation of all cargo on board a ship while the actual Levy collected is based on cargo that has been cleared by customs;
b) Part of the manifested cargo may be short landed, abandoned in port, condemned or cleared late, which will definitely create variation in calculations pegged on manifest and customs declaration entry;
c) The manifest are usually lodged days before arrival of the vessel and this also creates a discrepancy with the actual levy amount collected as currently almost all clearance procedures are concluded once the cargo has landed at the port.

The authority had taken several measures to strengthen the accuracy and credibility of the reconciliation process thus:

a) Review of the MS levy business rules to provide clear and distinct segmentation between the different types of cargo as provided for in the fees regulations, a copy of which is attached.
b) The MOU with KRA had been reviewed and awaits consent from KRA for actualization, a copy of which is attached and also further follow up communications on finalization of the review.

A letter to KRA dated 9th May, 2018; MS levy business; MOU with KRA & Follow up communications was provided as evidence.

Committee Observations

The Committee observed that Signing of new MoU had seen increase of collections by Ksh. 20m per month; the KMA had access to the KRA's collection systems

Committee recommendation

The KMA should continue using KRA in revenue collection by instituting robust internal mechanisms of ascertaining the accuracy of the amounts collected.

383. **Investments (2016/17)**

The Committee heard that Note 16 to the financial statements reflected an amount of Kshs 1,050,901,393 in respect of various fixed deposits during the year ended 30 June 2017. However, there was no evidence of how the banks were identified and selected. In addition, there was no evidence that the national Treasury approved the investments in line with section 1.7 of the National Treasury Circular No. 15/2016 Reference No. DGIPE/A/1/10 dated 19 August 2016 which states that "*…no state corporation should invest surplus funds in any financial institution/bank without prior approval of the National Treasury other than where the investments is in treasury Bills or Bonds*". Further section 20(a) of the Kenya Maritime Authority Act 2006 provides that surplus funds shall be invested in Government securities. Therefore, the management was in breach of the law.

In the circumstances, legality and value for money from the investments of Kshs 1,050,901,393 for the year ended 30 June 2017 could not be ascertained.

Management Response

Management informed the Committee that Section 20 of the Kenya Maritime Authority Act, 2006 gives two options for investment of surplus funds. Section 20 (a) recommends investment in Government Securities while Section 20 (b) of the Act allows the Authority to place as deposits surplus funds with banks as it may determine. The placement of surplus funds in Fixed and Call deposits by the Authority were therefore in line with the provisions of section 20(b) of the Kenya Maritime Authority Act, 2006.

The Authority has since taken the advice of OAG and invested all the matured fixed deposits to Treasury bills with effect from 3rd August 2018. The Authority operates Virtual Account No. 1000353856 Portfolio No.136022-1 at the Central Bank of Kenya from November 2017.

The following was given as evidence: Call Deposit Retirement Instruction Ref: KMA/FIN/2/6/A; Treasury Bills Account Statement & 4th Quarter Financial Statements FY2018/2019

Committee Observations

The Committee observed that -

(i) Evidence on the choice of the areas to invest was not provided

(ii) The KMA confirmed that it overlooked treasury guideline on investment of surplus funds. Since the matter had been flagged by the OAG, the KMA had since always sought the authority from Treasury before investing

(iii) KMA confirmed that there was a Board approval to invest Kshs 1 billion. But details on that approval as to when, where, and the amount was not availed to the Committee or OAG for audit verification

Committee Recommendations

The Committee recommends that -

(i) The then Director General of the KMA should be reprimanded for not seeking Treasury's approval before investing surplus funds

(ii) The Director General of KMA should always adhere to the law regulating investment of surplus funds.

384. **BOARD OF DIRECTORS COST (2016/17 FY)**

The Committee heard that Note 11 to the financial statements reflected an amount of Kshs .57,389,175 in respect of board of directors cost for the year ended 30 June 2017.Audit examination of the board of directors record revealed the following anomalies :

a. Excessive Expenditure

Audit analysis of the Board of directors costs revealed the board held forty seven (47) sitting including twenty (22) full board sittings and twenty five (25) committee sittings during the financial year and as a result meeting costs rose by Kshs 9,144,524 or 19% of expenditure balance of Kshs 48,244,651 and thirty (30) sittings reported in the year 2015/2016.This was an indication of extravagant use of public resources contrary to article 232 (1-b) of constitution of Kenya 2010 which provides that values and principles of the public service include efficient, effective and economic use of resources

Management Response

The Board meetings that took place during the period in question had duly issued notices with agendas outlined with pertinent issues for discussions. The Board will continue to ensure that the expenditure is within budget and no meetings held that could be remotely described as "excessive". It should be noted that special circumstances will arise and the need of convening a Special meeting as outlined in the Mwongozo code of governance.

Committee Observation and recommendation

The amount expended was within the approved budget and therefore the query was resolved

b. Irregular Sittings 2016/17

The Committee heard that a total of Kshs.9,877,181 was paid to board members for foreign meetings which were not in annual approved work plan contrary to section 7 of mwongozo coda of Governance for the state corporations, 2015 which requires the chairperson of the Board to ensure that the Board develops and adheres to the annual work plan .In addition ,the board members attended the following activities which were not in the annual work plan as detailed below :

Event	**Amount Kshs.**
Trainings	6,518,190.95
KECOSO Games	265,670.00
Agricultural Society of Kenya	1,806,399.00
Others	5,856,598.00
Total	**14,446,857.95**

Audit verification of the other expenditure as indicated above, revealed the expenditure included: benchmarking trip to Thailand, attending CSR activities, courtesy call to county Governor, attending burial of principal secretary's relative sensitization of boat owners among others which are administrative functions as outlined in mwongozo code of governance for Stete Corporation ,2015,section 1.2(C) and 1.19 on the role and functions of the board members without evidence of notices of the meeting ,agenda for the meeting and respective board minutes for the above events as provided for by section 7 of mwongozo code of Governance for state corporation,2015.

Consequently the property of the board expenditure amounting to Kshs.24, 324,039 for the year ended 30 June 2017 could not be ascertained.

Management Response

The said activities under query , which the Board members attended , that is - KECOSCO & ASK shows were not merely Management functions but as well opportunity for the Board to build cohesion and integration with other stakeholders in the Ministry of Transport & Infrastructure. The KECOSCO (Kenya Communications Sports Organization) games are held annually and is a premier event of the year attending by the following entities:

1. Ministry of Information Communication & Technology
2. Ministry of Sports , culture & the Arts
3. Postal Corporation of Kenya
4. Kenya Ports Authority
5. Kenya Airports Authority
6. Kenya Civil Aviation
7. Communications Authority of Kenya
8. Kenya Ferry Services
9. Kenya Broadcasting Corporation
10. Kenya Film Classification Board.

The KECOSCO games originated from the East African communicty which Organized the first games under the East African Community's inter Corporations and Associated Organisations (EACASO). It should be noted that the Authority has won several accolades and brought honour as a dynamic and worthy participant in various games. The attendance and participation of the Board and senior management has been an exceptional boost to the morale and results .

As regards the A.S.K shows – the Board of Directors have been participating alongside Management in the the Shows , under the publicity and awarenes programs for about eleven years now. The Board as strategic policy makers are important participants in the task of enhancing the public image, identity, creating awareness, sensitising the public on the role and mandate of the Authority. The forum creates an opportune arena for the dessimination of maritime matters and a feedback platform. Notably , the President of the Republic of Kenya graces the show and awards the best performing exhibitionists after a Luncheon where Directors of State owned Organisations attend and interract with the Head of State. Undoubtedly this is a mandatory meeting that our Board of Directors must attend and usually only the closing and opening ceremonies presided over by the Cabinet Secretary.

CSR activities are firmly anchored in KMA's CSR policy with a focus on KMA's strategic plan , environmental protection and preservation , education , health, promotion of gender equity, sports promotion, charitable activities and empowerment of persons with disabilities. The policy has guiding principles, with a clear selection criteria for beneficiaries. Ultimately the handover of these projects are done with the Board who are first and foremost in the front line in upholding the vision of the Authority together with Managmenet. Their role should therefore not be undermined nor categorized as irrelevant, extravagant or usupery.

At all these functions the Board members have been invited by way of an invitation letter as instructed in the Guidelines on the terms and conditions of service for state Corporations 23rd November 2004 - Annex IV – Clause C' and the circular letter dated 14th January 2008 – ref OP/CAB.17/34A – which states verbatim as regards payment of sitting allowance; *" an activity that bears directly on the business of the State Corporation for which the Chairman or Board member is invited in writing by the Chief Executive Officer to attend."*

Further, these activities did not require Minutes as ordinarily as reports are prepared by the Public relations section capturing the gains made during the forums – notices however were duly issued.

Committee Observations

This had been addressed in the previous Finacial year

385. **EMPLOYEE COSTS FY 2016/17**

The Committee heard that Note 10 to the financial statement reflected an amount of kshs 460,353,351 in respect of employee costs for year ended 30th June 2017, Audit verification of the employee cost records revealed the following anomalies:

a. Recruitment

Records availed for audit indicate that the Authority employed thirty-one (31) additional staff during the year under review. Audit verification of recruitment process for various positions revealed that the recruitment of nineteen new staffs including: assistant accountants, accounts assistant, assistant public relations officer, assistant human resource officer, ICT assistants, two data entry clerks was done without evidence of advertisement. This was contrary to section to section B,4(1) of the Human Resource Policies and Procedures Manual for the public service which provide that Ministries /state Departments will advertise all vacant posts in manner that reaches the widest pool of potential applicants. Further, there was no evidence that the management received approval from the National Treasury to recruit the new staff in line with National Treasury Circular No.20/2015 reference ES 1/03 "J" (79) dated 4 November 2015 freezing recruitment of new staff including in state corporation.

Further, recruitment for position of: assistant accountant, accounts assistant, assistant public relation officer, assistant human resource officer, ICT assistants. Procurement assistant, assistant internal audit officer and ICT assistant was not evidenced by application, short-listing, interview and appointment. It was therefore not evident that the vacancies were competitively filled on merits as the basis of appointments and promotion was not availed for audit review. As a result, the management was in breach of the law.

Management Response

Management informed the Committee that the positions were created by the Board's resolution to fill the gaps in the establishment for smooth career development and succession planning in the Authority. Documentation for the same are available for verification.

Committee Observations

The Committee observed that -

- **(i) There was no evidence to show that recruitment was competitive**
- **(ii) The positions were given to officers that were working with the KMA for six years.**
- **(iii) Contrary to KMA's insistence that there was approval from treasury for recruitment, the KMA did not table any material from treasury to buttress its argument**
- **(iv) There was approval from the Board to begin recruitment contrary to treasury freezing employment. The Board acted ultra vires in this case. The Board needs to be held responsible**

<u>Committee recommendation</u>

The Committee recommends that the then Board of directors should be reprimanded for recruiting staff while there was a freeze of employment from Treasury .

b. <u>Staff Training</u>

Included in the employee costs expenditure figure of Kshs, 160,353,351 as reported in Note 10 to the financial statement for the year ended 30th June 2017, was staff training figure for Kshs.180,145,891. The expenditure of Kshs. 52,100,269 being an increase of 41% compared to expenditure of Kshs. 128,045,622 reported in the financial year 2015/2016.Audit verification revealed the following anomalies:

<u>Lack of Training Needs Assessment</u>

Records availed for audit verification indicate that in June 2016, the management engaged a consultant to undertake a training needs assessment of the Authority whose draft report was submitted to management in August 2016. However, there was no evidence that the exercise was finalized. In addition, it was not clearly explained the basis of preparing the staff training plan for the financial year 2016-2017 whose needs assessment had not been determined. This was contrary to section 3 of Guidelines on Managing Training in the Public service which states that "planning for training shall be guided by the outcomes of Training Needs Assessment and shall be designed in line with identified performance gaps linking training to closing of such gaps". It was not clear how the training needs were identified. The Authority may not have obtained value for money on this expenditure.

Management Response

- Training Needs Assessment report was provided for verification by the Committee
- The minutes of Training/Advisory Committee on the approved training plan was also provided for Committee's perusal

The observations were noted by the management which endeavored to adhere to procedures and processes.

Committee Observations

The Committee observed that -

(i) The Training needs assessment prepared by Global Trainings and Consultants firm for KMA was tabled before the Committee and verified.

(ii) There was no evidence to show that the board approved the trainings and whether they were in the budgets.

Committee recommendations

The Committee recommends that -

(i) The KMA should only take trainings abroad that are not available locally and also adhere to approved training needs assessment progamme.

(ii) Training budget should be ratoionalized to reflect the economic realities of the country

Locally Available Training Held Abroad

Included in the training expenditure of Kshs. 180,485,891 were various trainings undertaken abroad at a cost of Kshs. 23,707,024. However, audit examination of the courses revealed that the courses were locally available detailed below.

No.	Staff No.	Name	Original amount Kshs	Paid	Current Balance Kshs	Remarks
1	FER300	Ambrose Riasi Getenge	20,000	-	20,000	Dismissed
2	FER347	Mwangi Kahora Gitonga	356,315	145,677	210,638	Resigned, partly repaid
3	FER391	Mong'are Edwin Momanyi	116,065	116,065	-	Cleared
4	GMA002	Joel John Ria	798,735	-	798,735	Dismissed
5	KOO001	Kenedy Oyugi Onkoba	858,801	-	858,801	Dismissed
6	SNR003	Sajad S Janoowalla	13,750	13,750	-	Written off
7	SNR005	Deche Nelson Kachero	748,586	-	748,586	Dismissed
8	SNR009	George Chiwai Barua	295,937	-	295,937	Deceased
9	T020	Edwin Osano Onkoba Motuka	82,515	-	82,515	Dismissed
10	T023	Martin Mwenda Mbaka	244,244	-	244,244	Dismissed
11	T022	Joseph Kariuki	22,500	-	22,500	Dismissed
12	FER313	Kurgat Kiprop	180,140	-	180,140	Retired, not cleared
13	FER242	Victor Chite	45,100	-	45,100	Dismissed
14	FER178	Fredrick Baraza Dodi	259,920	129,960	129,960	Dismissed

15	FS325	Douglas Kitonyi Ndeto	161,738	161,738	-	Cleared
16	FS185	Salim Mwabaka	54,073	-	54,073	Dismissed
		Total	**4,258,419**	**567,190**	**3,691,229**	

It was not clear why training could not be sourced locally. In addition, some of the training attended were attended were offered by ESAMI which offer same course locally. This is contrary to section 4.2.1 of the Guidelines on Managing Training in the Public Service which provides that approval to train in foreign based institution will be granted only in instances where the course applied for is not available in any local institution.

Further the foreign travels were not supported with evidence of clearance from permanent secretary of the parent ministry contrary to revised code of regulations 2008 and circular OP/CAB/9/9 by the permanent secretary, secretary to the cabinet and head of Public service which require officers travelling abroad to seek clearance from permanent secretary of the parent ministry .

In the circumstances, the propriety of regularity for expenditure of Kshs, 180,145,891 for employees' costs for the year ended 30 June 2017 to could not be ascertained.

Management Response

Being an Institution with international Maritime mandate, the Authority allowed some staff to undertake some international training to acquire specialized technical skills which were not provided locally e.g Certificate of Competency course in Singapore. The observations were noted by the management and course approvals are currently sought from the parent ministry.

Committee Observation

After the audit observation, KMA stopped abroad trainings for courses that were locally available

Committee Recommendations

The Committee recommends that -

(i) **The KMA should only take trainings abroad that are not available locally and also adhere to approved training needs assessment progamme.**

(ii) **Budgets for training should be itemized between local and abroad going forward**

386. **DUTY TRAVEL ALLOWANCES FY 2015/2016 & 2016/17**

The Committee heard that included in general expenditure of Kshs.536,689,113 under note14 to the financial statements is duty travel allowances of Kshs 89,330,791 for the year ended 30 June 2017. Audit analysis revealed the expenditure increased by Kshs, 23,135,190 which is 35% compared to an expenditure of Kshs. 66,195,601 reported in 2015/2016 financial year. In addition, records availed for audit verification indicated that during the period under audit, foreign travel allowance to various staff was not supported by evidence of clearance from permanent secretary of the parent ministry. This was contrary to Revised code of regulations 2006 and circular OP/CAB.9/9 by the permanent secretary. Secretary to the cabinet and head of Public Service which Require officers travelling abroad to seek clearance from permanent secretary of the parent ministry, Therefore the management was in breach of the law

Further, included in duty travel allowances of Kshs 89,330,791 is travel allowance and air tickets expenditure amounting to Kshs 9,899,000 for staff of the ministry on foreign travels, although the management indicated that the ministry requested for the support due to constraints, it was not clearly explained how the Authority f8unded activities of another entity without a budget .

In the circumstances, the propriety and regularity and regularity of duty travel allowance expenditure amounting to Ksh 89,330,791 for the year ended 30 June 2017 could not be ascertained

Management Response

The management stated that the circular in use at the time required only the CEO and Board members to get clearance for foreign travel. All the foreign travel for the DG and the Board members were sought from the PS. The observations were noted by the management and Government circulars which provide procedures and processes are always adhered to.

Sponsorship of Ministry staff was only done on joint activities in the fulfilment of the Authorities mandate.

Committee Observation

This was a repeat paragraph from the previous year.

3.42 TANA AND ATHI RIVERS DEVELOPMENT AUTHORITY (TARDA) (FYS 2014/15 TO 2017/18)

EXAMINATION OF REPORT OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF TANA AND ATHI RIVERS DEVELOPMENT AUTHORITY FOR THE FINANCIAL YEARS 2014/15 TO 2017/18

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.

387. **GOING CONCERN (FY 2014/15 & FY 2015/16)**

The Committee heard that 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 had 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 was dependent upon financial support from the Government, its bankers and creditors.

Management Response

While concurring with the audit observation, the accounting officer stated that 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 had 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 30th June 2018 were honored, the going concern and balance sheet accounting of the Authority would continue to be negative and recurring year after year. Despite this, TARDA was undertaking sustainable projects that would improve financial performance of the Authority.

Committee Observations

The Committee observed that -

(i) **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.**

(ii) **KENGEN paid the Authority an annual sum of Kshs. 62,000,000 for power generation at TARDA's dams. This was 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 Recommendations

The Committee recommends that -

(i) **The Committee reiterates its recommendations of the 19th and 21st reports.**

(ii) The Committee on implementation should pursue implementation of these recommendations pursuant to its mandate.

(iii) The Head of Public of Public Service should convene a meeting between the two entities and resolve the matter within three months of adoption of this report

388. **PROPERTY PLANT AND EQUIPMENT FY 2014/5 to FY 2016/17**

389. **Land without Ownership Documents**

The Committee heard that the Property, Plant and Equipment balance of Kshs.11,224,308,393 as at 30th June 2015 included a sum of Kshs.22,674,600 representing the value of three(3) parcels of land located at Kibwezi and Kitui measuring 924.83 hectares whose ownership documents had not been presented for audit verification. In the circumstance, it was not possible to confirm the ownership status of the three (3) parcel of land.

Management Response

The accounting officer informed the Committee that ownership documents for Kitui and Kibwezi were being processed after delay occasioned by inadequate finances. Emali lease had expired and the County Government of Kajiado had expressed their unwillingness to renew the lease.

Committee Observations

The Committee observed that -

(i) 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.

(ii) The land in Emali was 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 Recommendations

The Committee recommends that -

(i) The accounting officer should fast track acquisition of ownership documents of the Kitui and Kibwei properties

(ii) The accounting officer should apply for fatracking resolution of the dispute regarding the Emali property regarding its ownership status and the title issued thereafter.

390. **Fully Depreciated Assets FY 2014/15 to FY 2015/16**

The Committee heard that the property plant and equipment balance of Kshs.11,224,308,393 as at 30th June 2015 were fully depreciated assets whose original cost was Kshs.1,942,275,373. However, some of these were still in use and had therefore not been adjusted from aggregate assets balance before charging depreciation. Further, management had 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 had not been ascertained.

Management Response

The management informed the Committee that the Authority had taken note of this, and would revalue the fully depreciated assets to correct the anomaly.

The Authority was in agreement with the auditor that there was no policy on revaluation of fully depreciated assets as pointed out. However, the process of developing the policy was underway.

Committee Recommendation

The Authority should complete the process of developing a policy on revaluation of fully depreciated assets and revalue the assets to avoid recurrence of the audit query.

391. **Assets Held by Former Managing Directors FY 2014/15 to FY 2015/16**

The Committee heard that 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 indicated 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 had 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 was not possible to confirm that the Property, Plant and Equipment balance of Kshs.11,224,308,393 as at 30th June 2015 was fairly stated.

Management Response

The Management concurred with the Auditors that assets held by former Managing Director of Kshs. 422,500 for various mobile phones and Ipads had not been recovered. Mr. Abdul Agonga had filed a Constitutional Petition Number 15/2013. The said matter was pending in court and as such the Authority was unable to conclusively pursue the recovery of the assets.

Similarly, the Management wrote to former MD Mr. Francis Agoya severally to return the assets in his possession without any reply. Management had since written to the Inspectorate of State Corporations to assist in the recovery of the above assets.

Committee Observation

The Committee observed that -

i) **The Committee observed that the Authority had so far spent Kshs. 150,000 in litigation against the former Managing Director, Mr. Abdul Agonga. This may end up costing the authority more than the value of the assets earmarked for recovery.**
ii) **The Inspectorate of State Corporation had done little in the surcharge process.**

Committee recommendations

The Committee recommends that -

(i) **The accounting officer should apply for speedy conclusion of the matter in Court considering the cost implicaations.**
(ii) **The Inspectorate of State Corporations should advice on the available options to recover the impugned assets.**

392. **TRADE AND OTHER RECEIVABLES FY 2014/15 to FY 2015/16**

The Committee heard that Trade and Other Receivables balance of Kshs.60,352,441 as at 30th June 2015 (2013/2014 Kshs.60,262,030) was net of the Kenya Power and Lighting Company debtor account. According to Note 18 to the financial statements, the account related to bulk power sales amounting to Kshs.1,179,215,376 for the period prior to 1988 and which sum had been under dispute. Further, the balance of Kshs.60,352,441 included debtors account – car loan balance of Kshs.259,396 which the Authority alleged was historical and could not be supported, and a debtor account for Freshco Kenya Limited amounting to Kshs.7,576,126 which was 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. Further, it was not possible to confirm whether adequate provision had been made against the long outstanding debts.

In the circumstances, it was not 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

1. The Authority provided for provision for bad and doubtful debts in the year 2011/12 and was verified from the financial statement.
2. **Car Loan Balances – Kshs.259,396.00:** This amount had been in the Authority's 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.
3. **Freshco Account – Kshs.7,576,126:** This amount related 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.
4. Age analysis for Trade and other receivables had been done and was available for audit verification.

Committee Observations

The Committee observed that -

(i) **The audit query had been addressed in the 21st PIC Report.**
(ii) **The Committee recommendation on adoption of paperless records was being implemented.**

Committee recommendation

The Committee on implementation should track implementation of PIC's recommendations

393. **REVALUATION RESERVE FY 2014/15 to FY 2015/16**

The Committee heard that the financial statements reflected a revaluation reserve of Kshs.19,697,833,221 as at 30th 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 was 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 balance of Kshs.19,697,221 as at 30th June 2015 was fairly stated.

Management Response

The management informed the Committee that 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. No revaluation of assets was done in the year under review. Revaluation of assets had been delayed by lack of budgetary support.

Committee Observation

The Authority had been unable to carry out a re-valuation exercise due to lack of funding.

Committee Resolution

The Authority should prioritize funding for a re-valuation exercise in its next budget.

394. **TRADE AND OTHER PAYABLES FY 2014/15 to FY 2015/16**

The Committee heard that the Trade and Other Payables balance of Kshs. 143,525,579 as at 30th June 2015 included 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 had been outstanding for long, some dating back to 2004. Further, included in trade and other payables was a balance of Kshs.28,622,440.00 relating to unremitted pension. No explanation had been provided for the failure to remit statutory deductions to the respective institutions.

Further, as reported in the previous year, the Authority did not reconcile arrears and penalties owed to the NSSF. The omission signified poor internal control and the Authority was likely to suffer heavy penalties if corrective action was not taken urgently.

In addition, other creditors totaling to Kshs.20,636,111 had been outstanding for between one and nineteen years. Management had not explained this anomaly.

Consequently it was not 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 -** NSSF balance was reconciled and fully paid, the Authority settles this obligation as, and when it fell due.
b) **Outstanding VAT-** The Authority was developing a payment plan geared towards settling the outstanding balance.
c) **Pension -** Ever since 1994, the Authority had 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, had reduced these figures. Management was pursuing National Treasury to provide for funds to settle this account.

d) **Other Creditors -** Included under these are figures, that have been outstanding over 30 years without supporting documents because they were part of records that were destroyed by 1998 bomb blast. On several occasions, the Management had been requesting the Board to write off these figures from the books. The Board had advised that management should seek concurrence from the Treasury, the line Ministry and the Auditor General. This concurrence and advice from the above offices had not been granted.

Committee Observations

The Committee observed that -

(i) **The Authority had settled the outstanding statutory balance with the National Social Security Fund.**

(ii) **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 Recommendation

The Committee recommends that the Authority should pursue concurrence from the National Treasury to write off long outstanding debts whose documentation is unavailable.

395. **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 audit query in question had been addressed in the 21st Report of the Public Investments Committee and resolved.

396. **LOSS MAKING SERVICES (MASINGA DAM AND TANA DELTA RESORTS) FY 2014/15 To FY 2015/16**

a. Masinga Dam Resort

The Committee heard that 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 had not been explained.

b. Tana Delta Resort

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 had not put in place any new measures to make the venture profitable.

Management Response

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.

Committee Observation

The Committee observed that -

i) The Authority had instituted measures to turn around its services to profitability.

ii) The Masinga Dam Resort has been making a profit since FY 2017/18 and had made a profit of approximately Kshs. 30,000,000.

iii) The audit query had been resolved.

397. **OVER EXPENDITURE ON ACCOMMODATION AND SUBSISTENCE FY 2014/15**

The Committee heard that 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

Management concured 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.

Committee Observation

It was illegal to overspend without the approval of the National Treasury and the parent Ministry.

Committee Recommendation

The accounting officer should be reprimanded for violating section 12 of the State Corporations Act.

398. **FUNDING OF PARLIAMENTARY ACTIVITIES FY 2014/15**

The Committee heard that Administrative expenses balance of Kshs.4,717,495 included 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

The Accounting officer stated that this was not a direct payment to the Committee members but rather payment to the authority staff members who accompanied the committee during conservation activities in the Authority's area of jurisdiction of Makueni, Machakos and Tana River Counties.

Committee Recommendation

The explanation given was satisfactory and therefore the query resolved.

399. CONSULTANCY SERVICES – MUNYU MULTIPURPOSE DAM FY 2014/15

The Committee heard that 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, it was incomplete 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 accounting officer informed the Committee that 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 had been released, hence the late completion of the project.

Committee Observations

The Committee observed that -

1. **(i) The impugned technical evaluation report was not availed during audit but was later on provided.**
2. **(ii) The project was incomplete**

Committee Recommendations

The Committee recommends that -

(i) **The Authority should initiate projects once assured of availability of resources**

(ii) **The Accounting officer should always provide documents for audit within the required timelines**

400. **BIOLOGICAL ASSETS FY 2014/15 to FY 2016/17**

The Committee heard that the biological assets balance of Kshs. 21,694,045 as at 30th June 2015 excluded 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 had not been disclosed in the financial statements despite a purchase of 127 goats by the Authority during the year under review.

Consequently, it was not possible to confirm the accuracy and completeness of the biological assets balance of Kshs.21,694,045 as at 30th June 2015.

Management response

The Committee heard that the 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 related to paddy in the Tana Delta farm and not trees in Kibwezi and Kiambere.

The valuation of fruit bearing trees in Kibwezi and Kiambere required engagement of a valuation expert and funding.

Committee Recommendation

The Authority should hire a valuer to assist in the valuation exercise in the 2020/2021 financial year.

401. **LEASE INCOME – TANA DELTA INVESTMENT PROJECT FY 2014/15 to FY 2015/16**

The Committee heard that 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 production of rice. However, Article 7 of the contract and specified the terms that must be met by both the lessor and the lessee. In subsections (ii) and (iv) the Authority appeared to be disadvantaged in terms of the gains and costs that would arise at it was obligated to offer services to the lessee, including milling and storage of the harvest without compensation. In addition, the authority had no costing policy by which its products and services could be billed.

Independent inquiry at Tana Delta Rice Mills confirmed that at the time of audit, rice was 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 would result in a net expense to the Authority of Kshs.130,000,000 far beyond the income received as result of the lease.

Under (iii) of the contract, the Authority offered to provide sufficient storage space to Braken Agricultural Limited rice. However, it had not set the storage charges. The Authority was also be required to meet dying, fumigation, security and labour costs. Since the lessee was required to produce 260,000 tons of rice per annum, the Authority would incur huge storage charges this was not factored in the in the contract.

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 consisted 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 good and favourable to the Authority because of the following:

a) The volume involved was huge so the average cost of milling operations would be low

b) Currently (2018), the cost of milling in Western Kenya of paddy was 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 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.

<u>Committee Observations</u>

The Committee observed that -

(i) **The contract between the Authority and Braken Agricultural Limited had been cancelled.**

(ii) **The land that was leased out in the contract with Braken had since been re-advertized for a similar project.**

(iii) **Braken Agricultural Ltd. owed the Authority approximately Kshs. 60,000,000 for occupation of the land for two years.**

<u>Committee Recommendations</u>

The Committee recommends that -

(i) **The Authority should look into the clauses highlighted by the Auditor General that would prejudice its position in any such future contracts.**

(ii) **TARDA should follow up with Braken Ltd. on payments due to the Authority.**

(iii) The authority should present details of Braken Ltd to the Inspectorate of State Corporations to share with the rest of the state corporations so that that they are catious as they deal with it.

402. **<u>MATERIAL UNCERTAINTY RELATED TO SUSTAINABILITY OF SERVICES (FY 2016/17)</u>**

The Committee heard that the Authority recorded a deficit of Kshs.552,712,373 during the year under review which, after considering a prior year adjustment of Kshs.756,883 as reflected in the statement of changes in net assets, raised its accumulated deficit to Kshs.13,353,414,171 as at 30th June 2017 (2016: Kshs.12,799,944,915). In view of the foregoing, the ability of the Authority to sustain its services is dependent on the continued financial support from the Government, and the Authority's bankers and its creditors. This material uncertainty was however not disclosed in the financial statements.

<u>Management Response</u>

The Managing director informed the Committee that the Authority recorded a deficit of Kshs.552,712,373 (2015/16 Kshs.572,700,415). However, the deficit for the financial year 2016/2017 had since changed to Kshs.578,318,053 after the recommended adjustments. He further averred that:

a) 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.
b) TARDA had been insolvent since the day generating and transmission assets were transferred to KenGen. Unless the claims were 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 1990s.

Committee Observations

The Committee observed that -

i) The financial statements for 2016/17 were restated following some adjustments.
ii) The restatements were reflected in opening balances of the financial statements for 2017/18. The Authority therefore recorded a deficit of Kshs 578,318,053 leading to a cumulative deficit of Kshs 13,385,652,237
iii) TARDA continues to reflect assets and their depreciation that were moved to KENGEN in its books
iv) TARDA continued to maintain reservoir and dam monitoring and gets Kshs. 62 Million. This was too little.
v) The PIC recommendation on the engagement with parent Ministry and KENGEN was underway.
vi) The Authority had provided reports of valuation of claims by Pricewater House Coopers, ISG and PIC 19th and 21st reports recommending payments of annual obligations which had accumulated to 10.7 billion by 30th June 2018

Committee Recommendation

The Committee on Implementation should follow the PIC's recommendation in the 19th and 21st reports.

403. WORK-IN-PROGRESS (FY 2016/17)

The Committee heard that as similarly reported in the previous year, the capital work in progress balance of Kshs.252,001,275 as at 30th June 2017 (2015/2016: Kshs.235,449,689) reflected in the statement of financial position and disclosed in Note 15 of the financial statements comprises of capital work-in-progress valued at Kshs.234,152,289 in respect of staff houses, a school, a dispensary and supermarket. Construction of these facilities commenced in 1990 at Tana Delta Irrigation Project (TDIP) in Garsen but relevant supporting documents for procurement and construction of the facilities were not availed for audit verification. These were stalled and dilapidated projects whose current value was far below the disclosed amounts.

Further, the capital work in progress figure of Kshs.252,001,275 included an amount of Kshs.17,848,986 in respect of Masinga Dam Resort construction. However, the payment certificates produced in support of the project amounted to Kshs. 10,992,767 resulting in unexplained variance of Kshs.6,856,219. Additionally, the payment vouchers and procurement documentation for the Masinga Dam Resort work in progress totaling Kshs.17,848,986 were not provided for audit verification. As a result, the accuracy and validity of the carrying amount of work in progress of Kshs.252,001,275 could not be ascertained.

Management Response

(a) **Tana Delta Irrigation Project (TDIP) – Kshs.234,152,289:** This figure had been appearing in all TARDA audited accounts for the last 30 years since 1988. They had always been classified as work in progress because the work remained incomplete and has never been commissioned. The attempt to complete these works with use of AIA was hampered by the El Nino of 1997.

b) **Masinga Dam Resort Construction – Kshs.17,848,986:** This project is also reported as work in progress because up to now it is not yet complete. It remains work in progress but the management hopes to complete it before the end of December 2019 through our internally generated funds.

Committee Observations

The Committee observed that -

i) **The management did not answer the query raised by the OAG with regard to absence of procurement documents and the payment vouchers**
ii) **This project started way back when Kenya did not have a procurement law**
iii) **Management indicated that the documents got destroyed during the bomb blast in 1998. It was curious that TARDA did not have a backup to these documents.**

Committee Recommenation

The Committee on implementation should follow up implementation of the previous PIC reports on the matter.

404. **ASSETS HELD BY FORMER MANAGING DIRECTORS (FY 2016/17)**

The Committee heard that, as previously reported, the Authority incurred expenditure totaling Kshs.422,500 on purchase of various mobile phones and IPads which were issued to a former Managing Director between July 2012 and February 2013. In addition, available records indicated that another former Managing Director was issued with a Laptop, camera and mobile phones which was not surrendered to the Authority as at 30th June 2017. The management did not provide satisfactory explanation why these assets were not recovered from the Managing Directors at the end of their respective tenures. In view of the foregoing, it was not possible to confirm that the property, plant and equipment balance of Kshs.10,379,031,923 as at 30 June 2017 was fairly stated.

Management Response

The Management concurred with the Auditors that assets held by former Managing Director (Mr. Abudl Agonga) of Ksh.422,500 for various mobile phones and Ipads had not been recovered. The Authority wrote a letter to Mr. Abdul Agonga demanding the return of the assets in his possession but was yet to respond. Similarly, the Management wrote to former MD Mr. Francis Agoya severally to return the assets in his possession but he had not been responding to the demand letters.

Management further averred that it could be costly following legal avenues to recover the assets as they had continued to depreciate since February 2013 and therefore very low in value. However, Management had written to the Inspectorate of State Corporations to assist in the recovery of the above assets.

Committee Observations

The Committee observed that -

i) **This matter was handled in the PIC's 21st report with a recommendation that the Inspectorate of State Corporations be enjoined in the recovery of the assets from the former MD's terminal dues.**
ii) **The former MD had since sued TARDA and the matter was live in court**
iii) **The Inspectorate of State Cope rations had done nothing on this matter through its surcharge Committee**

Committee Recommendations

The Committee recommends that -

(i) **The Implementation Committee should follow up on this matter pursuant to its mandate.**
(ii) **The Inspectorate of State Cooperation should follow-up the matter expeditiously**

405. **TRADE AND OTHER RECEIVABLES (FY 2016/17)**

The Committee heard that the trade and other receivables balance of Kshs.140,401,502 as at 30th June 2017 (2016: Kshs.92,916,780) was net of the Kenya Power and Lighting Company debtor account. According to Note 19 to the financial statements, the account related to bulk power sales amounting to Kshs.1,179,215,376 for the period prior to 1988 and which was under dispute between the Authority and Kenya Power Lighting Company.

Further, the balance of Kshs.140,401,502 included debtors account – car loan balance of Kshs.259,396 which the Authority stated as historical and impossible to analyze and debtor account-Freshco Kenya Limited of Kshs.7,576,126 which was not properly supported with contract documents.

Further, included in the trade and other receivables balance of Kshs.140,401,502 are debts amounting to Kshs.43,910,700.40 owed by various stations and departments within the Authority. These debts were, however, not supported by any corresponding liabilities in the books of accounts or documentation.

In addition, the Authority failed to provide age analysis for the trade receivables balance of Kshs.140,401,502 as at 30th June 2017. It is therefore not possible to assess the recoverability of these debts and confirm whether adequate provision had been made against the long outstanding debts. In the circumstances, it was not possible to confirm the accuracy, validity and recoverability of the trade and other receivables balance of Kshs.140,401,502 as at 30th June 2017.

Management Response

(a) The Authority provided for provision for doubtful debts some years back, which can be verified from our trial balance, this has always been reported in our books over the years.

(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 bomblast, 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.

(d) Inter departmental debts of Kshs. 43,910,700.00 were reconciled and corrective action taken as recommended by the Auditor.

(e) **Age Analysis of Kshs.140,402,502:** The age analysis of this figure was similarly was availed for audit verification.

Committee Observations

The Committee observed that -

i) **This matter had been dealt with in the 21st report of the PIC in which the authority was to digitize its files. The authority confirmed it had done part of the work. The matter of debt write off had been pending since the TARDA had not been properly constituted.**
ii) **KPLC was to pay TARDA but the matter was disputed**
iii) **The OAG did a reconciliation of the amounts between TARDA and KPLC and indicated that KPLC was to pay TARDA Kshs. 2.4 billion**
iv) **Efforts to have KPLC pay the money has not born any fruit**

Committee Recommendation

The Head of Public Service should convene a meeting between the two entities and resolve the query within three months of adoption of this report.

406. **REVALUATION RESERVE (2016/17)**

The Committee heard that reflected in the statement of financial position and disclosed in Note 23 to the financial statements is the revaluation reserve balance of Kshs.19,697,833,221 as at 30th June 2017 (2016: Kshs.19,697,833,221). However, no documentary was availed availed to support any revaluations of assets undertaken by management. Further, the reserve balance is not identified with any particular assets of the Authority and the depreciation on the revalued assets was never charged to the reserve. In addition, revaluation of the Authority's assets was last done in 2006 and thus the expired period is more than the five-years prescribed under International Public Sector Accounting Standards No. 17. Consequently, it was not possible to confirm whether the revaluation reserve balance of Kshs.19,697,833,221 as at 30 June 2017 is fairly stated.

Management Response

The Managing Director submitted that TARDA'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. The Management noted the Auditor's concern on charging depreciation of revalued assets to the reserve account and therefore would adopt the same in the financial year 2019/2020.

Management would endeavor to make a budgetary provision to carry out revaluation exercise in the FY 2020/21.

Committee Observations

The Committee observed that -

i) **TARDA had been requesting for asset revaluation money for the last three years but the money had not been allocated.**
ii) **Valuation will coast Kshs. 20 million.**
iii) **The revaluation report had never been availed to the auditors to estimate the deprecation**

Committee Recommendation

TARDA should prioritize revaluation in the 2020/21 financial year

407. **TRADE AND OTHER PAYABLES (FY 2016/17)**

The Committee heard that, as reported in the previous year, included in trade and other payables balance of Kshs.238,092,491 as at 30th June 2017 (2016: Kshs.230,532,432) are un-remitted statutory deductions of Kshs.3,355,164 relating to National Social Security Fund (NSSF) and withheld VAT of Kshs.6,475,583.60, which had been outstanding for long some dating back to 2004. Further, included in trade and other payables balance is an amount of Kshs.70,815,832.50 relating to un-remitted pension and PAYE of Kshs.54,007,140.36 dating back to 2014. No explanation has been provided why the Authority has delayed remittance of statutory deductions to the respective institutions.

Further, as reported in the previous year, the Authority does not reconcile reported amounts of arrears and penalties owed to NSSF. As a result, the management does not confirm the authenticity of the payments made and outstanding balances, an indication of poor internal control. The Authority is likely to incur heavy penalties and interest charges if management does not take corrective measures.

In addition, creditors amounting to Kshs.63,710,558.48 had been outstanding between one and twenty years. Management had not explained why the debts have remained unpaid for so long.

Additionally, payables amounting to Kshs.2,225,125.20 related to defunct organizations that ceased existing as tabulated below:

Ministry	Year	Amount Kshs
Ministry of Cooperative Development	2008	50,816.20
Ministry of Home affairs	2011	152,050
Ministry of State Dev. Of Northern Kenya	2013	85,380
Council		
Town council of Kitui	2012	213,000
Murang'a County Council	2008	1,723,879
Total		**2,225,125.20**

In view of these anomalies, it was not possible to confirm the accuracy, validity and completeness of the trade and other payables balance of Kshs.238,092,491 as at 30th June 2017.

Management Response

a) NSSF

Management concurred with the Auditor on the outstanding statutory and other payroll deductions. However, the NSSF balance was reconciled and fully paid and the Authority settles obligation as and when it falls due since then.

b) Outstanding VAT: The Authority was in the process of settling the outstanding balance.

c) Pension

Ever since 1994, TARDA had 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. Management through its own resources had reduced these figures. The Authority has been requesting the National Treasury to provide Kshs.30million on annual basis to clear at least annual provision for this account. This has not been actualized and causes the above challenges.

However, Management had entered in to an agreement with Board of Trustees – TARDA Staff Pension Scheme to settle the outstanding balance as the current obligation is remitted.

d) PAYE

Management concursed with the Auditor that an amount of Kshs. 54million was outstanding in respect of PAYE.

e) Long outstanding Creditors

Included in this figure of Kshs. 63,710,558.48 are balances which have been there for over 20 years as hanging figures without supporting documents because they were part of records that were destroyed by 1998 bomb blast. On several occasions, the Authority has been requesting the Board to write off these hanging figures from our books. The Board resolution has always been that it seeks concurrence from the Treasury, the Line Ministry and the Auditor General. This concurrence and advice from the above offices has not yet been availed.

f) Amounts Owed to Defunct Organizations

The Authority owed Kshs. 2,225,125.20 to defunct organizations as at the end of the year under review as reported by the Auditor. The amounts are not supported by any relevant documents nor did the TARDA receive demand notes from the respective organizations. The Authority therefore categorized these outstanding balances as hanging and unsupported figures which form part of the list earmarked for write off as explained earlier in part (e) above.

<u>Committee Observations</u>

The Committee observed that -

i) TARDA had been settling VAT to KRA as a per the agreed payment plan.

ii) **On NSSF and pension, the auditors confirmed that it had been paid**
iii) **On PAYE, the agreement was being honoured**
iv) **On long outstanding creditors, TARDA was to avail letters of concurrence it did to parent ministry and treasury on write off but had not done so at the time of compiling of this report**
v) **On amount owed to defunct organizations, TARDA did not know who to pay. The limitations of actions may bar them from suing**

Committee resolutions

TARDA should honor its obligations as and when they fall due.

408. **CASH AND CASH EQUIVALENTS FY 2016/17**

The Committee heard that Cash and Cash Equivalents balance of Kshs.88,259,459 as at 30th June 2017 had outstanding items in the reconciliation as follows:

(i) Consolidated bank account had unpresented cheques totalling Kshs. 2,483,865.10. Cheques totalling Kshs. 2,062,684.10 were claimed to have been reversed on 31 January 2018 but the cashbook was not produced to confirm the reversals.

(ii) Unpresented cheques as at 30 June 2017 for Masinga dam totalling Kshs. 254,000 were stale but had not been reversed in the cash book.

(iii) Emali Livestock Multiplication Unit had unpresented cheques totalling Kshs.412,300 which were indicated to have cleared on 3rd July 2017 but no bank statement showing the clearance was provided for verification.

(iv) The ledger for Emali (KCB-Machakos) Savings had a balance of Kshs. 205,953 while the cash book indicates Kshs.181,852 resulting to unexplained variance of Kshs. 24,101.

Consequently, the completeness and accuracy of cash and cash equivalents balance of Kshs. 88,259,459 as at 30 June 2017 could not be confirmed.

Management Response

Management informed the Committee as follws:

i) Consolidated bank cashbook was availed for audit verification.

ii) Unpresented cheque of Kshs. 254,000 for MDR was reversed back in the cashbook and later availed for audit verification.
iii) Emali livestock cashbook and bank statements were later availed for audit verification.
iv) The differences in Emali and Narok ledgers were as a result of typing error which was corrected and availed for audit verification.

Committee Observations

The Management of TARDA had failed to provide requisite documentation to the Office of the Auditor General during the audit period but has since provided them for verification by the OAG.

Committee recommendation

The Management of TARDA should always provide documents for audit as per the PFM and the Public Audit Act 2015 failure to which the provisions of Section 68 of the PFM Act and Sections 62 of the Public Audit Act 2015 should be invoked.

409. **REVENUE FROM EXCHANGE TRANSACTIONS FY 2016/17**

303.1 External AIA – KenGen

The Committee heard that Revenue from exchange transactions of Kshs.168,049,484 as disclosed in Note 5 to the financial statements includes external AIA from KenGen of Kshs.67,166,640. However, no agreement between the Authority and KenGen had been provided for audit examination in support of the amount which TARDA should be receiving from KenGen and other terms pertaining to this transaction. Further, although KenGen Staff were housed in the Authority's houses and paid rent for occupation, information in form of lease agreements detailing the number of houses and the charges per month had not been provided for audit verification.

Management Response

On KenGen, Management informed the Committee that a dispute between the Power sector organizations, KenGen/KPLC and TARDA were based on the compensation for the loss of generating and transmitting assets at Masinga and Kiambere Dams, which were transferred to

KenGen in the year 2000, and non-remittance of sales of energy to KPLC as aligned to commercial Agreement between KPLC and TARDA between 1988 –2000.

TARDA and the above-mentioned organizations always appear at the PIC on the above dispute.

One of the disputes related to this was why it was instructed by the Ministry of Energy to KenGen to pay TARDA Kshs.55million every year up to 2005 financial year when TARDA insisted to be paid Kshs.420 million but instead they have been paying Kshs.62million per year.

This was a known fact to all stakeholders and available in the printed estimates and written instructions.

The Kshs.420million in favour of TARDA, was advised by Price Water House Coopers in 1999/2000 financial year to the Ministry of Energy as per the latter's request. All these historical information were available more so specifically from 1988 – 2017.

On rent, KenGen had been occupying TARDA estates at Masinga, Kamburu and Kiambere without paying rent and the dispute between the two organizations have been ongoing until two years back when it was resolved by Management and the Chairman of the Board.

The Minutes indicated very clearly that before valuation is complete, KenGen will make payments based on the committees' resolution. After valuation, the subsequent monthly disbursements would be based on the valuation report and this has been the case all along. All the relevant documents related to this were available.

Valuation report is finalized and TARDA was awaiting KenGen to sign Lease agreement, which has already been signed by the Management.

<u>Committee Observations</u>

The Committee observed that -

i) The audit query had been considered in the 19th and 21st Report of the Public Investments Committee on audited accounts of State Corporations.
ii) TARDA had scheduled a Special Board meeting regarding this matter on 12th November, 2019 with a view to suing KENGEN.

Committee recommendations

Considering that the PIC had considered the matter in the 19th and 21st reports; the Committee on Implementation should follow up on the implementation of the past PIC recommendations pursuant to its mandate.

303.2 Other Incomes

The Committee heard that revenue from exchange transactions of Kshs.168,049,484 included an amount of Kshs.61,036,682 in respect of sale of produce, sale of tree seedlings, sale of sand and honey and rendering services which was not fully supported by documentary evidence. Consequently, the validity and accuracy of the recorded amounts totalling Kshs. 61,036,682 for other incomes could not be confirmed.

Management Response

Management informed the Committee that the voluminous documents for these transactions were physically given to the Auditors at TARDA's head office and availed for audit verification. Such documents were still available for verification.

Committee Observations

This query arose due to TARDA's failure to provide documents for audit within the required timelines. TARDA had entered into an agreement with Embu County government and loaders and splitting of proceeds from sale of sand harvested in the county. A lorry of soil was selling at a price of Kshs. 8000 in Embu county. This was split among the parties with TARDA getting Kshs. 2000 per sale while the County government and loaders were getting Kshs. 3000 each per lorry.

There appears not to be proper structures of accountabilty and therrefere subject to abuse.

Committee Recommendation

The Committee recommendations that -

i. **The Management of TARDA should provide documents for audit within the required timelines failure to which sanctions provided under sections 62 of the**

Public Audit Act 2015 and Section 68 of the PFM Act should be instituted against the accounting officer.

ii. **Management should put in place a system that esnsures proper accountability of the revenue streams from this transaction.**

iii. **The office of the Auditor General should audit the entire transaction and report compliance of the same in the next audit report for TARDA's financial statements.**

3.43 KENYA PORTS AUTHORITY (KPA) (FYS 2014/15 TO 2016/17)

EXAMINATION OF REPORT OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF KENYA PORTS AUTHORITY FOR THE FINANCIAL YEARS 2014/15 TO 2016/17

Mr. Daniel Manduku, the then 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.

410. **PROPERTY, PLANT & EQUIPMENT**

a. **Stalled Projects (FY 2014/15 to FY 2016/17)**

The Committee heard that the Property, Plant and Equipment balance of Kshs.2,279,884,090 as at 30th June 2014 included 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 was registered under the name of the University.

Further, included in the above balance for property, plant and equipment was an amount of Kshs.8,228,852 for work-in-progress projects which stalled during the year. Note 17 to the financial statements did 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 had not put in place a revaluation policy to ascertain if the motor vehicles carried any nominal value that was 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

Management informed the Committee that the two stalled projects were:

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 Board duly approved the impairment.

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.

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.

Subsequently, a series of meetings with EPZA have been held and all the land for exchange was valued. There were some claims by investors that had 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 had also been subject of investigations by Ethics and Anti-Corruption Commission (EACC) following recommendations by PIC. Management had co-operated with the investigations and is yet to receive a progress report from the Ethics and Anti-Corruption Commission (EACC).

Committee Observations

The Committee observed that -

(i) The audit query regarding canteen had been addressed in the 20th Report of the Public Investments Committee. 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. The Authority had engaged the Commission on the progress of investigations on 11th July, 2016 and 10th March, 2017. The EACC had not concluded the investigations.

(ii) Regarding depreciation of the assets, the Committee was satisfied with the explanation given by the management

(iii) The response to the pieces of land was amalgamated in the unutelized laand paragrahs below.

Committee Recommendations

The Committee recommends that -

(i) The EACC should expedite investigations of the matter of the canteen expeditiously with a view to preferring charges of those found culpable.

(ii) **The Committee on Implementation should follow-up on the PIC past recommendations pursuant to its mandate.**

b. 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.

<u>Management Response</u>

Management explained the matter as itemized in the table below: Details of 7 parcels of land so far secured:

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 had a leasehold title for a term of 99 years with effect from 1st April, 1991. They wee secured by a boundary wall and guarded by a contracted security firm. The plots had Six (6) old dilapidated developments. The Board approved development of an ultra-modern facility to accommodate KPA non-operational offices including the headquarters, which needed to be moved out of the port to create additional space for operations. Feasibility studies have been completed, the next stage was to be design and construction
		170144	26,000,000.00	
		170145	28,680,000.00	
ii	Plot No. LR/16121; 2.5 Ha; Located at	170159	9,325,550.00	The plot was acquired in 1994; was vacant and fenced in preparation for

	Shimoni, Kwale			Shimoni port development whose feasibility study was complete.
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 but was vacant. The Board had in 2014 considered disposal of the parcel. The Authority would further engage the Parent Ministry and Treasury for approval to dispose. The plot was heavily infested with squatters
iv	Plot No. MN/V/196; 63 acres, Located at Jomvu Kuu, Mombasa	170036	63,000,000.00	The parcel was bought by the former Kenya Cargo Handling Services Ltd and was vacant. KPA published a caveat in the media on 29th January 2016 to ward off squatters. There were also plans to exchange this land with Export Processing Zones Authority (EPZA). The firm of Muchoki, Kangata Njenga & Co. Advocates had been instructed to institute a civil suit to evict the squatters. The Authority had also identified an Auctioneer (Siuma Auctoneers) to evict the squatters and consultations were underway.
v	Plot No.	170234	3,600,000.00	The two parcels were acquired in

	MN/17944/45; 2.4 Ha, Located in Kisumu	170235	3,600,000.00	1992 and were being cultivated by the locals. KPA was in the process of engaging National Housing Corporation with a view to developing the parcel through a joint venture.
vi	Plot No. LR 24588; 9.182 Ha, Located in Malaba	170233	19,650,000.00	This parcel was compulsorily acquired by the Government on behalf of the Authority in 1987. It was vacant, and guarded by a contracted security firm. It was reserved for future development in view of the development of the SGR to Malaba.
vii	Plot No. MN 5325; 17.10 Hectares, Located at Taita-Taveta	140306	2,500,000.00	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 was vacant, fenced with chain link fence and was secure, with a site office constructed in the year 2014. It is reserved for future port development (ICD)
	TOTAL		192,344,245.00	

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	The plot was bought in October 1993. Part of it was occupied by squatters. A proposal to resettle squatters on part of the plot to forestall further encroachment was not approved by the government. An attempt to secure the un encroached portion of the land was made through fencing. This was however frustrated when the fencing was vandalized. The matter was reported to the police. The firm of Sichangi Partners Advocates had also been instructed to institute a civil suit to evict the squatters. The land had been impaired by 10%
ii	Plot No. LR/9093; 7 Ha, Located in Malindi	170160	66,585,000.00	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 policy concerns. The firm of Cootow & Associates Advocates was then instructed to institute a civil suit to evict the

				squatters. However it later emerged the KAA was expanding the Malindi Airport and land featured among the list of parcels to be affected by the expansion. KPA had since notified the KAA of its claim to the encroached parcel. The land had been impaired by 25%
iii	Plot No. MS/46/I; 5.073 Ha, Located at Likoni; Mombasa	170225	25,000,000.00	The plot was bought in October 1991 and was an open field utilized as a football pitch by the locals. Management planed 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 had been impaired by 10%.
iv	Plot No. MS/1682/I; 2.708 Ha, located at Likoni, Mombasa	170238	26,765,000.00	The plot was acquired in 1994 and was partly occupied by squatters but a large portion is being used by the Community as playing ground. The Authority would 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. It had been impaired by 25%
v	Plot No. MS/137/II; 2.46 Acres, Located at	170226	21,600,000.00	This plot was acquired in 1991 and was being used by a youth group as a fish landing site and farming. The Board

	Mtongwe, Mombasa			approved granting of lease for 33 years to M/s Midland Energy Limited, who agreed to remove the group. Midland had 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 was engaging the county in this regard with a view to resurveying the land for informed decision making on future use of the plot. The land had been impaired by 20%
vi	Plot No. MN/V/1614; 2.5 Ha, Located at Kibarani, Mombasa	170239	18,820,000.00	The plot, acquired in 1992, was 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 could be disposed. The land had been impaired by 25%
vii	Plot No. MN/VII/3794; 12.24 Ha, located at Chaani, Mombasa	170224	90,735,000.00	This land was held on leasehold for 99 years with effect from 1st July, 1993. It is currently occupied by squatters who had 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 KPA

				could dispose. It had been impaired by 5%.
	TOTAL		483,288,200.00	

Committee Observations

The Committee observed that -

(i) **The Audit query recurred in the financial years 2014/15 to 2016/17.**

(ii) **The valuation of the respective pieces of land was done in 2009.**

(iii) **Most of the land was vacant with some being occupied by the squatters. This shows that the authority acquired land it did not need leading to idle capital.**

Committee Recommendations

The Committee recommends that -

(i) **The Authority should secure all percales of land it holds by placing caveats, fencing them and securing their titles.**

(ii) **The Authority should put the idle land into economic use**

411. **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

Management indicated that 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 it strategic interest over its property by, amongst other things, that the consent was necessary to enable it maximize use and benefits of its parcels, leases were subordinate to KPA's interest and there was always due diligence through internal processes before consent was given. Charged property was not under risk in case of default as the charge was only against the leasehold interest and in particular the unexpired term.

<u>Committee Recommendation</u>

The explanation given was satisfactory and therefore the query resolved.

<u>Irregular Extension of Leases</u>

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

Management indicated that this matter was resolved with the Auditor-General. During its 304th meeting, the Board (KPA) 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.

Committee Recommendation

The explanation given was satisfactory and therefore the query resolved.

412. **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 was a Harbor Area as pronounced by KPA tariff book being part of tidal waters encircling the Mombasa.

Management Response

The Management informed the Committee that the current status was that the National Land Commission was 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 was the one mandated by law to intervene.

Committee Observations

The Committee observed that -

i) **The National Land Commission was handling the matter of the excision of part of the Harbour area.**
ii) **The County government of Mombasa had taken up possession of the land.**
iii) **The Audit query was recurring in the financial years 2015/16 to 2016/17.**

Committee Recommendations

The Committee recommends that -

(i) **The National Land Commission should revoke ownership of any land reclaimed and in the hands of the private developers.**

(ii) **The National Land Commission should confirm the ownership of the impugned land and register it under its rightful owner between KPA and the County Government of Mombasa**

Approval of Access Road (FYs 2014/15)

The Committee heard that records availed for audit indicated that the Authority's board approved construction of a road linking the reclaimed parcels of land by the same developer to the Port through a defined route on parcel MSA/BLOCK 1/691 which was reclaimed through dumping material from the Port. The road was restricted and privately used by the developer who had installed a weighbridge and an office for their use. The Authority indicated that the title for the reclaimed land was acquired by the developer on behalf of the Authority at the developer's cost. The reclaimed land formed part of the harbor area which could only be amended by a gazette notice by the Minister responsible for transport and not the Authority's board or management.

The management did not explain how the developer, and under whose instructions, they applied for and acquired the title for the irregularly reclaimed land on behalf of the Authority which was eventually beneficial to the developer.

The Authority therefore violated Part IV Section 8(e) of KPA Act that requires the board to ensure that no particular person or body is given any undue preference or is subjected to any undue disadvantage.

Management Response

Management informed the Committee that the Authority approved the connecting road but on condition that it would be available for public use and not for exclusive use by the developer. letters of 23rd December 2008 & 11th January 2011 and Wayleave clause B3 were availed.

Committee Observation and Recommendation

Explanation was satisfactory, and query resolved.

413. **INTANGIBLE ASSETS (FY 2014/15)**

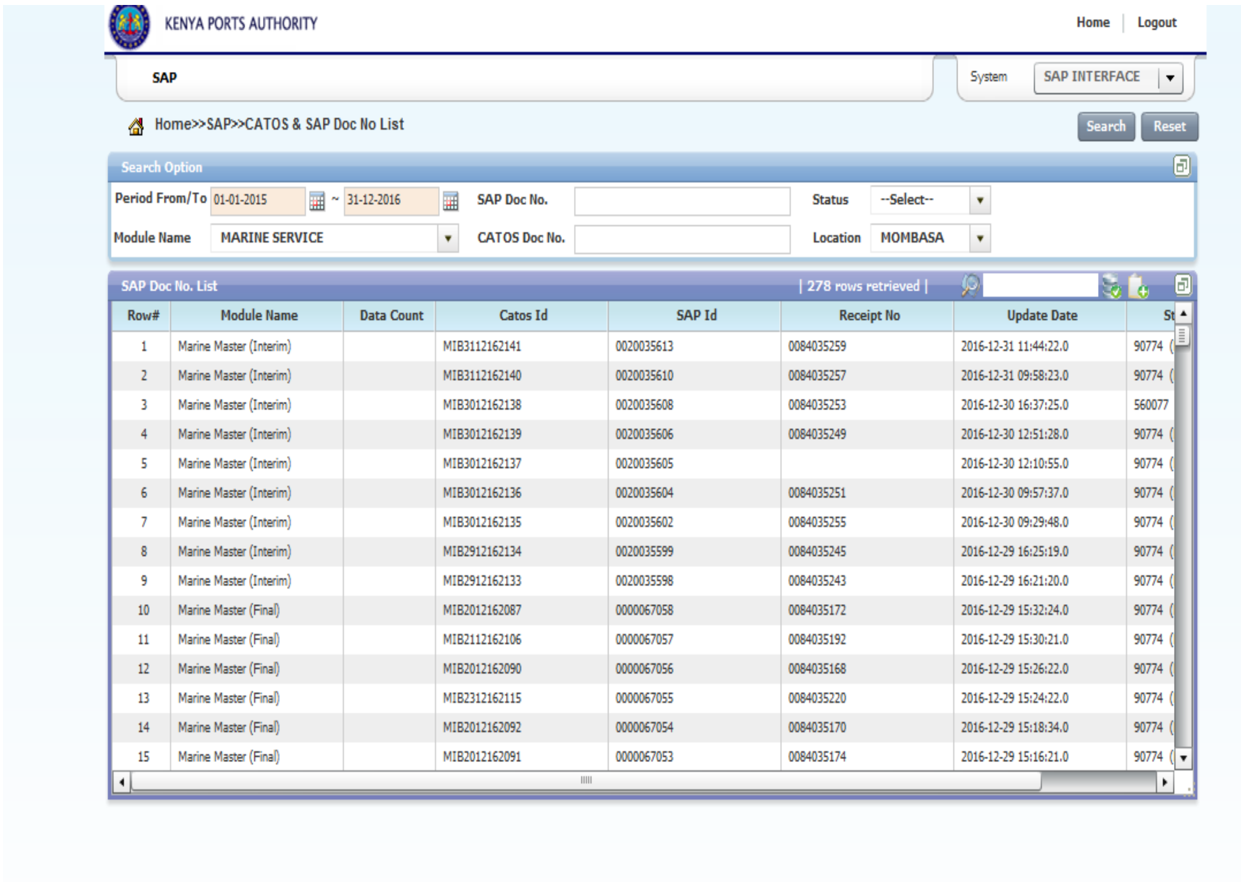
The Committee heard that the statement of financial position as at 30th June 2015 reflected a net book balance of Kshs.197,580,000 in respect to Intangible assets. The total cost as per note 7 to the financial statements amounted to Kshs.1,496,354,471.90 which included Kshs.415,436 ,572 being cost of Waterfront Software (Kwatos). A visit to marine operation offices revealed that marine operating system procured as a part of the Kwatos at a cost of Kshs.38,160,000 (US$ 522,750) was not in use and the marine operations department were manually recording vessel tracking data and physically transmitting the same to finance department for billing. The contract between the application vendors provided for integration of the same with SAP which had not been done as at the time of this audit. The asset had been fully depreciated in the Authority's books and there was no evidence that the Authority has derived any benefit from the asset since procurement of the same.

Further, the Authority had been incurring maintenance cost amounting to Kshs.13,549,994 (US$ 157,557.49) annually since the year 2010 as annual maintenance fees for this system.

In the circumstances, it has not been possible to confirm the validity of the Kshs.38, 160,000 intangible asset as at 30 June 2015 and propriety of the annual maintenance fees amounting to Kshs.13,549,994 incurred for the year ended 30 June 2015.

Management Response

Management informed the Committee that marine operations module in KWATOS was integrated with SAP. The Interim and Final marine billing information was interfaced to SAP for billing in Finance. The SAP Interface screen where marine documents are automatically interfaced to SAP was provided in the table below.

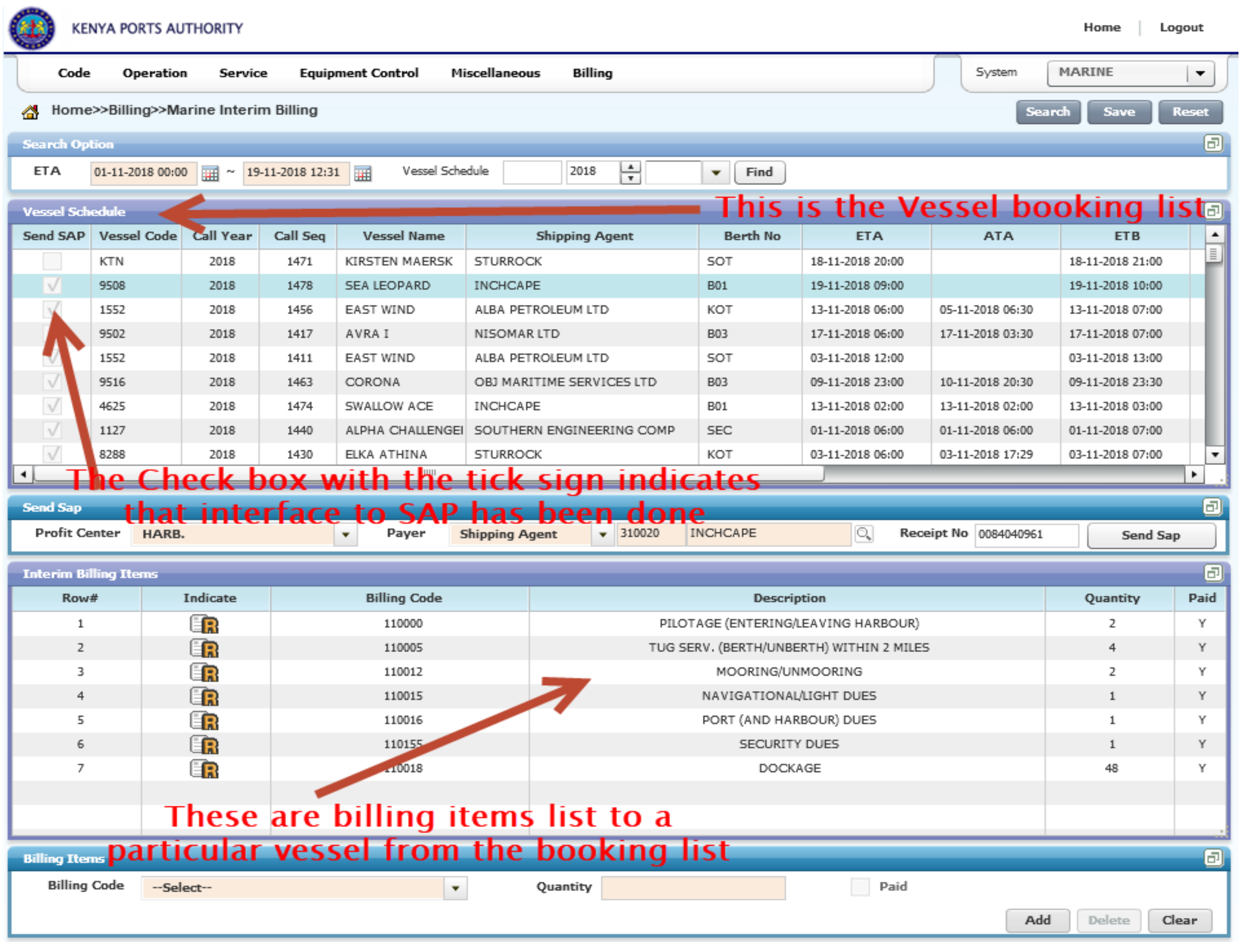


Row#	Module Name	Data Count	Catos Id	SAP Id	Receipt No	Update Date	St
1	Marine Master (Interim)		MIB3112162141	0020035613	0084035259	2016-12-31 11:44:22.0	90774 (
2	Marine Master (Interim)		MIB3112162140	0020035610	0084035257	2016-12-31 09:58:23.0	90774 (
3	Marine Master (Interim)		MIB3012162138	0020035608	0084035253	2016-12-30 16:37:25.0	560077
4	Marine Master (Interim)		MIB3012162139	0020035606	0084035249	2016-12-30 12:51:28.0	90774 (
5	Marine Master (Interim)		MIB3012162137	0020035605		2016-12-30 12:10:55.0	90774 (
6	Marine Master (Interim)		MIB3012162136	0020035604	0084035251	2016-12-30 09:57:37.0	90774 (
7	Marine Master (Interim)		MIB3012162135	0020035602	0084035255	2016-12-30 09:29:48.0	90774 (
8	Marine Master (Interim)		MIB2912162134	0020035599	0084035245	2016-12-29 16:25:19.0	90774 (
9	Marine Master (Interim)		MIB2912162133	0020035598	0084035243	2016-12-29 16:21:20.0	90774 (
10	Marine Master (Final)		MIB2012162087	0000067058	0084035172	2016-12-29 15:32:24.0	90774 (
11	Marine Master (Final)		MIB2112162106	0000067057	0084035192	2016-12-29 15:30:21.0	90774 (
12	Marine Master (Final)		MIB2012162090	0000067056	0084035168	2016-12-29 15:26:22.0	90774 (
13	Marine Master (Final)		MIB2312162115	0000067055	0084035220	2016-12-29 15:24:22.0	90774 (
14	Marine Master (Final)		MIB2012162092	0000067054	0084035170	2016-12-29 15:18:34.0	90774 (
15	Marine Master (Final)		MIB2012162091	0000067053	0084035174	2016-12-29 15:16:21.0	90774 (

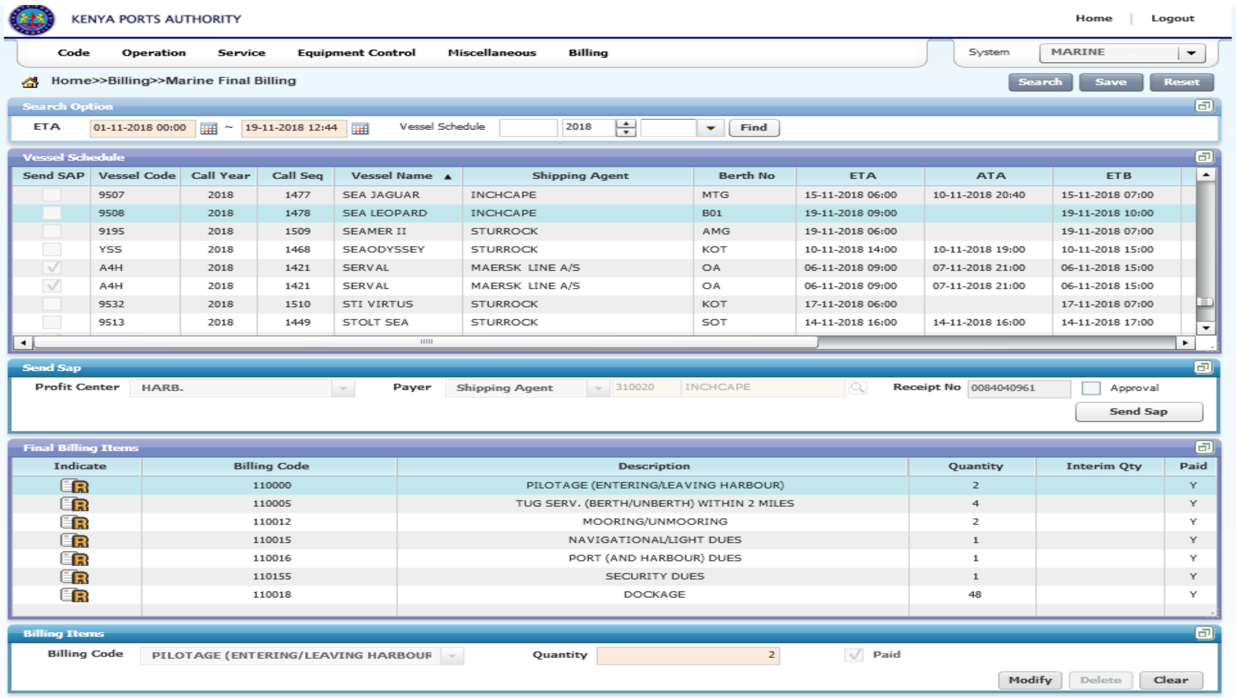
The benefit derived from the Marine module – SAP integration was that customers were able to receive and pay for invoices within minutes. This had eliminated the manual process of raising customer invoices and consequent delays. This improved KPA service delivery to customers as the process of dispatch and receipt of billing information was streamlined.

The manual marine billing information dispatched to Finance was for reconciliation of what hasdalready been interfaced through the system.

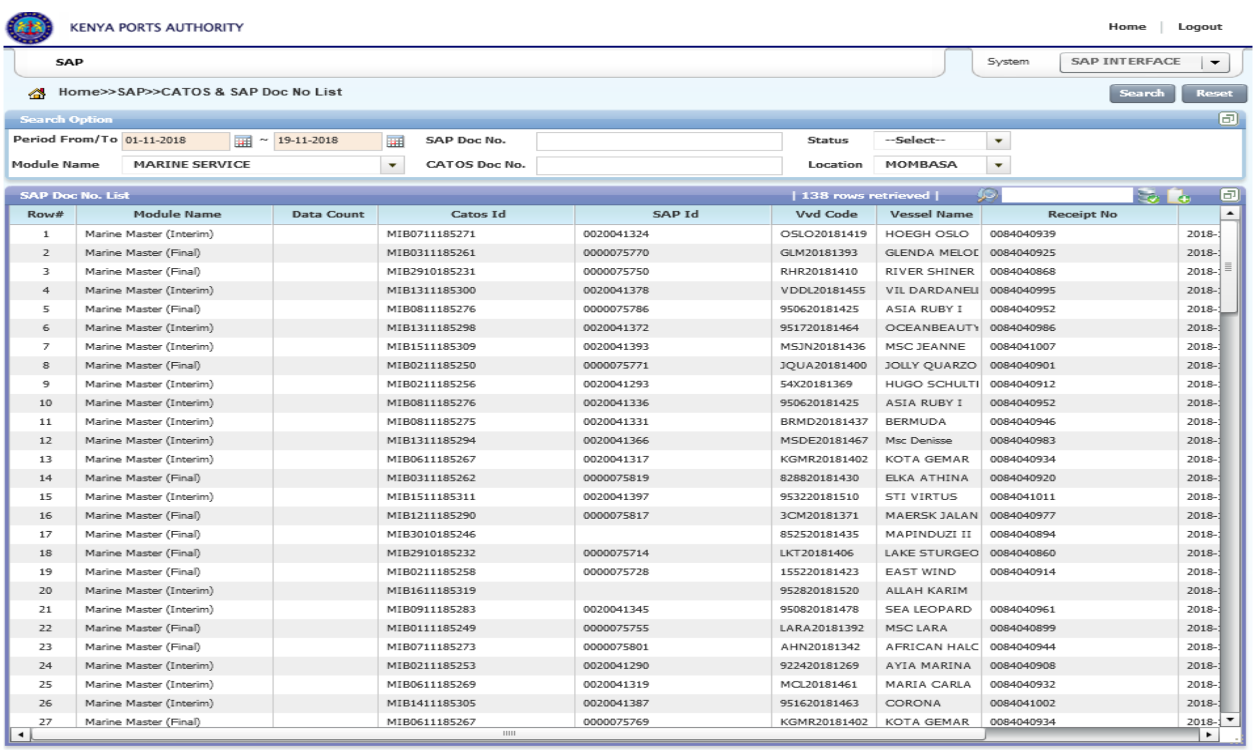
Once billing information was received from the Pilot (Pilot Log chits), the same was entered (manually) into the KWATOS system (Marine Module) where SAP picked the same and generated marine bills. The challenge usually arose from the fact that there was no separate system which could enable the Pilots to key in the information instantaneously while still onboard the ship. Hence the use and need of maintaining marine records which were used by finance for reconciliation before generating the bills.



The second screen is for final Billing of vessels after the vessel has left the port. (Marine Final Billing Screen).



Screen number three is the KWATOS-SAP interface screen which receives information from the two previous screens from the Marine module; (CATOS & SAP Doc No List Screen).



Committee Observation

The Committee observed that -

i) **The OAG and the KPA confirmed that the entire system had since been put in use**
ii) **The KPA was paying for servicing the system that was not in use effectively.**

Committee Recommendation

The Authority should always ensure that procured goods are put into use immediately to avoid payment for their servicing when not in use.

414. **RECEIVABLES AND PREPAYMENTS FY 2014/15**

The Committee heard that as reported in the previous financial years, the receivables and prepayments balance of Kshs.6,324,493,000.00 as at 30 June 2015, included amounts of Kshs.287,231,000 and Kshs.336,010,000 owed by the Ministry of Transport and Kenya Ferry Services Limited respectively, and which had been outstanding for more than seventeen (17) years. Although the Public Investment committee in its ninth report recommended that the Chief Executive Officer communicates with both the Parent Ministry and the National Treasury with a view to ensure that the receivables were paid to the Authority, no meaningful progress had been made in this regard.

Further, included in the receivables and prepayments balance were amounts totalling Kshs.591,459,937 in respect of debts owed by three firms and which had been outstanding since 2004/2005 financial year. These firms were Kenol Kobil, Kobil Petroleum Ltd and Kenya National Shipping Line which owed Kshs.134,684,891, Kshs.431,289 ,649 and Kshs.25,485 ,396 respectively. In addition, from a sample of trade cargo debtors, marine debtors and rental debtors selected for examination, it was noted that the Authority was still trading with debtors with outstanding balances of over 2 (two) years and for those debtors the Authority had impaired (100%) amounting of Kshs.677,959,554 in line with their policy.

Under the circumstances, the accuracy and completeness of the receivables and prepayments of Kshs.6,324,493,000 as at 30th June 2015 could not be confirmed.

<u>Management Response</u>

Ministry of Transport and Infrastructure (Kshs 287,231,402)

The Management informed the Committee that the said debt arose in 1994 when Kenya Ports Authority contracted M/s Dredgco Kenya Ltd to undertake maintenance dredging at the port of Mombasa. This project was to be funded by the then Ministry of Transport and Communications, through appropriations from the consolidated funds from the Government of Kenya. With consent from the National treasury and the parent ministry, KPA paid the contractor M/s Dredgco a sum of Kshs. 287,231,401.95. The payment was made in lieu of Uganda compensation. On the other hand, the withheld compensation funds amounting to Kshs. 287,231,401.95 had not been released. Despite several communications to the two ministries, this money had not been refunded.

The Authority was still in discussions with the parent ministry and the National Treasury on the write-off or resolution of this matter.

Kenya Ferry Services (Kshs 336,010,000)

The Authority received approval from the National Treasury to write-off the debt and the debt had been removed from the books.

Kenya National Shipping Line

Both parties agreed about the existence of the debt. The Authority could not institute legal action towards recovery of the debt since the owners of KPA and KNSL was the Government of Kenya, nor can KNSL pay the debts due to its non-performance. Recent developments were that the Ministry, through the State department for Shipping and Maritime Affairs, was restructuring KNSL.

Kenol Kobil and Kobil Petroleum Ltd.

The Authority had filed legal proceedings to recover debts of Kenol Kobil and Kobil Petroleum Ltd. The matter was still pending in court under cases Nos. HCC no 128 of 2004 and HCC no. 216 of 2009.

On 17th December 2018, the Court directed that the case should be referred for mediation. The Deputy Registrar had not yet issued directions on the matter, neither had a Mediator been appointed to hear the suit.

On 15th January 2019, the Authority appointed the firm of Mohammed Muigai Advocates to represent its interests owing to dissatisfaction with the way the firm of M/s Daly and Inamdar Advocates had been handling the matter.

Trading with debtors with Outstanding Balances of over 2 years old

Management in compliance with the International Financial Reporting Standards impaired the debts of the Kenol Kobil, Kobil Petroleum Ltd and KNSL. Indeed over 87% of the Kshs.677, 959,554.09 relates to these 3 entities. As stated above, the Authority filed legal proceedings to recover debts of Kenol Kobil and Kobil Petroleum Ltd. The matter is pending in court.

All debts were actively pursued and the Board during its 347th Special Board meeting held on 24th July 2018, recommended the write-off of outstanding debts of Kshs. 78,018,967.30 as at 30th June 2018. Efforts to collect the debts had been frustrated by factors ranging from firms that were no longer transacting with the Authority, tenants who never occupied offices/plots, to disputed bills. The amounts would be written- off once approval from National Treasury had been received as per the PFM Act 2012.

<u>Committee Observations</u>

The Committee observed that -

i) **The amounts due from the Ministries were still pending as at the time of KPA's appearance before the Committee and there was no assurances that it could be honoured**
ii) **The auditors confirmed that amount due from KFS had been written off**
iii) **It was inconceivable that the KPA was investing in distressed companies**
iv) **The matter of Kenol Kobil has taken inordinately long time in Court. Kenol Kobil wanted negotiations and were in negotiations of their intended offer before deciding**

on whether or not to withdraw the Court case. Currently, Kenol Kibil was paying exactly for the services they contested previously.

v) **KPA was not trading with KNSL and had not taken it to Court despite owing it huge chunks of money**

vi) **The liabilities of the KNSL had been included for settlement in the currently restructuring process**

Committee Recommendations

The Committee observed that -

(i) **The KPA should suspend trading with entities that fails to owner their part of the financial obligations until the matter is resolved**

(ii) **The KPA should expedite the negotiations process with Kenol Kobil to ensure that the money due to KPA is repaid without delay**

415. **PENSION SCHEME EXPENSES (FY 2014/15)**

The Committee heard that the statement of comprehensive income reflected operating expenses amounting to Kshs.28,415,612,000. Included in these were expenses paid by the Authority on behalf of the KPA's pension scheme's administrative expenses amounting to Kshs.53,747,946.83. This was done contrary to the provisions of Section 10 of the Treasury circular 18/2010-52(10) dated 24th November 2010 which required the employer to meet the set-up costs for the scheme only for the first year.

From the foregoing, the propriety of Kshs.53,747,946 for scheme administrative expenses for the year ended 30th June 2015 could not be confirmed.

Management Response

Management informed the Committee that the pension scheme was transitioning to full autonomous stand-alone unit. The tender for consultancy on optimal stand-alone pension structure was advertised in January 2019 and awarded to PKF who were working on the structure.

The National Treasury's letter ref EPN 171/07 VOL. Q (94) of 16th June 2011 directed changes to its circular No. 18/2010 of 24th November 2010 under variation of clause 10 that provided that scheme expenses related to in-house administration may be met by the employer (KPA). These were salaries and allowances paid to employees assigned the duty to administer the scheme. The Scheme has since started reimbursing the Authority employees costs for the staff attached to the scheme on a quarterly basis.

Committee Observation and recommendation

The matter was satisfactory addressed and query resolved

416. **PROPERTY PLANT AND EQUIPMENT (FY 2015/16)**

a. **Alienated Properties FY 2015/16**

The Committee heard that the statement of financial position as at 30th June 2016 reflected property plant and equipment balance of Kshs.123,242,840,000. The balance included leased land valued at Kshs.6,162,840,000 and land and buildings valued at Kshs.22,384,283,000.

Information availed for audit indicated that twentynine (29) properties valued at Kshs. 313,400,000 belonging to the Authority were invaded by third parties. The management indicated that the invaders had purportedly acquired ownership rights over the properties and undertaken developments on the lands. The Authority had filed suits in various law courts which were pending determination.

Management Response

Management informed the Committee that the Authority has filed several cases as listed in the table below. The total number of plots belonging to KPA which were irregularly alienated to third parties were twenty eight (28). The third parties had purportedly acquired rights (ownership) over the plots and some had even undertaken developments. However, in the month of January 2018, the National Land Commission published a notice listing parcels illegally alienated from KPA and gave the registered parcel owners 90 days to vacate the parcel.

The High Court in ELC Civil Suit No. 245 of 2004: *Kenya Ports Authority Vs. G. Wayumba (Geometer Surveys Ltd), Commissioner of Lands, District Land Registrar Mombasa, Wayland Ltd, Essam Properties Ltd and Kilifi Gardens Ltd* entered judgement in favor of KPA declaring that excision of portions from KPA's original parcels by creating new ones in the names of private parties was illegal and ordered for the excisions be revoked and rectification of the register. An application for a stay of the decision and setting it aside had been filed by the defendants and the ruling was delayed on 21st March 2019. The Court allowed the application for setting aside of the Ex Parte Judgment in MSA ELC Civil Suit No. 245 of 2004, as against only the 6th and 7th Defendants (Essam Properties Ltd & Kilifi Gardens Ltd), in respect of their titles No. MSA/BLOCK XXVI/508 and MSA/BLOCK XXVI/928. The Application was allowed only because there were pending suits against the two defendants namely; ELC No. 497 and 498 of 2001, where they had filed their Statements of Defence in Court. (A letter from the lawyer and a copy of the judgement was provided.)

The table below summarizes the status of these plots:

	Plot No.	**Allocated To**	**Revalued Amount (Kshs)**	**Status**	**Case No./ Lawyers**
1	XLVII/111 0.2833 Ha	Robert Mutiso P. O. Box 285587 Nairobi	87,500,000	This case is part heard and was fixed for hearing on 28th November 2018 but could not proceed as the court was not sitting. Though the case had been fixed for hearing on 28th March 2019, it did not proceed because the matter was not listed. The Court directed parties to	HCCC No.495/01 The law firm of M/s Timamy & Co. Advocate were retained to represent the Authority in these cases. The Litigation lawyer who was handling this case joined the judiciary and the managing partner was venturing into politics. Consequently, a decision was made to transfer the briefs to M/s

				take a hearing date at the Registry. It was subsequently fixed for hearing on 30th October 2019	A.B. Patel & Patel Advocates.
2	XLVII/112 0.7503 Acres	Stone Wave Limited P.O. Box 82576 Mombasa Directors Abbasali A.G. Dossa Naushad A. Merali	153,500,000	The case was consolidated with HCCC 497/2001 & 498/2001 (see item 10 & 11) and came up for hearing on 28th November 2018 but did not proceed as the court was not siting. The case was fixed for hearing on 28th March 2019. The Court directed that the Intended Interested Party's application to be enjoined to the suit will be heard on 30th October 2019	HCCC NO. 499/01 A.B. Patel & Patel Advocates
3	XLVII/113 0.535 Acres	Supernova Properties P. O. Box 82077 Mombasa Directors Ashok L.Doshi Doshi Group of	65,000,000	An office block had been constructed on the plot. Application to consolidate this case and further directions was on 19th February 2019. The Court directed that the application to have the suit	HCCC NO. 40/05 A.B. Patel & Patel Advocates

		Companies		consolidated with others should await the decisions in the other two applications: one for joinder of an Interested Party fixed for hearing on 25th September 2019 and the other seeking to have the suit against the 1st Defendant dismissed – was fixed for hearing on 2nd October 2019	
4	XLVII/114 0.363 Acres	**Santunia** Limited P. O. Box 87270 Mombasa	37,500,000	A boundary stone wall had been built. Application to consolidate this case and further directions was on 19th February 2019 Court directed that the application to have the suit consolidated with others should await the decisions in the other two applications: one for joinder of an Interested Party in ELC Nos. 41, 42 and 43 of 2005 fixed for hearing on 25th September 2019 and the other seeking	HCCC NO. 40/05 A.B. Patel & Patel Advocates Same as 1 above

				to have the suit against the 1st Defendant in ELC 40 of 2019 dismissed – was fixed for hearing on 2nd October 2019	
5	XLVII/115 & XLVII/116	Freight Constructions services	50,400,000 76,000,000	Boundary wall and offices constructed. Application to consolidate this case and further directions was on 19th February 2019 Court directed that the application to have the suit consolidated with others should await the decisions in the other two applications: one for joinder of an Interested Party in ELC Nos. 41, 42 and 43 of 2005 fixed for hearing on 25th September 2019 and the other seeking to have the suit against the 1st Defendant in ELC 40 of 2019 dismissed – was fixed for hearing on 2nd October 2019	HCCC No.43/05 A.B. Patel & Patel Advocates
6	XLVII/117	Nature System	63,000,000	Boundary wall had been	HCCC No. 496/01

	0.558 Acres	Limited P. O. Box 19002 Nairobi Directors Abdul-Gaffur Abdulgani Pastor Abdulgani Abdul-Gaffur Pastor		constructed. Though the case had been fixed for hearing on 28th March 2019, it did not proceed because the matter was not listed. The Court directed parties to take a hearing date at the Registry. It had since been fixed for hearing on 30th October 2019	A.B. Patel & Patel Advocates
7	XLVII/118	TSS Grain Millers P. O. Box 85039 Mombasa	114,500,000	Boundary wall had been constructed. Application to consolidate this case and further directions was on 19th February 2019. The Court directed that the application to have the suit consolidated with others should await the decisions in the other two applications: one for joinder of an Interested Party in ELC Nos. 41, 42 and 43 of 2005 fixed for hearing on 25th September	HCCC No.41/2005 A.B. Patel & Patel Advocates

				2019 and the other seeking to have the suit against the 1st Defendant in ELC 40 of 2019 dismissed – was fixed for hearing on 2nd October 2019	
8	XLVII/179 0.0336 Ha	Akaba Investment P. O. Box 8997 Mombasa Directors Abdikarim Shigog	18,200,000	Construction had commenced but was stopped by a court order. KPA had since obtained judgment against Akaba Investment in Civil suit number 245 of 2004 KPA vs G. Mwanyumba and 6 others. While in the process of execution of the said Judgment, the persons affected by the judgment had preferred an appeal and obtained a stay of execution.	HCCC No.124/01 Cootow & Asscoiates
9	1/469 0.2501 Ha	Hydery (P) Limited P. O. Box 82576 Mombasa Masumali G. Merali Naushad A.	Not Revalued	Warehouse built on plot. This was a road reserve There were two Applications pending before Court: One filed by KPA & KPAPS for contempt of	No court case filed as yet awaiting judgement on the related cases to be used as a test case.

		Merali		Court; and the other by M/s Akaba seeking stay of proceedings pending the hearing and determination of an appeal they have preferred. Parties are filing the responses to the Applications. The matter was to be mentioned on 8th August 2019 to confirm compliance. Letter dated 16th July 2019 from M/s Cootow & Associates was attached.	
10	XXVII/508 0.1278 acres	Essam Properties P. O. Box 82578 Mombasa Directors Masumali G. Merali Naushad A. Merali	108,000,000	KPA house was demolished. A boundary stone wall built on the plot. The case had since been consolidated with HCCC No. 498 of 2001 and 499 of 2001 herein were fixed for hearing on 28th March 2019 (see item 11 & 2) Though the case had been fixed for hearing on 28th March 2019, it did not	HCCC No. 497/01 A.B. Patel & Patel Advocates

				proceed because the matter was not listed. The Court directed parties to take a hearing date at the Registry. It has now been fixed for hearing on 30th October 2019	
11	XXVI/928 0.900 acres	Kilifi Gardens Limited P. O. Box 82576 Mombasa Directors Masumali G. Merali Naushad A. Merali	Not valued	KPA house was demolished. A boundary wall built around the plot. This was a road reserve. This case has been consolidated with HCCC 497/2001, 499/2001 (see items 10 & 12) The case was fixed for hearing in 28th November but did not proceed as the court was not sitting. Though the case had been fixed for hearing on 28th March 2019, it did not proceed because the matter was not listed. The Court directed parties to take a hearing date at the Registry.	HCCC No. 498/01 A.B. Patel & Patel Advocates

				It was fixed for hearing on 30th October 2019	
12	XXVI/1001 0.1805 Ha	Wayland Limited P. O. Box 12416 Nairobi Directors Not on company registry database Geometer Ltd – Directors Gordon Wayumba , Alice Ochieng , Francis Odhiambo	37,000,000	KPA house occupied by OCPD Port. The had been fixed for hearing on 28th March 2019. See also attached judgment in ELC 245/2004 The matter was fixed for hearing on 2nd October 2019	HCCC No. 500/01 (Now ELC. No. 211 of 2018) A.B. Patel & Patel Advocates
13	XLVII/149	Osman Taraab and Zera Taraab	61,500,000	Warehouses. This was a road reserve.	No court case filed as yet awaiting judgement on the related cases to be used as a test case.
14	XLVIII/150 0.1551 Ha	Sunnex Ent. Limited P. O. Box 82077 Mombasa	55,000,000	Plot created from road reserve at either side of road at Dockyard and adjacent to Port fence	No court case filed as yet awaiting judgement on the related cases to be used as a test case.

		Directors Ashok L.Doshi Doshi Group of Companies			
15	XLVII/151 0.450 Ha	Venezia Ent. Limited P. O. Box 86029 Mombasa Directors Abdul-Gaffur Abdulgani Pasta	37,500,000	Plot created from road reserve at either side of road at Dockyard and adjacent to Port fence. No development.	No court case filed as yet awaiting judgement on the related cases to be used as a test case.
16	XLVII/152 0.450 Ha	Venezia Ent. Limited P. O. Box 86029 Mombasa Abdul-Gaffur Abdulgani Pasta	37,500,000	As above	As above
17	XLVII/153 0.450 Ha	As above	37,500,000	As above	As above
18	XLVII/154 0.0450	As above	37,000,000	As above	As above

19	XLVII/155 0.0675 Ha	Oceanfreight (MSC) P. O. Box 80637 Mombasa	38,500,000	Grabbed and sold to MSC. Car Park built	As above
20	XLVII/162 0.0451 Ha	Vanezia Ent. Limited P. O. Box 86029 Mombasa Abdul-Gaffur Abdulgani Pasta Abdulgani Abdul-Gaffur Pasta	37,500,000	Plot created from road reserve at either side of road at Dockyard and adjacent to Port fence. No development.	As above
21	XLVII/163 0.0531	Osman Hajj Talab & Zera Osman Talab P. O. Box 98142 Mombasa	60,000,000	Plot created from railway reserve. Boundary wall and buildings.	Railway siding plots allocated to private individuals. No cases have been filed.
22	XLVII/164 0.500 Ha	As above	40,000,000	As above	As above
23	XLVII/165 0.0496 Ha	As above	20,000,000	As above	As above

24	XLVII/166 0.0497	Joseph Ngetich P. O. Box Mombasa	20,000,000	As above	As above
25	XLVII/167 0.0502 Ha	Lumda Ent. P. O. Box 20712 Nairobi. Mwenda Mbogori Lucy G. Mwenda	22,000,000	As above	As above
26	XLVII/168 0.0501 Ha	Gladys Tesot	40,000,000	As above	As above
27	XLVII/169	Not registered	12,800,000	As above	As above
28	I/528 & 529	Chembe Holdings and Musk Deer Daniel N Kihiko Abbas M Yusuf	Not Revalued	Road reserve	Ethics & Anti-Corruption Commission filed a civil case seeking cancellation of the titles and a criminal case against the suspected grabbers.
		TOTAL	**1,367,400,000**		

Letters dated 7th August 2019 from A. B. Patel & Patel Advocates and letter dated 16th July 2019 from Cootow &Associates were provided as appendix 3.

<u>Committee Observations</u>

The Committee observed that -

(i) The NLC had recommended revocation of titles to these properties

(ii) Despite these being old matters, they were not captured in the previous audits ostensibly because of sampling.

(iii) Most of the impugned properties were at various stages in Court while in the others, the KPA had not secured titles

(iv) There is need to know who was allocating the KPA land to private individuals

Committee Recommendations

The Committee recommends that -

(i) The Land Registrar should issue KPA with titles to the land whose third parties have not sued the KPA within three months of adoption of this report;

(ii) KPA should apply for expeditious conclusion of the cases in Court;

(iii) The DCI and the EACC should investigate the circumstances under which the KPA land was allocated to private individuals with a view to preferring charges aganst them.

b. Land Without Title Documents (Fy 2015/16)

The Committee heard that included in the Property Plant and Equipment balance of Kshs.123,242,840,000 for the year ended 30th June 2016 was land and buildings valued at Kshs.22,384,283,000 owned by the Authority. However, documents availed for audit review indicated that the Authority did not have title deeds for thirty four (34) parcels of land valued at Kshs.3,478,490,000.

Although management had engaged a consultant to conduct verification of all its properties, no documents were presented for audit to confirm that the parcels were owned by the Authority and were free from encumbrances.

Management Response.

Management provided a list indicating land with no titles and KPA's remarks per title. For the parcels of land without titles, action to secure new titles were underway. The Authority proceeded and undertook official searches for the plots**.** The Authority also filed affidavits for issuance of provisional titles. For two plots MSA/BLOCK/XLVIII/131 and MSA/BLOCK/I/315, the green cards were missing in the Kalamazoo and in the loss cards. KPA could not thus lodge the searches. KPA wrote to the Land Registrar to ensure he avails the files. KPA also filed cautions to protect the interests of the Authority.

On 26th July 2019, the four plots were gazetted and an application for provisional certificate of title deed would be submitted to the Mombasa lands office upon expiry of the 60 days. Details of the plot and gazette notice are (refer to Appendix 4) shown below.

a) Notice No 6899 for MSA/Block/XLVIII/131

b) Notice No 6900 for MSA/Block/XLVIII/558

c) Notice No 6901 for MSA/Block/I/315

d) Notice No 6902 for MSA/Block/XLVIII/156

Some plots were grabbed from the Authority and have cases in court while others were consolidated/subdivided leading to new titles. The rest of the plots have titles. Copies of the titles were provided.

<u>Committee Observations</u>

The Committee observed that -

(i) OAG confirmed seeing the titles as per the responses

(ii) The cases that were in court were however taking inordinately long.

(iii) Titles to other properties had not been secured

<u>Committee recommendations</u>

The Committee recommends that -

(i) **The KPA management should apply for expeditious conclusion of the Court cases**

(ii) **The land registrar should register the KPA land that has no cases in Court within three months of adoption of this report**

c. **IDLE PARCELS OF LAND 2015/16**
d. **RECLAIMED LAND 2015/16**
e. **EXCISION OF PART OF HARBOR AREA 2015/16**
f. **APPROVAL OF ACCESS ROAD 2015/16**
g. **INTAGEABLE ASSETS 2015/16**

(These matters were handled in the FY2014/15).

417. **RECEIVABLES AND PREPAYMENTS (FY2015/16)**

a. **Lessee Holding of 33 year for Kipevu Parcel LR No. MN/VI/3957**

The Committee heard that an application by Znymat to lease MN/VI/3957 was considered. In September 2008, KPA leased to Zynmat parcels MN/VI/4407 and MN/VI/4408 for Kshs. 13,348,649 stand premium Kshs. 12,200,000 and annual rent of Kshs. 1,016,665. The lease was signed on 29th July 2009 for 33 years with effect from 1st August 2008, annual rent of Kshs. 2,750,000.

In March 2009, Zynmat paid Kshs. 13,348,649 and sought waiver of 2 years rent for reasons that the land had been invaded by squatters which prompted them to pursue negotiations, compensation and resettlement and further the parcel would require earth work. There was also an oil pipeline with a way-leave zoning which rendered a substantial portion of the parcel unusable for the intended purposes. Zynmat therefore requested for a rent moratorium from 26th March 2010 to 31st July 2018.

In May 2008, Zynmat sought consent to charge by proposing to curve out plot A and B out of the property MN/VI/3957 and to charge the same to raise collateral for the proposed development. This request was declined as was the one on rent moratorium.

Zynmat stopped paying rent and by 2018, had accumulated arrears amounting to Kshs. 25,822,735. A demand notice was issued to their last known address but was returned undelivered.

KPA was considering advertising the termination through the local media and upon expiry set in motion the process of disposal of the interest.

Recovery of the rent arrears appeared to be remote and the lessee wass so far untraceable.

The Board in its 347 Special Board meeting held on 24th July 2018 recommended the debt for write-off subject to approval from the National treasury through the parent ministry as per the PFM Act 2012.

The management had in the meantime recognized a provision as per the existing impairment policy.

Committee Observations

The Committee observed that -

i) **The KPA did not know the address of the addressee**
ii) **KPA undertook to serve them through substituted service**
iii) **KPA was reckless by signing a contract with people it did not know**

Committee Recommendations

The Committee recommends that -

i) **KPA should use CR12 for to determination the address of the lessee**
ii) **KPA should sue the lessee having obtained the CR12**
iii) **The DCI and EACC should investigate the matter with a view to preferring charges against the culprits**

418. **SHORT TERM DEPOSITS**

The Committee heard that the statement of financial position reflects short-term deposits balance of Kshs.12,540,442,000 as at 30 June 2016, an increase of Kshs.3,302,558,000 from balance of Kshs.9,237,887 ,000 as at 30 June 2015. During the financial year 2015/2016, the Authority invested Kshs.2,957,000,000 with Chase Bank. The bank was placed under receivership by the Central Bank on 7 April 2016 and as at the time of this audit, the Authority had not recovered these funds which had already matured.

Under the circumstance, it was not possible to confirm recoverability of the short- term deposits totaling to Kshs.2,957,000,000 invested in Chase Bank as at 30 June 2016.

Management Response

Management informed the Committee that Chase bank was placed under receivership by the Central Bank of Kenya (CBK) on 7th April, 2016. As at this date, the Authority had placed time deposits with the bank amounting to KShs.2,956,547,180. The deposits had earned an interest of KShs.74,859,759 up-to the date of receivership, bringing the total to KShs.3,031,406,939.92 details are as follows:

	Date Invested	Tenor	Maturity Date	Interest Rate	Principal Amount Kshs	Interest Earned Kshs	Total Kshs
1	22nd December 2015	5 Months	22nd May 2016	14.5%	1,000,000,000	36,041,329	1,036,041,329
2	26th January 2016	3 Months	26th April 2016	15.35%	1,000,000,000	25,667,213	1,025,667,213

3	1st March 2016	4 Months	1st July 2016	16%	956,547,180	13,151,217	969,698,397
Total					**2,956,547,180**	**74,859,759**	**3,031,406,939**

Following the receivership, the Kenya Deposit Insurance Corporation (KDIC) appointed KCB Bank Kenya Ltd as the receiver manager of Chase Bank and modalities for reopening the bank were put in place, resulting in its partial reopening on April 27, 2016 but still under receivership. At that point, Chase Bank customers were given immediate access to their deposits up to a maximum of KShs.1 million.

On 30th March, 2017, CBK and KDIC invited investors to present an initial Expression of Interest to take an equity interest in Chase Bank. On January 5, 2018, CBK and KDIC announced the receipt and acceptance of a Binding Offer from State Bank of Mauritius (SBM) Holdings Limited, through SBM Bank (Kenya) Ltd with respect to Chase Bank and CBK issued a Gazette notice to this effect.

Based on the agreement between the CBK, KDIC and SBM Bank Kenya, a transfer of 75% of the value of deposits (KShs.2,273,555,204) moved to SBM Bank Kenya while 25% (KShs.757,851,734) remained with Chase Bank (Receivership) in the custody of KDIC.

In compliance to the IFRSs, Management impaired the 25% deposits, recognizing a loss of KShs.757,851,734 during the financial year ended 30th June 2018.

For the 75% of moratorium deposits transferred to SBM, the terms were as below:

No.	**Description**	**Equivalent Amount (KShs)**
i	18.75% is held in a current account with SBM Kenya with unrestricted usage	568,388,801

ii	18.75% is held in a savings account with SBM Kenya at an interest rate of 6.30% per annum with unrestricted usage	568,388,801
iii	37.5% is held in a fixed deposit with SBM Kenya at an interest rate of 6.30% per annum with restricted access; Maturing as one-third on first, second and third anniversaries respectively.	1,136,777,602
Total moratorium deposits		**2,273,555,204**

The transition process was completed on 17th August 2018 and SBM Kenya Limited opened its doors on 20th August 2018 offering full banking operations.

The SBM had since transferred a total of KShs.1,175,061,018 to the Authority's Bank account at Citibank, following management instructions as follows:

- 27th February 2019 - KShs.1,122,161,722
- 11th April 2019 – KShs.52,899,296

The Authority's current and Savings accounts at SBM have nil balances. The remaining 37.5% of the deposits (KShs.1,136,777,602) are on a Fixed deposit account earning interest at 6.3% p.a with restricted access; maturing as one-third on first, second and third anniversaries respectively.

<u>Committee Observations</u>

The Committee observed that -

(i) **Treasury had given approval to invest in Chase Bank through the letter Ref: CONF/MOF/16/01 "TY".**

(ii) **Prior to Treasury approval, the Board of KPA had met on 21st October 2014 at its 91st meeting and approved the proposal.**

(iii) The banks to invest in were picked through restricted tendering of ten banks approved by the CBK and requested to submit proposals. Chase bank was chosen as it provided the highest rate i.e 14.5% for the Kshs 1M invested on 22nd December 2015; 15.35% for the Kshs. 1M invested on 26th January 2016; 16% for the Kshs 956, 547,180 invested on 1st March 2016.

(iv) It was curious that KPA continued investing in Chase Bank up to and just before the Bank was closed. This indicates that the KPA was not keen on following the financial stability of the bank before investing it.

(v) The Chairman of KPA during that time was Hon. Danson Mungatana while the CEO of KPA was Mr. Ndua G

(vi) None of the current Board members that sat in that approval process.

Committee Recommendations

The DCI and the EACC should investigate the circumstances under which the then KPA management and Board continued investing in Chase Bank only for it be closed just after KPA's investments with a view to preffering charges against those found culpable.

419. **CURRENT LIABILITIES (FY 2015/16)**

Trade and Other Payables Variances

The Committee heard that the statement of financial position reflected trade and other payables balance of Kshs.5,668,561,000 as at 30th June 2016 as detailed in Note 27 to the financial statements. Included in other payables was general trade payables balance of Kshs.285,978,000, which KPA circularized vide letter referenced FA/12/01 dated July 2016 to 53 suppliers out of which only one supplier (2%) responded. The supplier stated that KPA owed them Kshs.4,730,596 .64 and USD 287,708.65 while the Authority acknowledged owing Kshs.3,153,676.39 only resulting to a difference of Kshs.1,576,920.25 and USD 287,708.65 which the Authority's management had not explained as at the time of this audit.

Management Response

The Management informed the Committee that the Authority disagreed with the amounts indicated by the vendor/supplier. Some of the invoices included in the outstanding statement by the supplier had been processed and paid before the closure of the financial year. The balance shown in our accounts is therefore correct; a reconciliation of the amounts is shown in appendix 19 provided.

And in as much circularization is important, the Authority cannot force responses from suppliers.

Committee Observation

The reconciliation was still pending.

Committee recommendation

The Kenya Ports Authority should reconcile the amount and report to the Office of the Auditor General within three months of adoption of this report.

Long Outstanding Balances FYs 2015/16

The Committee heard that trade and other payables balance of Kshs.5,668,561,000 as at 30 June 2016 included a general trade balance of Kshs.285,978,000 out of which Kshs.87,843,356.60 was owed to Kenya Oil Company Limited since 2005. With this in mind, it was not possible to confirm the accuracy and completeness of the trade and other payables totaling to Kshs.5,668,561,000 as at 30th June 2016.

Management Response

Management informed the Committee that Kenol had sued KPA claiming the amount allegedly being agreed purchase price for fuel products sold and supplied by Kenol to KPA during May and June, 2008. The case Nbi HCCC No. 216 of 2009 was still pending in court. The amount was not paid to the vendor and was held as a counter claim for the debtor’s amount. This matter was still pending in court since the Plaintiff; Kenol Kobil, had not taken any steps to progress the matter.

Committee Observation

This matter had taken inordinately long time to conclude from court.

420. **IRREGULAR PAYMENTS OF LEGAL FEES (FY 2015/16)**

The Committee heard that the statement of comprehensive income for the year ended 30th June 2016 reflected administrative expenses amounting to Kshs.3,194,375,000 which included legal fees amounting to Kshs.388,528,000 as detailed in Note 5 to the financial statements. Review of the legal records availed for audit revealed that management did not comply with the provisions of the Attorney-General Circular number AG/CONF/6/E/247NOL.ll which required that:

iv) Hire of services of private legal consultants by National Government entities be approved by the Attorney-General;
v) All material litigation be notified to the Attorney-General within (3) three days after filing of any pleadings; and
vi) Legal fees paid to various law firms be approved and authorized by the Attorney-General.

Consequently, it was not possible to confirm the propriety of the legal expenses amounting to Kshs.388,528,000 incurred during the year ended 30th June 2016.

Management Response

Management informed the Committee that the Authority's lawyers were not aware of the existence of the circular from the office of Attorney General which was under the reference of KENAO. However, KPA had just obtained a copy of the said circular from Mr. Alex Mbuvi of the Office of the Attorney General after this issue was brought to KPA's attention (a copy of the forwarding email was provided).

In addition, KPA pointed out that upon its analysis of the said Attorney General's circular, KPA opined that it did not apply to State Corporations and therefore KPA sought clarification, advice and direction from the Office of the Attorney General. Even though KPA had not yet received a response from Attorney General on this issue as KPA had stated herein, KPA had informed the office of the Attorney General of two recently filed major court cases for their noting and advice.

KPA also pointed out that out of the total expenditure of Kshs 388,528,406.12 only Kshs. 77,259,112.32 was actually paid out.

The accrued expenditure of Kshs. 311,269,293.80 was derived from ongoing communications, discussions and negotiations on pending fee-notes between respective lawyers and the Authority as can be discerned from some of the bundle of correspondences.

Committee Observation and recommendation

The explanation given was satisfactory and the query resolved.

421. **PENSION SCHEME EXPENSES 2015/16**

This was a repeat paragraph addressed in 2015/16 FY.

3.45 NATIONAL BANK OF KENYA (NBK)

EXAMINATION OF REPORT OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF THE NATIONAL BANK OF KENYA (NBK)

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.

422. **AUDIT OF NATIONAL BANK OF KENYA ACCOUNTS**

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 only advise the bank on any issue which the Committee would raise and not necessarily be the one to be introgated matters matters the management should respond to. The Committee further 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 Office of the auditor Gneral had informed the Committee that the NBK had not submitted to statutory audit by the Office of the Auditor General for a long time claiming that they were not a state corporation. The Committee sought ot know why and with the management of the NBK who, in the first par of the meeting, raised the following issues before finally indicating that NBK had not refused to be audited and that the Bank was waiting for the audit request from the Office of the Auditor Gneral:

- **a.** The NBK was not a State Corporation within the meaning of Section 2 of the State Corporation.
- **b.** The Bank was not funded from public funds
- **c.** The the Banking Act, Companies Act and the Capital Markets Act on appointment of External Auditor did not envisage this to be the Auditor General

<u>Committee Observations:</u>

The Committee observed that -

i) On whether rhe bank was a state corporation contrary to the NBK's submission, the Committtte was convinced that the Bank was was a state corporation.

It was incorporated under the Companies Act, Cap 486 Laws of Kenya on 19th June, 1968 (Certificate of Incorporation No.C.7763 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 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 table the NSSF and Treasury shares account for 70.55% making NBK a state corporation.

ii) On whether the National Bank of Kenya was funded from public funds, it was noted that 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. NBK through the GoK investment in it was funded from Public funds. The funds being managed by the board of Trustees of NSSF was a public fund created by legislation. The funds were then invested in different investments including the funds invested by National Bank. These funds were a portion of members' contribution whose loss will lead to liability on the part of the GoK. 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.

b. The Bank had received cash injections from the government in the past in an effort to keep it afloat and this money is part of public funds. This squarely puts NBK as a sate corporation subject to audit by the Auditor General.

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

a. Section 721(1) & (2) of The Companies Act, 2015–Appointment of External Auditor at AGM

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

c. 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

d. Sections 26, 31 (2) & 32 (2) (C) of the Banking Act – Duty of Confidentiality

e. Sections 23,24 & 52A of the Banking Act - Banking Act to prevail in the event of a Conflict

f. Section 25 of the Banking Act –Change of Auditor to be Notified to the Central Bank

g. Section 161 The Companies Act Chapter 486 Laws of Kenya (now Repealed) – Disqualification of Auditor

All the above provisons don not bar appointment of the Office of the Auditor to audit the NBK. Infact to be ICPAK member, Membership to the Institute of Certified Public Accountants (ICPAK) 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.

On 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. 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.

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 the binds the Auditor general in his say to day work.

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.

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.

423. EVENTS AFTER THE MEETING OF 4TH JULY 2019

Following the resolution of 4th July 2019 between the Committee, National Bank Management and the Office of the Auditor General that the OAG initates the audit process, the OAG wrote to the NBK management on 10th July 2019 requesting submission of financial statement for audit pursuant to Section 47 of the Public Audit Act of 2015. The NBK replied on 24th July 2019 objecting the request and raised the same issued that had been raised with the Committee on 4th July 2019. The Office of the auditor General reporting the same to the Committee by way of a letter dated 22nd October 2019 on renagation of NBK's promise.

The NBK is currently undergoing restricting in which KCB has offered to purchase it.

Committee Recommendaations

The Committee recommends that -

(i) **The then manaing director for the NBK, Wilfred musau, should be repremenaded for renaging o the promise he made in the Committee that NBK was not opposed to audit by the OAG.**
(ii) **All entities funded by by the Public Money (as difined in the constitution, the PFM Act and Case law), akin to the NBK, should be audited by the Office of the Auditor General.**
(iii) **The Auditor General should audit all the financial statements of NBK that were not audited by the Office of the Auditor General.**

3.46 KENYA REVENUE AUTHORITY (KRA)

EXAMINATION OF REPORT OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF THE KENYA REVENUE AUTHORITY (KRA) FY 2014/15

Mr. John Njiraini, the then Commissioner General of the Kenya Revenue Authority, accompanied by Mr. Bernard Ndung'u – Director General, Accounting Services & Quality Assurance, National Treasury, Mr. David Yego – Commissioner, Investigation & Enforcement, Mr. Ezekiel Saima – Commissioner, Ms. Wairimu Ng'ang'a – Commissioner, Mr. Julius Musyoki – Commissioner Customs, Mr. Moses Musa – DC- (F&LS), Mr. Caxton M. Ngeywo – Commissioner, Domestic Taxes, Ms. Wavunia Ng'aya – Commissioner LS & BC, and Mr. Muema Joseph – Commissioner LS & BC, Mr. Josephat Omondi – Deputy Commissiner Finance and Ms. Grace Mrichu – Deputy Commissioner –

SCM, 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 2014/2015.

424. **LAND WITHOUT TITLE DEEDS FY 2014/15**

The Committee heard that the the disclosures in note 8(i) to the financial statements of the KRA for the year ended 30th June 2015 reflected land and buildings with a net book value of Kshs. 9,291,654,000. The Kshs. 9,291,654,000 included 17 parcels of land without title deeds valued at Kshs. 378,000,000 which were transferred to the Authority by the Government in 1995. The net book value of Kshs. 9,291,654,000, however excluded three (3) unvalued parcels of land in Machakos, Taita Taveta and Shimoni without title deeds. It was therefore not possible under the circumstances to confirm ownership status of these 17 parcels of land and whether property, plant and equipment balance of Kshs. 12,607,320,000 was fairly stated as at 30th June 2015.

Management Response

Management informed the Committee that the the auditors had been given details of the progress made in acquiring titles as indicated below.

Out of the 17 parcels of land without title deeds, titels to the following four properties have been secured:

(i) Embu (P.No. 1602) – obtained in 2017
(ii) Kiunga (P. No. 29768) - obtained in 2017
(iii) Taveta (P. No. 5865/650) - obtained in 2018
(iv) Loitoktok (P.No. 2091) – obtained in 2018

Progress made in obtaining the remaining 13 titles is as follows:

Category A – titles expected by 30th June, 2018:

(i) Mandera (P. No.960) - title deed prepared, awaiting signature.
(ii) Robert Ouko (Blk 6/171) – title deed prepared; under dispute with Ministry of Lands.
(iii) Namanga border station (P. No. 323/86/1) – deed plan approval stage.

Category B – properties pending survey, with a timeline of 30th September, 2018:

(i) Malaba border station – PDP approved, awaiting valuation for issuance of LoA
(ii) Busia – PDP stage; no objection not yet cleared. Under dispute with County Government
(iii) Lwakhakha – PDP stage; County Government physical planner yet to release PDP.
(iv) Machakos – PDP stage; following up with Director Physical Planning

Category C – Ownership being resolved under a inter-ministerial committee:

(i) Kilifi, at part development plan (PDP) stage.
(ii) Robert Ouko Blk 4/87, at PDP stage.

Category D – Properties with court cases:

(i) KESRA:
- MN/1/9594 – case awarded in favour of KRA; at Survey and approval of plan stage.
- KESRA-MN/1/9592/3 – case yet to be decided; at Survey and approval of plan stage
- KESRA-MN/1/9784-95 – reinstatement of title to the Authority being pursued, at Survey and approval of plan stage with target timeline of 31st December, 2018.

(ii) Mtwapa MN/111/8807 – at letter of allotment stage; EACC filed suit to reclaim the parcel for KRA with a hearing date of 5th June, 2018.
(iii) Oceanic (Kizingo) MI/XXXVI/686/593/685/779 – at the deed plan stage.
(iv) Bamburi MN/1/3090-3094 & MN/1/2395 & MN/1/6230 – at the deed plan stage.

Committee Observations

The matter of KRA land without title deeds had been raised in the 21st PIC report with recommendations to the Authority to expedite the process of acquiring title deeds. However, progress towards securing titles for all the KRA land has been very slow as the time of appearance before the Committee.

Committee Reccomendations

The Committee recommends that -

i) **The KRA processes titles for all its land as previously recomnended in the 21st report of PIC.**

ii) **The Committee on Implementation should follow up on the matter pursuant to its mandate.**

425. **IDLE PLANT AND EQUIPMENT FY 2014/15**

The Committee heard that Property, Plant and Equipment balance of Ksh. 12,607,320,000 included a palletized X-ray air cargo scanner with a net book value of Kshs. 29,182,666 (cost Kshs. 166,700,000) at Jomo Kenyatta International Airport which was idle during the year under review.

Management Response

The accounting officer informed the Committee that the contract for scanner maintenance included upgrade and relocation of the Swissport scanner at JKIA had been awarded and copy submitted to the Auditors. The scanner was to be operational from June 2018.

Committee Observations

The Committee observed that -

(i) **The Auditors stated that they had not received copies of the contract for maintenance of the equipment as stated by the Authority.**
(ii) **The machine was acquired in the FY 2004/05 and had been in use since then. It was rendered idle after Swissport, the company that had been using it, relocated to another section of the airport.**
(iii) **The Authority did not transfer the machine as the cost of relocation was higher than the current value of the machine.**

Committee Recommendation

The then Commissioner General of KRA should be reprimanded for allowing the Company that was operating the equipment to relocate before bringing on board a new mintanance and operating company.

426. **BUILDINGS FY 2014/15**

The Committee heard that the Kenya Revenue Authority had been upgrading all its border stations throughout the country through demolition of old buildings and structures and putting up new complexes. However, old buildings and structures that were long demolished with a book value of Kshs. 121,228,000 located in Malaba, Isebania, Lwakhakha and Suam were still retained in fixed assets schedule and books of account. Similarly, new complexes in the same border posts, some of them complete and in use, were not valued and recorded in books of account.

Further, a parcel of land, Plot LR 209/9355 measuring 0.3716 ha located at Wilson Airport and valued at Kshs. 127,000,000 was included in the Property, Plant and Equipment balance of Kshs. 12,607,320,000. This property was however rented out and the Authority received rental income of Kshs. 10,953,000 from the property in the year 2014/2015. No satisfactory reasons have been provided for classifying the property as part of the Property, Plant and Equipment instead of investment property.

Management Response

The accounting officer informed the Committee that upgrading of the border stations was being undertaken under the One Stop Border Posts (OSBPs) project through funding by various donors and supervised by KENHA.

KENHA had provided progress reports which were used to recognize the values in the Accounts as Work In Progress (WIP) in the FY 2015/2016. Evidence on the same was provided to the Auditors. Adjustments for the demolished structures was made in the financial year 2015/16 and evidence provided to the auditors.

Accounting Treatment for Wilson Airport Property

The Wilson airport property consisted of an office building and a hangar. It was only the hangar which was rented out (it formed 3% of the entire Wilson Airport property). The largest portion of the property consisted of an office block which was correctly categorised under Property, Plant and Equipment (PPE) and was in use by the Authority. In the circumstances, the property was therefore properly categorized under PPE in accordance with IPSAS No 17 on Property, Plant & Equipment.

Accounting for investment property is covered under IPSAS 16. Paragraph 14 states that if a property is to be used for service delivery objectives then the property should be accounted for as Property Plant and Equipment (PPE) and not investment property.

Committee Observations

The Committee observed that -

i) **The KRA should valued all the properties constructed and recognize them in its books in the 2014/15 but failed to do it. Equally, the demolished structures should have been removed from its books of 2014/15.**

ii) **The explanation offered with regard to treatment of Property in Wilson Arport was satisfactory.**

Committee Recommendations

The Committee recommends that -

(i) **The query on the demolished buildings had been resolved.**

(ii) **The KRA should value its new buildings and recognize them in books**

427. **AMOUNT DUE WITH TREASURY – FY 2014/15**

The Committee heard that the financial statements of KRA reflected Kshs. 2,123,899,000 as due with Treasury as at 30^{th} June 2015. The amount related to 2013/2014 and earlier financial years. However, documentary evidence showing commitment by the National Treasurer was not provided for audit verification and therefore its recoverability was doubtful. Consequently, the recognition and disclosure of this amount could have been misleading.

Management Response

The accounting officer informed the Committee that the outstanding amount comprised of previous years' unpaid agency income arrears and bonuses earned and accrued in accordance with section 16 of the KRA Act and also in respect of some payments made on behalf of the

National Treasury. The amounts were therefore legal entitlement to KRA accrued in accordance with the provisions of the KRA Act.

In the letter Ref. Conf. 282/18/02’E’ (22) dated 1st September, 2009, the National Treasury acknowledged the agency debt and made some payments in the Financial year 2009-2010. The Authority had been regularly engaging the National Treasury on the debt (Copies of correspondence provided).

Committee Observation and recommendation

The National Treasury should honour its obligations under section 16 of the KRA Act and settle all the outstanding balances due to KRA.

428. **FINANCIAL STATEMENT FY 2014/15**

The Committee heard that debtors and receivables balance of Kshs. 473,261,000 reflected in the financial statements and disclosed in Note 10 included staff debtors balance Kshs. 119,315,000. The staff debtors in turn included medical scheme debtors totaling Kshs. 31,212,517 out of which an amount of Kshs. 7,167,670 related to 2013/2014 and earlier years. No recoveries in respect of the amounts for earlier years were made in the year under review and appropriate provision was not made for those doubtful debts. Consequently, debtors and receivables could have been overstated.

Management Response

The accounting officer informed the Committee that out of the Kshs 7,167,670 which was outstanding:

- Kshs 3,325,406 had been cleared.
- Board approval was obtained to write off amounts relating to retired and deceased staff totaling Kshs 3,262,700
- Kshs 579,564 was still outstanding and related to staff who had resigned, dismissed or terminated but yet to clear with the Authority. The amounts would be recovered once the staff clear with the Authority.

Further, the Authority had implemented the biometric medical cards system to enhance the administration and controls which had addressed the issue.

Committee Observations

The Committee observed that -

1. **The Board approval obtained to write off amounts relating to retired and deceased staff totaling Kshs 3,262,700 had not been granted by the National Treasury and therefore should not be removed from the books of accounts.**
2. **Kshs 579,564 is still outstanding and relates to staff who have resigned, are dismissed or terminated but yet to clear with the Authority.**

Committee Reccomendations

The Committee recommends that -

(i) The KRA should seek approval from the National Treasury first before writing off the remaining debt whose recoverability was not possible.

(ii) For the Kshs. 579,564, the KRA should recover the money from the employees' terminal benefits or wrte to the institutions where they work for for assistance or any other method that could help recover the deabt.

3.47 NATIONAL SOCIAL SECURITY FUND (NSSF) FYS 2016/17 AND 2017/2018

EXAMINATION OF REPORT OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF THE NATIONAL SOCIAL SECURITY FUND (NSSF) FYS 2016/17 AND 2017/18

Mr. Anthony Omerikwa, the Managing Trustee of the National Social Security Fund accompanied by Mr. Austin Ouko (Ag. Corporation Secretary), Mr. Moses Chesoto (Ag. General Manager, Investment), Mr. Evans Ombui (Ag. Manager, Registration and Collection), Dr. Christopher Khisa (Manager, Public Relations and Communications), Mr.

Stephen Obare (Manager, ICT) and Ms. Marrieta Mutinda (Section Head, Registration and Collection) appeared before the Committee to adduce evidence on the report of the Auditor General on the financial statements of the Fund for the financial years 2016/17 and 2017/18.

He briefed the Committee as follows:

ASSETS UNDER CONSTRUCTION FY 2017/18

429. **Milimani Executive Apartments**

Assets under construction balance of Kshs.6,203,801,502 included an amount of Kshs.2,564,664,264 in respect of Milimani flats project. The project comprised of 104 spacious apartments on Five Blocks A-E with initial estimated cost of Kshs.1.55 Billion. The Contractor Nanchang, Foreign Engineering Company (Kenya) Limited), completed the project at a pre-measured works value of Kshs.1,692,262,919.38 and handed it over on 9th April 2019 to the Fund. Sales process was categorized in two-fold:

- 3-bedroomed unit with a DSQ was to be sold at Kshs.35 million each, and
- 3-bedroomed unit without a DSQ to be sold at Kshs.31 million each.

The Fund expected total sales of Kshs. 3,600,000,000 by the time of hand-over but total sales realized amounted to Kshs. 753,520,000 as at 9 April 2019. In order to achieve the intended benefits from the investment the Fund, the Auditor General recommended expedite collection of the remaining balances totaling Kshs. 2,846,480,000.

<u>Management Response</u>

Managememt informed the Committee that the Milimani Executive Apartments – Nairobi (LR NO. 209/1796 & 5014) were developed by the Fund at a cost of Kshs.3,083,608,179 with sales proceeds of Kshs.3,600,000,000 so far. The Fund expected a return on investment of Kshs.516,391,821 or 16%. The Fund offered to sell the houses off-plan and received deposits worth Kshs. 802,000,000. Currently the process of conveyance and handing over of the houses to the purchasers who had met all the sale requirements was underway.

Accornding to the Fund's brief to the Committee of 21st May 2020, the project had faced a number of challenges such as El nino; adverse ground work that was rockier than expected; delay in procuring consultants; delays in approva;s from NEMA and NCC; and frequent interventions by NEMA at the behest of some neighbours.

Committee Observations

The Committee observed that -

i) Pursuant to the Fund's brief to the Committee of 21st May 2020, the 68 units had been sold; 36 were available out of which 10 had sale commitments. All had been sold at market rate.

ii) The NSSF brief to the Committee of 21st May 2020 further indicated that the whole project had ninety four 3-bedroomed plus DSQ and ten 3-bedroomed without DSQ.

iii) The Fund's brief to the Committee of 21st May 2020 indicated that it had so far received a total of Kshs. 818,000,000 from the project.

iv) Management was weighing the option of selling the units on a 'Tenant Purchase Model' as done in other previous projects and will present this option to the Board of Trustees for consideration.

v) An MoU had been signed between the Fund and two local banks to finance potential buyers at negotiated rates.

Committee Recoomendation

Management should reconsider the valuation of the assest and dispose them at a market rate to avoid unnecessary holding up of capital that can be applied elsewhere.

430. **Hazina Trade Centre 2016/17 and 2017/2018**

The Committee heard that included in the assets under construction balance of Kshs.6,203,801,502 was an amount of Kshs.2,039,836,328 relating to Hazina Trade Centre construction project. The matter had been reported in the previous financial years that the construction of Hazina Trade Centre, Nairobi commenced on 17 June 2013 and was to be undertaken in 155 weeks with an expected completion date of July 2016. However, as at the time of the audit carried out in April 2019 the project was still not complete and only minimal activities were observed. According to the information given during the site visit, the building had been scaled down to reach 15 floors from the initial scope of 34 floors representing a 56% reduction while the contract sum reduced from Kshs.6,715,218,188 to Kshs.4,095,862,434 (variation order number 1) a reduction of Kshs.2,619,355,754 or 39%.

As at 30 June 2018 the contractor had been paid up to certificate No. 6 which cumulatively brought the total payments to Kshs.2,183,017,974 representing 53% of the revised contract sum against the State Department of Public Works valuation of Kshs.2,349,953,195.90. Considering the minimal work mobilization at the site, it was not clear whether the construction works would be completed by the revised contract date of 30 June 2019 and within the revised contract sum of Kshs.4,095,862,434.

Management Response

Management informed the Committee that the major structural works was complete. The outstanding items include: (i) roofing (ii) internal fittings and finishes (iii) installation of lifts and (iv) external finishes (curtain walling). The contractor had since fully mobilized and is progressing.

The completion date was extended from 30th June 2019 to 31st December 2019 at the same Contract Sum of Kes 4,095,862,434 owing to delayed approvals.

Appearing before the Committee on 26th November 2019, the Board of NSSF gave a similar representation as management but went haed to indicate that the the project's valued work as at 1st November 2019 was KShs. 3,134,972,979.91 that translates to 77% completion rate. On the issue of the claim, the Board stated that the State Department of Public Works (SPDW) assessed and recommended an amount of KES 871,697,124.10 which was presented to the Fund on 12th April 2018. The contractor had on various dates written to demand payment of the claim indicating that it risked accruing penalty interest. At the 180th meeting of Board of Trustees held on 11th September, 2019 the Board resolved that any contractor's claim should be settled with the final account.

This followed the SPDW advise to consultants on 27th August 2019 against inclusion of evaluated claims on payment valuations without prior approval by the Fund. On 14th November 2019 the contractor wrote to the Fund seeking interest due to late settlement of the claim at Kshs. 243,672,873 i.e. Kshs 871,697.10 x 553/364 (delay period) X 18.4%. The SPDW has advised that no accrued interest amount was not payable at that moment based on their earlier advise and letters dated 15th April 2019 and 27th August 2019.

<u>Committee Observations</u>

The Committee observed that -

i. **This matter was addressed in the PIC's 22nd Report with a recommendation that the NSSF should only pay the amount that was recommended by the State Department of Public Works. The Fund has followed this recommendation by not paying. The Committee had further asked the OAG to conduct value for money and forensic audit but such a report has not come so far to prompt the DCI and the EACC into action had culpability been found.**

ii. **The Contractor raised a claim for payment on 31st May 2017, which claim was assessed by the Project Manager (Department of Public Works) and its findings communicated to NSSF on 12th April 2018 recommending payment of Kshs. 871.7 Million. NSSF has never settled such a claim as at 26th June 2020. This is in breach of clause 23.3 of the contractor that obligates the NSSF to pay calims assessed by the projector manager within 30 days of issuance of payment certificate. Further, delay in settllemen of the claims will attract interest.**

iii. **The Attorney Gneral's guidence on the matter dated 18th February 2020 Ref: AG/COF/21/35/3 VOL.II (16) was unquevocal that NSSF should settle the claims due to the contractor as assesed by the Projector manager. Failure to which NSSF would be in breach and that interest will continue accruing on the certified claims.**

iv. **The Fund's brief to the Committee on 22nd May 2020 indicated that the project remained incomplete but the contractor was on site doing minimum work. Reasons advanced for reduced activity by the contractor included disruptions in international supply chaims of construction materals; inadequate labor and social**

distancing measures brought about by covid 19. The Fund anticipates that the project will be complete by December 2020.

<u>Committee Recommendations</u>

The Committee recommends that -

i. **The NSSF should only pay for claims certified by the Project Manager (Department of Public Works) and as previously recommended in the 22nd PIC report.**
ii. **Considering that the Attorney General and the Department of Public Works had advised NSSF to settle the assessed claims due to the contractor and the NSSF Board failed to adhere to such advice, the NSSF Board should be held responsible for any interest claims from the contract arising from late settlement by dint of clause 23.3 of the contract.**
iii. **The Committee on Implementation should follow implementation of the PIC's recommendations pursuant to its mandate.**

UNRESOLVED PRIOR YEAR ISSUES FY 2017/18

431. **Irregular Disposal of Undeveloped Land- Mavoko**

The Committee heard that the undeveloped land in Mavoko Municipality measuring 69.16 acres was subdivided into seven (7) plots of 9.88 acres and disposed-off at Kshs.18,000,000 each. The plots were sold to AMS Properties Limited based 21 November, 2011 agreement at Kshs.126,000,000 but only Kshs.12,600,000 or 10% was paid. The balance of Kshs.113,400,000 payable in 90 days had not been settled to date.

The contract had not been terminated owing to delayed conveyancing process caused by a dispute over location of the plots involving the Fund and other parties claiming ownership of the land. It was not clear why dispute on the plot had not been resolved and the legal action taken by the management.

<u>Management Response</u>

Mnagement informed the Committee that based on its lawyers' opinion, the Fund referred the issues surrounding the titles of the properties to the National Land Commission for resolution. The Fund had instructed its lawyers to call off the transaction on account of frustration.

Committee Observations

The audit query was considered in the 21st PIC Report and recommendations made therein provided that the National Land Commission and the Ministry of Lands should resolve the matter. Nothing had happended so far.

Committee Recommendations

The Committee on implementation should follow up implementation of PIC's 22nd report on the matter pursuant to its mandate.

432. **Non-beneficial Lease of Hazina Plaza Mombasa – LR. NO.MSA/BLK XX/328 & 329**

The Committee heard that Hazina Plaza (formerly Polana Hotel) cost the Fund Kshs.450 Million in 1994 and was leased and operated as a four-star hotel at an annual rent of Kshs.60 Million. The hotel remained partially closed since 2001 for failure by tenant to meet rent obligations. The building was advertised for sale on 3 September 2009 at Kshs.300 million reserved price but the bids received were below the reserve price. On 25 May 2010 it was leased to M/s Techno Holdings Ltd at a monthly rent of Kshs.2.25 million or 27 million annually net of all taxes with an escalation cost of 10% after every two (2) years.

Only Kshs.66,500,000 had been realized by September 2016. The lessees and tenants were evicted from the building vide a court ruling on 18 March 2019 but the building was extensively vandalized by the tenants claiming that they had installed most of the items.

The Fund had not realized any value for money from the investment. The unrealized benefit from the investment in Mombasa Plaza cast doubts on prudent financial management in the interest of contributors.

Management Response

Management informed the Committee that the Fund attained 100% possession of the building by evicting tenants on 18th March 2019 following the expiry of the period granted by the court. The

Fund evaluated highest and best use cases for the building and determined that it should be sold as per the 180th Board of Trustees meeting held on 11th September 2019, the Board resolved that Hazina Plaza Mombasa building to be valued and advertised for sale "As Is".

Committee Observations

The Committee observed that -

i) **The audit query was considered in the 21st and 22nd PIC Report and recommendations made for the Auditor General to carry out a forensic audit on the query. The Auditor General has not conducted the said audit as at the time of compiling this report.**

ii) **The Board of Trustees at NSSF resolved to sell the building at a reserve price of Kshs. 560,000,000.**

Committee Recommendations

The Committee on Implementation should follow implementation of the PIC's 22nd report pursuant to its mandate.

433. **Unrecovered Investment Returns - Kisumu Milimani Upmarket Houses**

The Committee heard that land - LR. KISUMU/MUN/8/258 - measuring 0.7740 Ha. and situated in Milimani Estate, Kisumu County was on 26 November 2012 swapped to offset a debt of Kshs.150 million owed to the Fund by the then Municipal Council of Kisumu. At the time of audit, the said land was valued at Kshs.178, 000,000 and had a flat comprising of eight (8) two (2) bedrooms apartments and three separate maisonettes of three (3) bedrooms each with a servant quarter.

The Fund's officers rent at a monthly rate of Kshs.9, 000 and Kshs.7, 500 for apartments and maisonettes respectively realizing Kshs.900,000 p.a. The Fund does not realize commensurate rental income but continue to provide security and other services.

No reasons for the failure to review the rent payable since taking over the property in 2012. Therefore, value for money has not been realized from the investment

Management Response

Management informed the Committee that the Fund acquired the plot as a redevelopment property for an upper-medium income residential estate with some commercial component (mixed use development) and the existing buildings were to be demolished.

The design process had commenced in the 2017/18 financial year. The plot was valued at Kshs. 100 Million at the time of the debt swap but in June 2018 it was valued at Kshs. 220 Million thus appreciating by Kshs. 120 Million (120%). The value went up by 42 Million or 23.6% from Kshs. 178 Million to Kshs. 220 Million in 2016/2017 and 2017/2018 respectively.

Committee Observation and recommendation

The explanation given was satisfactory and therefore the audit query had been resolved.

434. **Refurbishment of Mombasa Social Security House**

The Committee that on 12 January 2012 the Fund entered into a contract with M/s EPCO Builders Ltd for the refurbishment and associated services of the Mombasa Social Security House at a cost of Kshs.217,530,427.

The contract was for forty (40) weeks and the certificate of practical completion issued on 7 November 2013. The Certificate of making good the defects issued on 30 November 2015 and payments totalling to Kshs.226,218,458 made to the contractor. Part of the main contract entailed the installation of CCTV system at Kshs.48,666,664.

Physical inspection of House on 16 May 2019 revealed CCTV system installed was not functioning despite full payment to the contractor. Management explained that the CCTV system was in proper working condition at the time of hand-over and worked effectively for the first two (2) years before developing technical issues due to lack of maintenance and a dispute on the amounts payable. No reasons were provided for the failure to include a service maintenance clause in the contract signed or for the failure to resolve the dispute and have the system working.

Management Response

Management informed the Committee that refurbishment contract for the SSH Mombasa included a component of CCTV which was installed, tested and commissioned. The installation contract was not a stand-alone contract but a sub-contract within the larger contract for civil works.

Civil works contracts do not have a maintenance contract other than a 6 months defects liability period and thus not practical to include the support component in the original contract.

A dispute with sub-contractor made it difficult to enter into a support contract on handing over but the Fund will procure an alternative service provider in the current financial year.

Committee Observations

The Committee observed that the Fund failed to anticipate problems that may come from contracting at the project conception statge. This shows poor project planning on the part of the Fund.

Committee Recommendation

The Committee recommends that going forward, the Fund should meticulously plan projects and their implementation before entering into contracts.

435. **Illegal Transfer of National Social Security Land in Upper Hill Nairobi** – LR No. 209/11642

The Committee heard that the a title deed for undeveloped parcel of land measuring 0.2100 hectares in Upper Hill, Nairobi – next to Milimani law Courts purchased on 20 April 1996 for Kshs.20 Million was irregularly revoked and reallocated to the Judiciary. On 18 April 2016, the NLC wrote to the Fund confirming the allocation to Judiciary and reiterated that it was not possible to reinstate the land to NSSF. The Fund filed a suit Case against the Chief Land Registrar and the private entity (Le-Kuna Company) for alleged and unlawful misrepresentation to the Fund and the matter is yet to be determined.

The Fund risks losing workers' pensions funds invested in the property if the land is not reinstated to NSSF.

Management Response

Managmeent informed the Committee that the the Fund had moved to court for recovery of the plot under HCC No 153 of 2018 and allowed by Court to serve M/s Le-kuna Limited the vendors of the plot to NSSF through substituted service which was done on 10 May 2019. Le-kuna Limited has since entered appearance and the matter will be determined by the court.

Committee Observation

This is a very old matter that had been dealt with in the previous PIC reports recommending recovery of the land. The Fund moved to court for recovery of the land and the matter was under consideration in High Court Case No. 153 of 2018.

Committee Recommendations

The Committee recommends that -

i. **The Committee on implementation should follow up implementation of the PIC's report on the matter.**
ii. **The Fund should apply for expeditious determination of the matter in Court**

436. **Nyayo Estate Embakasi Phase Six Contract No. 18/2012/2013**

The Committee heard that construction of 324 units at Nyayo Embakasi for Kshs.2,155,407,742 by M/s China Jiangxi International Kenya Limited had stalled. The construction works signed on 21 February 2013 were to take seventy-eight (78) weeks from 2 June 2013 to 30 November 2014.

As at 27 March 2018, only forty-four (44) units had been constructed and attributed the failure to Nairobi City County refusal to grant relevant approvals to enable construction of the remaining two hundred and eighty (280) units. No efforts to ensure completion of the project are evident.

The contractor received an advance fee of Kshs.215, 540,744.22 at stoppage time against a bank guarantee from the Standard Chartered Bank, which expired on 30 September 2015. The Fund risked of losing Kshs.215,540,744.22 paid and additional losses on delayed completion of the project.

Management Response

The contract was frustrated due to the unwillingness of the County Government of Nairobi to grant approvals for some of the plots identified for the project. The contract declared frustrated and terminated. The Fund had since written to the contractor demanding a refund of the full deposit.

Committee Observations

The Committee observed that -

i) **The Fund had written to the Attorney General seeking legal advice on how to proceed with the matter.**

ii) **A former Managing Trustee was removed from office based on the irregularities around this project.**

iii) **M/s China Jiangxi International Kenya Limited had undertaken a significant number of capital projects for the Fund, raising concern on monopolization by the Company.**

iv) **This matter was dealt with in PIC's 22nd report but so far nothing seams to have happened on those recommendations.**

Committee Recommendation

The Committee on implementation should follow up on the implementation of the previous PIC recommendations on the matter.

EMPHASIS OF MATTER

Budget and Budgetary Performance 2016/2017 2017/2018

437. **Revenue**

The Committee heard that the Fund's actual income for 2017/2018 was Kshs.31,316,814,415 against budgeted amount of Kshs.28,413,942,000 resulting to excess receipts of Kshs.2,902,872,415 or 10%.

The under collection in contributions receivable of Kshs.2,970,189,922 or 17% was attributed to numerous court cases which led to suspension of new rates of contributions provided in NSSF Act No. 45 of 2013.

The failure to pay budgeted benefits of Kshs.816,147,015 or 18% attributed to lodged claims for benefits which were never applied for within the financial year.

Management Response

Management informed the Committee that the variance of Kes 2,970,189,922 in contributions collected in FY 2017/2018 was attributed to Reduced contributions due to late disbursement of funds from Government to schools and other Employers leading to deficits; mass lay-offs due to downsizing by employers occasioned by collapse of business and financial crises; reduced contributions from County Governments due to lay-offs totaling to approximately Kshs. 1 billion in form of arrears; reduction in the number of County Government employees paying NSSF contributions due to confirmation of staff into permanent and pensionable terms; reduced contributions due to loss of business which led to revenue loss and the exclusion of the NSSF column in the IPPD Government payroll presents a challenge in receipt of contributions from the National and County Governments.

Committee Recommendation

The explanation offered was satisfactory and therefore the audit matter resolved.

438. **Underpayment of benefits by Kshs. 816,147,015 FY 2016/2017**

The Committee heard that fund estimated budget for Benefits claims was Kshs. 4.605 billion (FY 2016/2017) but claims of Kshs. 3.789 billion were paid being Kshs.816, 147,015 less (18%) than the amount estimated. FY 2017/2018, Fund's Benefits payable was Kshs. 5.065 billion but paid claims of Kshs. 4.939 billion being only 2% short of estimated budget.

Management Response

Benefits are paid from a qualifying member's contribution account consisting of savings and interest earned to the date of the claim. The budget figure therefore was for financial planning purposes only. Any Member/Dependent beneficiary who claims a Benefit for which he/she is qualified shall be paid irrespective of the level of budget consumption at that point in time.

Investment Income Positive Variance

The Fund had a positive investment income of Kes.5, 056,915,322.00 due to efficient investment portfolio mix and a conducive investment environment.

Committee Recommendation

The explanation offered was satisfactory and therefore the audit matter resolved.

439. **Expenditure FY 2016/2017**

The Committee heard that the Fund's budget was Kshs.6,830,860,000 against actual expenditure of Kshs.5,570,047,877 resulting to an under expenditure of Kshs.1,260,812,123 or 18%.

The overall under expenditure of Kshs.1,260,812,123 was attributed to low legal expenses due to reduced legal claims attributable to slow resolution of project cases and related activities and postponement of some consultancy services.

Management Response

Management informed the Committee that the Fund's under expenditure of 18% attributed to low project claims due to slow resolution of causes related to projects and unrealized provisions but the Fund would be more stringent in the current financial year and will carry out a midterm review of the budget to ensure it is aligned to the budget.

Committee Recommendation

The Fund should always endavour to prepare its budgets as realistic as possible.

440. **Senior Management in Acting Appointments**

The Committee heard that among top management team, four (4) senior staff including the Chief Executive Officer/Managing Trustee have been serving the Fund in an acting capacity with some acting since the year 2013. The management indicated that the positions have since been advertised.

Management Response

The Fund was undergoing job evaluation exercise after which positions would be filled.

Committee Observations

The Committee observed that -

i) **The Managing Trustee had been confirmed in the position.**

ii) **The Board of Trustees appeared before the Committee on 26th November, 2019 and stated that an organizational structure was being finalized before positions are advertised.**

iii) **The Board received the organizational structure on 16th February, 2020 and will advertise for the Senior Management positions after the next Board meeting.**

Committee Recommnedations

The NSSF Board should expidite filling up of vacant positions within three months of adoption of this report.

441. **Weaknesses in Systems and Controls**

442. ***Use of Suppliers Invoices and Delivery Notes as Payment Vouchers***

The Committee heard that the Fund had no standardized payment vouchers with postings and approvals done online in the SAP accounting software The physical vouchers comprised of memos for internal payments as well as invoices and delivery notes that were stamped severally for various approvals. It was therefore difficult to determine the specific accounts charged in the absence of proper payment vouchers.

Management Response

Management informed the Committee that the tandardized payment vouchers discontinued in 2012 when an integrated SAP system was implemented which had document reference numbers for every transaction in the system, and had audit trail to track all approvals on each payment. Approvals for payments were done online and evidence required can be availed from the system.

Committee Observations and recommendations

The audit query had been answered satisfactorily and thereforeresolved.

443. **Weakness in the SAP Accounting Software and Social Security Pension Administration System (SSPAS) FY 2017/18**

The Committee heard that the accounting software procured by the Fund failed to generate financial statements as expected of an end-to-end system. This occasioned manual preparation of financial statements leading to numerous errors in the presented set of financial statements. Further, the expenditure schedules produced using SAP system excluded payee names and thus making it hard to relate the schedules generated against payment vouchers or files availed for audit verification. Further, review of the SAP system in relation to a cut off period feature on several and similar reports, generated on different days, gave conflicting results. SSPAS system too produced different figures for contributions collection for the same period at branch level compared to reports generated at the head office.

Consequently, the Fund may not have obtained value for money from amounts of Kshs.237,827,220.87 and Kshs.397,814,092.02 paid for acquisition of SAP and SSPAS systems respectively and from amount of Kshs.23,820,720(USD 235,848.72) paid as annual license fee for SAP as 30 June 2018.

Management Response

Management informed the Committee that the Fund was continuously improving its system to ensure better integration and reporting.

Committee Observations

There was professional negligence in procuring a system that was not able to do the job that was intended. This casts doubt on the competency of the Fund's IT department in coming up with the required specifications. As a result, the Fund is losing money for no services rendered.

Committee Recommendation

The DIC should investigate the circumstances under which the system was acquired that ended up failing to work with a view to preffering charges agaist those found culpable within three months of adoption of this report.

444. **Corporate Bonds FY 2016/17 and 2017/18**

The Committee heard that Note 20 to the financial statements reflected corporate bonds balance of Kshs. 7,677,218,892 as at 30th June 2018 which was net of a provision of Kshs. 666,900,000 in respect of Imperial Bank and Chase Bank bonds amounting to Kshs. 132,200,000 and Kshs. 534,700,000 respectively. The bonds were invested between 28 September 2015 and 6 October 2015 and were to mature between February 2022 and September 2022. As previously stated, the two banks were put under statutory management by Central Bank of Kenya (CBK) before maturity of the bonds. Consequently, was not possible to confirm recoverability of the money invested in corporate bonds totalling Kshs. 666,900,000 as at 30th June 2018.

Management Response

The Fund had partnered with other note holders through the Fund Managers association to push for the recovery of the money from Kenya Deposit Insurance Corporation.

Bank	Investment	Recovery	Amount
Imperial Bank	132,200,000	-	132,200,000
Chase Bank	534,700,000	-	534,700,000
Total	666,900,000	-	666,900,000

Committee Observation

The amount remains unrecovered

Committee recommendation

The Fund should aggressively pursue its invenstments with the SBM Bank with a view to recovering it.

445. **Fixed Deposits (Held to Maturity)**

The Committee heard that Note 17(b) to the financial statements reflected a total of Kshs.3,009,277,681 in respect of fixed deposits (held to Maturity) as at 30 June 2018 which is net of a provision of Kshs.329,500,000 in respect of deposits held in Chase Bank and Imperial Bank amounting to Kshs.70,000,000 and Kshs.259,500,000 respectively. These amounts were invested between 8 September 2015 and 3 March 2016 and were to mature between December 2015 and May 2016. However, and as previously reported, Chase Bank and Imperial Bank were put under statutory management by Central Bank of Kenya (CBK) on 7 April, 2016 and 13 October 2015 respectively and only Kshs.26,682,488 has been recovered from Imperial Bank.

In the circumstances, recoverability of fixed deposits totalling Kshs.302,817,512 invested in the two banks under statutory management is in doubt.

Management Response

The Committee heard that to date, the Fund had recovered **Kshs. 123,373,740** from both Imperial and Chase bank. The **Kshs. 70,000,000** deposited in Chase bank has been recovered in full. Regarding the balance of **Kshs. 206,126,260** in Imperial bank, the Fund received a positive indication on the prospect of recovery of the amount, from Kenya Deposit Insurance Corporation (KDIC), following the takeover of 7.5% of deposits in Imperial bank by KCB in August 2018. The Fund had instructed its Fund Managers to pursue full recovery of the outstanding amounts.

Bank	Deposits	Recovered	Balance
Imperial Bank	259,500,000	53,373,740	206,126,260
Chase Bank	70,000,000	70,000,000	-
Total	329,500,000	123,373,740	206,126,260

Committee Recommendation

The Fund should aggressively pursue the SBM Bank for recovery of its investments

446. **Uremitted Members Contributions**

The Committee heard that as previously reported, contributions totalling Kshs. 754,995,367 had not been remitted in stipulated time period according to twenty (20) sampled employer files maintained in nine (9) NSSF branches. This was contrary to Section 8(a) of the NSSF Act, 2013 which required employers to remit into the Fund contributions deducted from members in full and in time.

Although management took action by issuing demand letters and also made alternative payment arrangements with employers such as instalment payments before considering legal action, it had not been established whether any amounts had been realized from these arrangements.

As a result, recoverability of the unremitted members' contributions of Kshs. 754,995,367 remains doubtful for over two years.

Management Response

Management informed the Committee that the outstanding arrears as at 30th June 2018 stood at **Kshs.6,349,517,582** comprising of contributions and penalties. A total of **Kshs. 771,225,862** had been recovered as at **31st March 2019** leaving a balance of **Kshs. 5,578,291,720.**

The analysis of the arrears and penalties including action taken by management is as follows;

CONTRIBUTION ARREARS	AMOUNT	ACTION TAKEN
Instalment undertaking	328,709,939	Being recovered through instalment undertakings and the repayment plans are closely monitored and evaluated on a quarterly basis.
Court actions	209,204,279	Pursued through court action by the Fund's Prosecutors across the branch offices.

Demand notices/ADRs	682,893,896	Pursued through formal demand notices and Alternative Dispute Resolutions (ADRs). Follow-ups for payments by the branch offices are continuously being undertaken.
Defunct Authority	241,679,597	Efforts to recover the outstanding obligations through court have been unsuccessful through court rulings such as the Judicial Review No. 81 of 2013 at the High Court of Nairobi and the Application 24 of case number 240 of 2012.The matter has been referred to the Intergovernmental Relations Technical Committee (IGTC) and the Council of Governors for direction on recovery
Closed and receivership businesses	10,276,387	Employers closed down
Sub Total	1,472,764,098	

OUTSTANDING PENALTIES	AMOUNT	ACTION TAKEN
Instalment undertaking	87,408,704	Being recovered through instalment undertakings and the repayment plans are closely monitored and evaluated on a quarterly basis.
Court actions	99,557,572	Pursued through court action by the Fund's Prosecutors across the branch offices.
Disputed	38,452,508	Resolutions (ADRs) Follow-ups for reconciliation

		with employers
Demand notices/ADRs	3,036,725,161	Pursued through formal demand notices and Alternative Dispute Resolutions (ADRs). Follow-ups for payments by the branch offices are continuously being undertaken.
Defunct Authority	828,272,664	Efforts to recover the outstanding obligations through court have been unsuccessful through court rulings such as the Judicial Review No. 81 of 2013 at the High Court of Nairobi and the Application 24 of case number 240 of 2012.The matter has been referred to the Intergovernmental Relations Technical Committee (IGTC) and the Council of Governors for direction on recovery
Closed and receivership businesses	15,111,013	Employers closed down
Sub Total	4,105,527,622	
Total	5,578,291,720	

447. **Unidentified and unremitted Members contributions 2016/2017**

The Committee heard that the financial statements under statement of changes in net assets available for benefits reflected a net surplus from dealings with members of Kshs. 9,885,860,827 for the year under review. In compliance with Retirement Benefits Act, 1997, NSSF maintains employer contribution clearing accounts for benefit payment upon qualification as per the Act. During the year under review, the contributions in transit balance changed marginally from Kshs.754 million as at 30 June 2016 to Kshs. 762 million as at 30 June 2017.

No reasons was provided for not posting the Kshs. 762 million which had accumulated over the years to the respective member's accounts despite the Fund having acquired a Social Security

Pension Administration System (SSPAS) and compliance officers to assist safeguard member's funds.

Consequently, the Fund may not have gotten value for money for SSPAS procured in the year 20111/2012 at a cost of Kshs. 300,000,000 and members risk loss of accrued interest especially those claiming benefits in the intervening period.

Management Response

Management informed the Committee that contributions in transit amount of Kshs. 762 Million is under reconciliation. This is a continuous process and there is a team updating member's balances on a regular basis, as at 30th June 2019 the balance stood at Kshs. 290 Million. The contributions in transit relates to historical records where NSSF member numbers were not provided by employers. The other measures management has implemented include:

Implementation of SSPAS system where tolerance rate of receiving contributions without member numbers had been fixed at 2% and; The introduction of Eservice which require employers to confirm the accuracy of their member return on-line before paying contributions for respective Months. The amount in contribution in transit account accrues interest as any other contribution.

Committee Observations

The Committee observed that -

i. **The matter had been considered in the 19th and 22nd PIC Reports on the audited accounts of the financial satements of State Corporations with that recommendations the Fund liases with the employers to identify the contribtors and remit their funds.**
ii. **The unclaimed funds were not taken to the Unclaimed Financial Assets Authority as the NSSF was re-investing them.**

Committee Recommenations

The Committee recommends that -

i. **The Fund should should implement the Committee's recommendations of the 19th and the 22nd Report on the matter.**
ii. **The Fund should transfer the unclaimed funs to the Unclaimed Finncal Assets Authority**

448. **Contributions Receivables**

The Committee heard that the financial statements under the statement of changes in net assets available for benefits for the year ended 30th June 2018 reflected a balance of Kshs.14,044,262,078 in respect of members contributions. A review of collection records and related documentations for the year under audit, disclosed variances as follows:

Type	**Amount in reports generated from SSPAS Kshs.**	**Amount in Financial Statements Kshs.**	**Variance Kshs.**
Monthly Collection Reports (Total all Branches)	14,016,684,188.61	14,044,262,078	27,577,889.39
Global Report	14,030,656,823.31	14,044,262,078	13,605,254.69

The differences between the global and monthly collection reports were explained as due to the fact that branch reports did not include Mpesa payments, miscellaneous income and payments receipted through reconciliations. However, it was not clear why these receipts were not reflected in the branch reports since receipting under SSPAS was centralized. Further, a reconciliation between amounts in the global and branch reports was not availed for audit verification.

In consequence, the accuracy and completeness of the contributions receivable balance of **Kshs. 14,044,262,078** for the year ended 30 June 2018 could not be confirmed.

Management Response

Management confirmed that the reported contributions amount of **Kshs. 14,044,262,078** was correct. The variances were as a result of timing difference in reporting and subsequent adjustments owing to cancelled receipts which happen when employer quotes wrong month or wrong employer when making payments.

Committee Observation and recommendation

This was a reconciliation matter that has since been done. The Fund should sensitize employers on the need to capture contribtors data accurately.

449. **Payables and Accrual Balances (FY 2017/2018)**

The Committee heard that Note 32 to the financial statements reflected a balance of Kshs. 2,295,147,790 in respect of payables and accruals. However, the fund did not provide schedules to support the following balances:

450. **Goods Receipts/Invoice Receipts (GR/IR) Clearing Account (FY 2017/2018)**

The Committee further heard that payables included due to vendors balance of Kshs.392,943,345 under Note 32 to the financial statements is Kshs.216,749,719.43 relating to various vendors GR/IR Clearing Account. However, the list availed in support of the balance was found to be incomplete whereby, details of majority of the vendors were missing hence not possible to confirm the debits and credit entries against vendors' accounts dating back to January 2013.

Management Response

Management informed the Committee that Goods Receipts/Invoice Receipts (GR/IR) Clearing Account is a control account for goods received and services rendered awaiting presentation of the respective invoices by vendors for approval and payment. Once the invoice has been received, the goods are transferred to respective vendor accounts for payment. The account is configured to include document number, document date, and amount in currency and the descriptions of goods received. However, the list has now been availed.

Committee Observtion

The query arose because of the Fund's failure to produce requested documents for audit verification. They have since been provided and vereified by the OAG.

Committee recommendation

The Fund should always adhre to the Public Audit Act 2015 and the Public Finance Management Act, 2012 timelines on submission of documents for audit.

451. **Unidentified Net Salary Payable (FY 2017/2018)**

The Committee heard that included in the statutory deductions payables balance of Kshs.34,512,649 was Kshs.34,411,397 in respect to net salary payable dating back to November 2012. No satisfactory reasons was given for the long delay in investigating and identifying the beneficiaries.

Management Response

Management informed the Committee that reconciliation of salary expense balances has been done and an amount of **Kshs 34,512,649** adjusted in the 2018/2019 financial statements.

Committee Obseration

Though the reconciliation had been in the 2018/2019 FY, no justifiable reason given for its subsistence since 2012.

Committee Recommendation

The Fund should ensure that its books of account are always reconcilied.

452. **Long Outstanding Creditors**

The Committee heard that a list of creditors generated from the Social Security Pension Administration System (SSPAS) revealed an amount of Kshs. 34,206,467.45 for which age analysis showed that they have been outstanding since 2015/2016. Further, the respective invoices from the suppliers of goods and services rendered as well as supporting details for amounts owed to various NSSF staff were not made available for audit to validate the balances as payable. The management did not provide any explanation as to why the amounts remained outstanding for more than two years without being settled and cleared from the system.

Management Response

Management informed the Committeee that the Vendor balances in the SAP system amounting to **Kshs. 34,206,467.45** which were long outstanding have since been reconciled, corrected and adjustments made in the financial statements for the period ended 30 June 2019.

Committee Observation and recommendation

This was a reconciliation matter that the Fund failed to do but has since done and the matter resolved.

453. **Returned Benefits to Members (FY 2017/2018)**

The Committee heard that the payables and accrual balance of Kshs.2,295,147,790 also includes an amount of Kshs.272,128,052.87 in respect of returned benefits payable to members as follows:

Item	**Period**	**Amount as per the SSAP Schedule** **Kshs.**
Returned Refunds	31/10/2012	751,095.40
Returned Age Benefit	01/11/2012	104,363,989.03
Returned Survivors Benefits	01/11/2012	-4,046,719.36
Returned Invalidity Benefits	31/10/2012	12,929,633.50
Returned Withdrawal Benefits	01/11/2012	149,506,489.55
Returned Emigration Benefits	31/10/2012	8,623,564.75

Total		**272,128,052.87**

It was not clear why the returned benefits had remained outstanding for a long period of time without being investigated, beneficiaries identified, paid and cleared from the system.

Management Response

Management informed the Committee that the returned benefits arose when eligible Members who applied for benefits changed their contact address, relocated without updating records with fund. Whenever members pass on before they are paid all their benefits and the next of kin fail to contact the fund. The Fund has since changed the mode of Benefits payments from Cheque to Electronic funds transfer (EFT) to address the problem.

The Fund has further come up with initiatives to try and re-establish contact with beneficiaries and so far members owed Kshs. 213,062,870.27 have been identified. To reach the identified members and or beneficiaries, the Fund has put up communication through print and social media, listing beneficiaries on the Fund's website and reaching out through the Fund's branch network and local administration.

Committee Recommendation

The Fund should aggressively liase with employers and publicize to locate the identities of the beneneficiaries

454. **Unreconciled Cash and Bank Balances**

The Committee heard that the statement of net assets available for benefits as at 30 June 2018 reflected a cash and cash equivalents balance of Kshs.1,271,066,588 in respect of both cash in hand and at bank while the general ledger reflected a balance of Kshs.756,823,113 resulting to a variance of Kshs.514,243,475 which had not been reconciled or explained.

Further, examination of the bank reconciliations statement as at 30 June 2018 revealed that out of its eighty-four (84) bank accounts, five (5) were facing systems reconciliation challenges as follows:

Receipts in Bank Statements not in Cashbooks:

On 30 June 2018, bank reconciliation statements for all bank accounts of the Fund reflected receipts in the banks but not recorded in the cashbooks totaling **Kshs.395,136,390** out of which **Kshs. 386,924,460** related to the year under audit. No reasons was given for failure to record the receipts in the cashbooks. Consequently, the contributions receivable balance of Kshs.14,044,262,078 as reflected in the statement of changes in net assets available for benefits for the year ended 30 June 2018 was understated by Kshs. 395,136,390.

Management Response

Management informed the Committee that contribution receivable balance of Kshs.14, 044,262,078 was not understated and had no correlation to the Kshs. 395,136,390 queried. The said amount related to other accounts as shown below;

Account	Amount
NBK Rent Account	334,683,587
Benefits Account	10,720,101
Car Loan Account	1,426,424
TPS Account	1,430,182
Vihiga Expenditure Account	300,000
Co-op Bank Account	33,976,644
Expenditure Account	6,507,101
Totals	**395,136,390**

These amounts have since been receipted in the system.

Receipts in Cashbooks not in Bank Statements.

The bank reconciliation statements for June 2018 further reflect receipts in the cashbook but not reflected in the bank statements totaling **Kshs. 1,186,515,978** dating back to 24 July 2014. No reasons have been provided for the failure to bank the long outstanding receipts.

Management Response

Management informed the Committee that the outstanding total amount of Kshs 1,186,515,978 was a reconciling amounts in bank reconciliation as at 30th June 2018 which cleared the following month..

Payments in Bank Statements not in Cashbooks

The Committee heard that the bank reconciliation statements also reflect payments totaling Kshs.19,015,236 dating back to January 2018 in respect of inward unpaid cheques in the bank statement not yet reflected in the cashbook as at 30 June 2018. No reasons were provided for the failure to investigate and reverse back into the cashbooks the inward unpaid cheques which have an effect of overstating the balance of benefits received from members. In addition, bank reconciliations statements for the following accounts were not availed for audit review:

Account Name	Account Number/Source	Cashbook Amount Kshs.
Income	1107110270	-305,990,775
Branch Income	1200583299	- 447,161,382
KCB Eastleigh	Trial balance	900,000
Imprest Account		213,710

In the circumstances, it was not possible to confirm the accuracy of cash and bank balance of Kshs.1,271,066,588 reflected in the statement of net assets available for benefits as at 30 June 2018.

Management Response

The payments are bank charges and unpaid rent cheques which had not been posted in cashbook by 30th June 2018 and have since been posted. Meanwhile, the bank reconciliation statements have been availed.

Committee Observation

The Fund had serious challenges of reconciling its books in time and submission of documents for audit.

Committee Recommendation

The Fund should always ensure its books of account are reconciled and that the documents submitted to the Office of the Auditor General for audit

455. **Provision for Bad Debts**

The Committee heard that Note 23 to the financial statements reflected provision for bad debts totalling Kshs.67,129,942 as follows:

	Name/Description	**Amount**
		Kshs.
1	ECASSA Debtors	9,211,610
2	City Council of Nairobi	2,474,000
3	Mutula Kilonzo	5,015,000
4	Lloyd Masika	4,787,000
5	Bounced Cheques	45,642,332
	Total	**67,129,942**

The basis for this provision was not given considering that some of the debtors are financially stable companies and individuals. Further, no efforts appear to have been made including legal action towards recovery of the same. In addition, details of the drawers of the bounced cheques totalling Kshs.45,642,332 included in the provision were not made available for audit verification.

In view of the foregoing, it was not possible to confirm the validity and legality of the provision for bad debts of Kshs.67,129,942 which in effect understatesd receivables and prepayments balance in the financial statements.

Management Response

Management informed the Committee stated provision was for debts that had taken too long to be recovered due to prolonged outstanding court cases and counterclaims. However, the respective debtors continued to be pursued for recovery. Some of the amounts were disputed and no resolution has been reached. The bulk of the provisions related to bounced cheques for member contribution amounting to Kshs. 45,642,332 of which the list had been provided and verified by the auditors. Some employers had since replaced the cheques and the rest were being pursued for replacement. The provision was guided through the accounting prudence/conservatism principle and IFRS 9, and hence correctly treated in the financial statements.

Committee Observation

Huge provisions for bad debt is an indicator of poor management. The amount reported in respect of NSSF is too high.

Committee Recommendation

The Fund should pursue the debtors aggressively including suing them with a view to realsinn the amount due.

3.48 KENYA NATIONAL HIGHWAYS AUTHORITY (KeNHA (FY 2014/2015 TO 2015/2016

EVIDENCE ON THE REPORT OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF THE KENYA NATIONAL HIGHWAYS AUTHORITY (KeNHA) FOR THE FINANCIAL YEARS 2014/2015 AND 2015/2016

Eng. Peter Mundinia- Director General of the Kenya Highways Authority accompanied by Eng. David Muchilwa- Director (Development); Eng. Samuel Omer-Director (Highway Planning and Design); Eng. Njuguna Gatitu-Director (Road Asset and Corridor Management); Mr. James Bowen- Director (Corporate Services); Mr. Chanje Kera-Deputy Director (Finance & Accounts); Ms. Norah Odingo- Deputy Director (Legal

Services); Ms. Levina Wanyonyi -Deputy Director (Supply Chain Management); Eng. George Amingh- Deputy Director (Construction); Eng. Symon Muita- Deputy Director (Road Asset and Corridor Management) and; Dr. Lydia Muiru - Alternate to PS Infrastructure in KeNHA Board, appeared before the Committee to adduce evidence on the report of the Auditor General on the financial statements of the Authority for the financial years 2014/15 and 2015/2016.

456. **Property Plant and Equipment - FY 2014/2015**

The Committee heard that Property, Plant and Equipment balance of Kshs. 215,017,181,726 as at 30th June 2015 excluded undetermined values of land and houses occupied by staff in South Rift Region from which the Authority earned an income of Kshs. 1,173,500 during the year. As such, the accuracy and correctness of Property, Plant and Equipment balance of Kshs. 2015,017,181,726 as at 30th June, 2015 could not be confirmed.

Management response

While agreeing with the observation, management informed the Committee that these houses were built by the road contractor as Resident Engineer`s premises under the road contract of the then Lanet- Nakuru - Njoro turnoff road construction contract previously managed by the Parent Ministry. The undetermined value of land related to land previously acquired by the Government prior to the establishment of the Authority. These values alongside the development expenditures met by the Government over the years in all trunk roads were not made available to the Authority.

Management further informed the Committee that although the data was not provided by the Parent Ministry to the Authority, Management was developing a mechanism of obtaining ownership documents for all the land, structures and developments on the road or road reserves that was under the jurisdiction of KeNHA. Upon obtaining such title deeds, the Authority would proceed to the next stage of professionally establishing the values of its road network including all developments on/ along its corridors and road reserves. The values so established would be entered in the Authority's books of accounts as provided by IPSAS accrual.

The Part Development Plans for the Land Owned by the Authority from all Counties

In November 2011, the Government through the National Treasury issued the Kenya Roads (Kenya National Highways Authority) (Vesting) Order, 2011 which was deemed to have come into operation on 7th September 2007. Paragraph 3 of the Vesting Order transferred and vested in the Authority all national roads and all their related road reserves throughout the country, all on-ongoing contracts and consultancies with respect to the national roads (as specified in the respective Schedule).

As per Paragraph 5 of the Order, all rights and liabilities in respect to the management, development, rehabilitation and maintenance of all national roads and all their related road reserves specified in the Schedule were, with effect from the effective date of the Order, deemed to have been transferred to, vested in and imposed on the Authority.

Following the issuing of the Vesting Order, the Authority in the year 2012 commenced the process of acquiring ownership documents for all its vested Road Reserves and Camps in all Counties. The process included -

a) Taking inventory of the vested Road Reserves and Camps spread across the Country;

b) Acquisition of documents related to the Road Reserves and Camps, e.g. Survey Plans, Part Development Plans, Gazette Notices etc.;

c) Preparation of Part Development Plans where none existed in liaison with the respective County Governments;

d) Land survey of the Road Reserves and Camps;

e) Land registration and fencing of the Road Camps.

The Authority was at various stages of acquiring ownership documents for its camps.

<u>Committee observations</u>

The Committee observed that -

i) **It was not clear who owned the parcels of land in question and the Authority had taken inordinately long to determine the whereabouts of the titles of the said land.**

ii) **The Authority had not obtained the Part Development Plans for its land across all the counties and as such, it would be onerous to secure title deeds.**

Committee Recommendations

The Committee recommends that -

(i) **The Director General of the National Highways Authority should prioritize securing of titles to all land under its jurisdiction, value the and properties and record them appropriately in the books of account**

(ii) **The Land Registrar should register all the KeNHA land and issue KeNHA with title deeds**

457. **Periodic Maintenance of Mombasa- Miritini Road- FY 2014/2015**

The Committee heard that as reported in the previous year, the contract for the above maintenance works was awarded to M/s Talewa Road Construction Ltd at a contract sum of Kshs. 341,180,245 with commencement and completion dates of 26th January 2012 and 26th September 2012 (8 months) respectively. Evidence available indicated that the contract was terminated after poor performance by the contractor when total payment to the contractor stood at Kshs. 144,146,778.76 (42.25% of the contract sum).

The Committee further heard that after termination, the remaining work was repackaged and awarded to M/s S.S. Mehta through direct procurement at a negotiated contract sum of Kshs. 292,656,590 contrary to section 50 of the Public Procurement and Disposal Act, 2005. Further, the negotiated contract sum of Kshs. 292,656,590 brought the total contract expenditure to Kshs. 436,803,368, an increase of Kshs. 95,623,123 or approximately 28% from the original contract sum of Kshs. 341,180,245.

A review of the contract during the year revealed that the contract sum was varied by a further Kshs. 63,330,409 thereby raising the contract sum to Kshs. 355,987,000 and further escalating total expenditure for the project to Kshs. 500,133,777 or 46.60% above original contract price of Kshs. 341,180,245

Although Management explained that the escalation of project costs was due to configuration of roads, roundabouts and traffic redirection around Changamwe area to facilitate faster exit of trucks due to Government directives, it was not possible to confirm whether the Authority got value for money on the total expenditure of Kshs. 500,133,777

Management response

Management agreed with the observation that the remaining work was repackaged and awarded to M/s SS Mehta through direct procurement at a contract sum of Kshs. 292.7 million. The procurement method was not guided by Section 50 of the Public Procurement and Disposal Act, 2005 but by Section 74 of the same Act under Alternative Procurement Procedures. The Law was observed to the letter hence there was no contravention of the Act.

The variation of contract sum by Kshs. 63.3 million was to allow the contractor address key emerging issues that were not factored during the contract negotiation stage. This was within the contract provisions and the Public Procurement and Disposal Act, 2005. The project was substantially completed by M/s Mehta and Sons on 24th December, 2013, four days before the planned completion date. End of Defects Liability Period Certificate was subsequently issued on 29th August 2014.

The Authority received full value for its money due to the social economic benefits since:

- An additional 3 Kilometres of previously unmotorable road section was resurfaced, dressed and made fully motorable
- The traffic gridlock from Makupa round about to Moi International Airport was cleared through the diversion of heavy goods vehicles to the newly resurfaced road section
- Cargo movements from the Port of Mombasa to Malaba boarder had been reduced from the previous 15 days during the traffic snarl-ups to less than four days.

Contractors who bid for the Maintenance of Mombasa – Miritini Road

	Name of bidder	Bidders postal address	Bid Sum (Kshs)
1	Victory Construction Company	Box 45329-00100 Nairobi	394,563,144.40
2	Hayer Bishan Singh	Box 253-40100 Kisumu	338,228,919.00
3	Talewa Road Construction	Box 8727-00200 Nairobi	341,180,245.56
4	Abdul Hakim Ahmed	Box 94024-80100 Mombasa	355,574,656.50
5	Dhanjal Brothers	Box 82909-80100 Mombasa	393,006,993.12

The amount of money spent in arbitration process in the matter of periodic maintenance of Mombasa – Miritini Road (as at the date of appearance before the committee)

The Authority had since incurred a total expenditure of Kshs. 15,714,793 out of which a total of Kshs. 10,114,793 had been paid as on the date of appearance before the Committee as shown.

Total expenditure and amount paid as legal fees following the termination of Mombasa – Miritini Road Project

	Description	Contracted Amount (KShs.)	Actual amount paid to date (KShs.)
a	Legal fees for advocate's representation during the court process	500,000	500,000
b	Legal fees for advocate's representation during the arbitration process	11,200,000	5,600,000

c	Arbitrators Fees (KeNHA's portion of the fees)	4,014,793	4,014,793
	Totals	**15,714,793**	**10,114,793**

The amount of money that the Authority had spent in the arbitration process in the matter of Periodic Maintenance of Mombasa – Miritini Road Project was Kshs. 9,614,793. The legal fees balance of Kshs. 5,600,000 would be paid upon receipt of the Arbitrator's ruling.

<u>Committee observations</u>

The Committee observed that -

a) **It was irregular for M/S S.S Mehta & Sons Ltd to be handpicked and awarded a tender to maintain the Mombasa – Miritini Road. The Authority did not satisfy the requirements for direct procurement as provided under Section 74 of the repealed Public Procurement and Asset Disposal Act of 2005. Further, the definition of "urgent need" as provided for in the said Act could not apply in the impugned tender.**

b) **There was no evidence to show that M/S S.S Mehta & Sons Ltd was evaluated before being awarded the tender to maintain the Mombasa – Miritini Road. But it was one of the pre-qualified companies.**

c) **An explanation that a presidential directive to have the road done within 100 days could not justify direct procurement. The Authority had planned to construct the road even before the said presidential directive. Further, executive order is not a justification to break the law.**

d) **It was not clear why Ksh 63.3m was added as a contingency when ordinarily provisions for the contingency should be included in the total contract sum.**

e) **Though the entire work ended up costing 46.6 % more than the contract sum, it was a new work given out and not a variation.**

f) **Kenya had signed a charter with EAC states on expeditious transport of cargo between Mombasa and Malaba within within 14 days.**

Committee recommendations

The Committee recommends that -

i. **The Director General of KeNHA should strictly follow the law when tendering and implementation of projects.**
ii. **The Executive should be cognizant of realistic procurement timelines when signing international commitments**

458. **Rehabilitation of Webuye-Kitale Road Lot 3 FY 2014/15 7 FY 2015/16**

The Committee heard that as reported in FY 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 work commenced on 1st April 2013 for a contract period of 24 months with a completion date of 31st March 2015. The project was 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 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 being 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 lay idle and no work was going on despite a court ruling on 12th June 2015 that both parties engage in an arbitration process. Although Management explained that the contractor abandoned the site on 31st March 2015 and that the abandonment was a subject for arbitration, the effect of the result of the arbitration on the project could not be determined.

Management Response

Management agreed with the audit query. The court ruling of 12th June, 2015 directed the parties involved to go into arbitration. The contractor abandoned the site and never returned. The abandonment was also a subject of the arbitration.

However, at the request of the contractor, the employer 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 work was awarded to a new contractor whose progress was satisfactory and had achieved 34% physical progress as at the date of appearance before the Committee. The project was scheduled to complete in late November 2018.

Committee Observations

The Committee made the following observations:

i. **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 recalled.**
ii. **The Authority 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. There is doubts on the quality of the due diligence done by the Authority with regard to this contractor.**
iii. **There was a new contractor on site with the project expected to be completed by October 2019.**

iv. **There was an increase in the contract sum from Kshs. 2,500,000,000 to Kshs. 4,000,000,000.**
v. **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 area locals for the road to be finalized which partly advised the decision.**
vi. **The Authority refused to pay Kshs. 122,000,000 claimed by M/S VIL Limited for works done.**
vii. **The matter was resolved amicably**

Committee Recommendations **The Committee recommends that -**

(i) The KeNHA should always do a thorough due diligence on any contractor before awarding him or her a contract to avoid non-performance

(ii) The KeNHA should never rely on the no objection report from the funding agencies to inform its decision of whether the contractor can be able to do the job or not.

(iii) The KeNHA should first recall the performance bond from a contractor who fails to do his or her work before resorting to Court or arbitration for non-non performance

(iv) The KeNHA should compile a list of all the firms that have had a history of non-performance with KeNHA and blacklist them from doing business with the KeNHA

(v) The PPRA should commence investigations againts firms that fail to do their work with a view to debarring them pursuant to section 42 of the PPDA Act of 2015

459. **Unsupported expenditure FY 2014/15**

The Committee heard that included in the expenditure of Kshs. 3,778,139,482 in the statement of receipts and payments was Kshs. 11,015,603 described as miscellaneous payments and explained in Note 8.7 as bank corrections. Although management explained that these were bank corrections, the letter from the bank dated 5 November, 2015 clearly stated that the interest rate of 8% was for the period of November 2013 to July 2014 and not July 2014 to June 2015 which was 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 could not be confirmed.

Management Response

The Committee was informed that the erroneous interest was Kshs. 12,959,532 out of which Kshs. 11,015,603 was the net interest recovered thus a difference of Kshs. 1,943,929 that represented withholding tax paid by the bank directly to KRA.

The correction 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 interest rate on deposits 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 were 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 was 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 Observations

The Committee observed that -

i) **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.**
ii) **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.**
i) **The matter has been resolved.**

Committee Recommendations

The Committee recommends that the KeNHA should ensure that all its accounts are reconciled continuously to avoid unnecessary queries.

460. **Regional Roads Component (Merille-Marsabit Road) Project No. KE/001/09 (Loan Agreement NO. KE/FED/2009/021-655) FY 2014/15**

23.1 Interest on delayed payments

The Committee heard that as reported in the previous year, the Authority was not paying the Contractor's dues when they fell due. As at 30th June, 2016, the contractor claimed interest on delayed dues to the tune of Kshs 38,892,979.63. The interest on delayed payment was a nugatory expenditure the Authority would not have incurred if it paid the Contractor's dues on time.

Management Response

Management informed the Committee that the situation of accumulation of interest on delayed payment of contract since inception up to 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

Delay in payments occasioning accrual of interest indicated poor planning on the part of the KeNHA and the Government of the day in implementing projects.

Committee Recommendation

The Committee recommends that -

(i) The KeNHA should only commence projects that it has made budgetary allocations to and is certain that it will be able to pay for them within that particular financial year

(ii) The National Treasury should always avail funds for payments to contractors once due to avoid incurring unnecessary losses

461. **<u>Nairobi Southern Bypass Road Project Loan No. China Exim Bank PBC NO. (2011) 32 Total No. (183) No. (1402030305201121l528) FY 2014/15</u>**

a. <u>Project Implementation and Nugatory Expenditure</u>

The Committee heard that this contract was awarded to China Road and Bridge Corporation at a contract sum of Kshs. 17,199,793,766 and commenced on 2nd July 2012 with completion date of 31 July 2015. However, as per progress report of June 2015, time elapsed was 97.2% while work completed was at 81.3%. In addition, as at June 2015, the contractor was not in possession of site for National Park Section of the Project.

Although Management explained and provided evidence that the Contractor was issued with possession of site for the National Park Section on 2 November 2015, the project was behind schedule and this could lead to escalation of project cost.

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

<u>Management Response</u>

The Director General submitted that the delay in project implementation was attributed to the lengthy court case by Friends of the Nairobi National Park who obtained an injunction stopping the Authority from constructing the road through the park. The Court eventually ruled that the Authority should follow due process and have the section of the park that was to be used for road construction appropriately gazetted. Upon gazettement as ordered, there were 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 issued with possession of site on 2nd November 2015 and the work substantially completed on 22nd June, 2016 with defect liability of 12 months.

Interest on delayed payments of Kshs. 236,261,048.16 that 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 was making a concerted effort, liaising with line ministry and National Treasury, to make sure that timely payments were made for all the certified works. This would resolve cash flow problems and the contractors would be able to work smoothly and improve on progress.

Committee Observations

The Committee observed that -

i) **The interest on delayed payments of Kshs. 236,261,048.16 paid to the contractor arose due to inadequate budgetary provisions and delayed exchequer releases.**
ii) **The delay in project implementation was attributed to a court case by 'Friends of the Nairobi National Park' who obtained an injunction stopping the Authority from constructing the road through the park. The Court eventually ruled that the Authority should follow due process to have the section of the park for road construction appropriately gazetted.**
iii) **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 was yet to honour the payment.**
iv) **KWS and NEMA had given approvals for the project. Previously, such approvals were enough and KeNHA used not to seek degazettement; which caught KeNHA by surprise this time round.**

Committee Recommendations

The Committee recommends that -

(i) **The KeNHA should seek for all the necessary approvals before commencing any projects to avoid a back and forth once the contract has been awarded**
(ii) **The KeNHA should only commence projects that it has made budgetary allocations to and is certain that it will be able to pay for them within that particular financial year**
(iii) **The National Treasury should always avail funds for payments to contractors once due to avoid incurring unnecessary losses.**
(iv) **The Judiciary should expedite determination of cases**

462. **Northern Corridor Transport Improvement Project (NCTIP) (IDA Credit No. 3930-KE and 4571-KE) FY 2014/15**

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

The Committee heard that 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 15th September 2012. However, a review of the project during the year under audit 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 4th March, 2015. However, an expenditure amounting to Kshs. 148,054,139 was incurred to pay interest on delayed payment which amounted to nugatory expenditure.

Management Response

The management submitted that the matter was discussed by PIC on 19th November, 2015. Delay in project completion was occasioned by inadequate budgetary provisions and delayed exchequer releases for financing development works and 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 made effort, liaising with line Ministry and National Treasury, to ensure that timely and adequate payments were made for all the certified work to curtail slowed progress of work and interest on delayed payments. This would resolve cash flow problems in future contracts and the contractors would be able to work smoothly

Committee Observations

The Committee observed that -

i) **The audit query was considered in the 19th Report of the Public Investments Committee on audited accounts of State Corporations.**
ii) **The Authority 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**

Committee Recommendations

The Committee recommends that -

(i) **The KeNHA should only commence projects that it has made budgetary allocations to and is certain that it will be able to pay for them within that particular financial year**
(ii) **The National Treasury should always avail funds for payments to contractors once due to avoid incurring unnecessary losses**

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

The Committee heard that 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 management informed the Committee that work was originally under supervision by the Department of Public Works under the Ministry of Lands, Housing and Urban Development. This work was characterized by slow progress and poor quality and required full time supervision. It was therefore agreed during the World Bank Mission held in June 2014 that the supervision of the work be enhanced. Due to inadequate time to allow for other methods of procurement and since the NCTIP credit would expire 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. Conte Designs was considered for the following reasons:

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

The procurement of the services was in line with the World Bank Procurement Guidelines since the work and the services were fully funded by the World Bank under the NCTIP credit. The quality of work improved with the engagement of full-time consultant.

Committee Observations

The Committee observed that -

i. **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 7 August 2014. The procurement process was done in accordance with the**

International Development Association procurement rules under which the project was funded. This was at variance with Kenya's procurement laws

ii. **The Authority justified the need for fulltime supervision of the project on the basis of slow implementation and poor quality and got the World Bank's concurrence.**

<u>Committee Recommendations</u>

The Committee recommends that -

i. **Being a government entity, KeNHA should be guided by Kenya's procurement law rather than the international instruments when carrying out procurement**
ii. **All the contracts signed between Kenya and the development partners in future should adhere to Kenyan laws**

c. <u>Supply of Computers and related Equipment</u>

The Committee heard that the 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 was 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; 94 No. Standard Desktop Computers: 12 No. Touch Smart Desktop Computers; 8 No. Laptop Computers and 46 No. Integrated Service Routers on 13th June 2013 at a tender sum of Kshs. 25,564,350.00.

The supplier was said to have delivered the goods to Mechanical and Transport Department of Ministry of Transport and Infrastructure on 19th November 2013 vide delivery note No. 1063. The Inspection and Acceptance Committee inspected and accepted only 8 No. laptop computers and 19 No integrated service routers all valued at Kshs. 2,975,150.00. It was 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 23rd 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

Management informed the committee that the supplier delivered the goods in quantities as per the contract requirements. 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 were stolen. The same was reported to the Kenya Police and investigations launched which led to the arrest of part of the private security guards and the vehicle used in the theft. The beneficiary 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 8 No. 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 were 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. The amounts paid were within the contract sum. Failure to pay for goods delivered as per the contract would have exposed the Authority to unnecessary litigations and claims.

Committee Observations

i. **The audit query was considered in the 19th Report of the Public Investments Committee.**
ii. **The Authority was following up on the matter with the Ministry of Transport and Infrastructure and the police.**
iii. **As at the time of compiling this report, it was not clear whether the investigations on the matter had been concluded**

Committee Recommendation

The DCI should expeditiously investigate the matter with a view of prosecuting the culprits

463. **Timboroa - Eldoret Road Rehabilitation Project No. P-KE-DBO- 019 LOAN AGREEMENT NO. 210050023344 FY 2014/15**

Rehabilitation of Timboroa-Eldoret (A104) Road

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

Although the work was under defects liability period from 10th July 2015 to 9th July 2016, as at June 2015, the contract was varied from KShs. 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 PPD Regulations.

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

Management Response

The Accounting Officer submitted that construction work was 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 re-construction 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 for the quantities was 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 related to change in the scope of work in accordance with the conditions of the contract. A no-objection for the same was obtained from the co-financier (AfDB). This project was completed.

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 work was to be financed by GoK. This was the basis of issuance of the No Objection hence the addenda to vary the contract.

The Bank further availed additional funding to finance the increased scope following granting of the ''No objection'. This project was 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 observed that -

i. **The contract for the project was varied from KES 3,113,871,197.73 to KES 5,213,921,839 or 68% above the authorized limit contrary to Section 31 of the Public Procurement and Disposal Regulations.**
ii. **The variation was procured in line with the African Development Bank (AfDB) conditions contained in the loan agreement and the project Aide Memoire as the bank was the major financier of the project. This was the basis of issuance of the no objection hence the addenda to vary the contract.**
iii. **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 Recommendation

In the event of a difference between international instruments and the Public Procurement and Disposal Act; the latter should prevail and that the such contracts should conform to Kenyan law

464. **Kenya Transport Sector Support Programme IDA Credit No. 4926 FY 2015/16 and FY 2016/17**

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

The Committee heard that 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 Committee heard that 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. The project was completed and a Taking Over Certificate issued on 30 October 2018.

Committee Observations

The Committee observed that -

i. **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.**

ii. **The project was completed in October 2018 with no extra cost incurred by the Authority.**

Committee Recommendations

The Committee recommends that -

i) The KeNHA should always ensure proper planning before initiating a project to avoid delays that should be foreseen through feasibility study.

ii) The National Treasury should release funds in time to avoid penalty

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

The Committee heard that as reported in the previous year, this contract was awarded to M/s China Railway No.10 Eng. Group Co. at a contract sum of Kshs.2, 690,008,029.77 for a period of fifteen months. The project commenced in 2nd February, 2015 and was originally scheduled to be completed on 2nd May, 2016. A review of the progress in the year under audit revealed that Monthly Progress Report No. 24 of May 2017 showed 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

Management informed the Committee that delay was occasioned by the following:

a. Delayed acquisition of land from project affected persons as listed below: -

   - Mau Summit Interchange-Chamgaa 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 in the ELC petition 33 of 2015. The matter was resolved on 15 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 15 May, 2016

b. Significant delays in cxlearance of plant and equipment from the port of Mombasa 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.

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

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

Committee Observations

The Committee observed that -

i) **The reasons advanced by the KeNHA for delay could have been foreseen had KeNHA did proper planning; which it appears not to have been done properly**

ii) **The Mau and Njoro turnoff interchanges were substantially completed by 21 December, 2017 and Nyahururu Interchange was substantially completed and a Taking Over Certificate issued on 30 April 2018.**

iii) **Treasury delayed in issueane of a certificate**

Committee Recommendations

The Committee recommends that -

i) Government agencies should expedite clearance of goods that need waivers;
ii) Design review should be done at least three months prior to commencements of projects;
iii) Contracts should be drawn to cater for force marjure eventualities.

465. **Construction of Thua Bridge and Approaches FY 2014/15 and FY 2015/16**

The committee heard that 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 21 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 and 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, and dissenting opinions among tender committee members.It was not clear under which guidelines the Authority's tender committee (TC) approved tenders through circulation for concurrence. In the circumstance, the Authority 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

Management informed the Committee that the procurement law gave the tender committee (TC) the mandate to deliberate on all procurements above Kshs. 500,000. This therefore resulted in a situation where the TC in KeNHA was required to deliberate on a high number of agenda due to the value of procurements done by KeNHA.

The TC membership including alternates was 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 were however instances where critical matters needed to be executed before the scheduled TC sitting, due to time related urgency. Members though available on that day could not be available at the same time. It was in line with this that the Authority applied Section 31(7) of the

Public Procurement Act 2005 which provided for the use of creative approaches in order to enhance efficiency of procurement processes and project implementation. Members were presented with the issue at hand and signified their approval or otherwise in writing. They freely expressed their views and in some instances sought clarification which was then given. Matters circulated were again included in the subsequent TC meeting where members again affirmed the earlier approval they had granted and minutes were prepared.

On interest on delayed payments, management concurred with the Auditor's observation that the payments made on interest on delayed payments were indeed nugatory expenditure. However, this situation was occasioned by several factors notably inadequate exchequer budgetary provisions during the project execution period and delayed releases of Exchequer by the National Treasury. Interest charged on each project and the respective periods is as listed below:

- Loruk Barpelo - Kshs. 70,585,085.95 from inception on 17th August 2011 to 30th June 2015.
- KCC-Sotik/Ndanai-Gorgor Road- Kshs. 53,723,192.77 from inception on 7th September 2011 to 30th June 2015 and
- Masara-Suna Kehancha Road & Reinstatement of Awendo Mariwa Road-Kshs. 70,333,782.26 from inception on 15th May 2013 to 30th June 2015.

<u>Committee Observations</u>

The Committee observed that -

i) **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.**

ii) **The justification given by the Authority for use of direct procurement was not satisfactory.**

iii) **Failure to circulate the agenda in time for the Members of the Tender Committee may have denied the Committee members time to adequately interrogate the agenda of the day. This could have explained the casual manner in which decisions were arrived at KeNHA with far reaching ramifications to the taxpayer.**

iv) Delayed payments and attendant interest indicated poor planning

Committee Recommendations

The Committee recommends that -

(i) **The then tender committee of the KeNHA should be reprimanded for overseeing a policy that violated the procurement law.**
(ii) **KeNHA should always plan and budget for projects it intends to execute to avoid delay in payments.**
(iii) **The National Treasury should honour its commitments and release funds in time for payments to contractors to avoid unnecessary costs such as interest**

466. **Consultancy services for management contracts of weighbridge stations across the national road network FY 2014/15, FY 2015/16 and FY 2016/17**

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

a. 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 21st June 2012. Request for Proposals (RFP) were issued to the shortlisted firms on 25 July 2012.

b. Proposal Response and Evaluations

The firms returned the RFP depending on the cluster for evaluation. 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 rest were non-responsive because they provided bid bonds valid for 120 days instead of 150 days.

c. Tender Committee, Award and Negotiations

In its meetings No. 92 held on 22nd November 2012, the Tender Committee 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 22nd November 2012. This was followed by negotiations between the KeNHA and the consultant on 11th December 2012. The contracts were later signed between the two parties on 04th February 2013 and order to commence was given on the same date for a period of three (3) years ending 04th February 2016.

d. 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 Eldoret cluster plus adjacent road network	263,978,880.00	519,321,725.85	255,342,845.83
2.	Gilgil & Mai Mahiu cluster plus adjacent road network	287,508,320.00	508,704,606.32	221,196,286.32
3.	Mariakani & 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	340,277,300.00	650,869,902.86	310,592,602.86

	road network			
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**

e. Exhaustion of Contract Sums

It was observed that three (3) year contract period expired on 4th 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 was 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 road network	Engineer's superintendence	34	30,500,000	58,028,748	27,528,748
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 superitendence	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

Management informed the Committee that procurement process 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 used to compare the bids and for conducting sensitivity analysis of the bids but was not for use as basis 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 related 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 was to source for these extra funds.

The Authority thereafter approached the Kenya Roads Board (KRB) 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 provide 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 nine weighbridges.

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.

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 in increase of the contract sums.

Committee Observations

The Committee observed that -

i. **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 rest** were non-responsive because they provided bid bonds valid for 120 days instead of 150 days.

ii. The tender sums exceeded the Engineer's estimate by a total of Kshs. 1,177,105,157.53. According to the KeNHA, the Engineer's Estimate was for weighbridge management component, and did not include the cost of improvements of the weighbridge and inclusive of personnel.

iii. The technology installed at the weighbridges was new and only used in South Africa.

iv. None of the bidders who missed out on the contract for the project raised any objection with the Public Procurement Regulatory Authority.

v. 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 Recommendation

The Committee recommends that KeNHA should always use the Engineers estimate as one of the tools when evaluating bids.

Signed: ....

Date: ......15/07/2020.......................................

HON. ABDULLSWAMAD SHARRIF NASSIR, MP

CHAIRPERSON

PUBLIC INVESTMENTS COMMITTEE

ADOPTION LIST

WE MEMBERS OF THE PUBLIC INVESTMENTS COMMITTEE HAVE ADOPTED THE 23RD REPORT [redacted] ON EXMINATION OF AUDITED FINANCIAL STATEMENTS OF STATE CORPORATIONS

	NAME	SIGNATURE
1.	The Hon. Abdullswamad Shariff Nassir, MP *(Chairman)*	
2.	The Hon. Ahmed Abdisalan Ibrahim, MP *(Vice-Chairman)*	
3.	The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP	
4.	The Hon. Gladys Nyasuna Wanga, CBS, MP	
5.	The Hon. John Muchiri Nyaga, M.P	
6.	The Hon. Justus Kizito Mugali, MP	
7.	The Hon. Raphael Bitta Sauti Wanjala, MP	
8.	The Hon. (Prof.) Mohamud Sheikh Mohammed, MP	
9.	The Hon. Babu Owino Paul Ongili, MP	
10.	The Hon. James Kamau Githua Wamacukuru, M.P	
11.	The Hon. Joash Nyamache Nyamoko, HSC, MP	
12.	The Hon. Mary Wamaua Njoroge, MP	
13.	The Hon. Mohamed Hire Garane, M.P.	
14.	The Hon. Omar Mohamed Maalim Hassan, MP	
15.	The Hon. Paul Kahindi Katana, MP	
16.	The Hon. Purity Wangui Ngirici, MP	
17.	The Hon. Rashid Kassim Amin, MP	
18.	The Hon. Thuku Zachary Kwenya, M.P	

Committee Clerk Evans Oanda Sec ....