Approved for tabling in the House.
SNA
31/5/2022.

REPUBLIC OF KENYA

TWELFTH PARLIAMENT

NATIONAL ASSEMBLY – SIXTH SESSION

PUBLIC INVESTMENTS COMMITTEE

THE TWENTY FOURTH REPORT

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

DIRECTORATE OF COMMITTEE SERVICES

THE NATIONAL ASSEMBLY

PARLIAMENT BUILDINGS

NAIROBI

MAY, 2022

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LIST OF ABBREVIATIONS/ACRONYMS

Ag.	-	Acting
AG	-	Attorney General
CAK	-	Communications Authority of Kenya
CBK	-	Central Bank of Kenya
CEO	-	Chief Executive Officer
CS	-	Cabinet Secretary
DCI	-	Directorate of Criminal Investigations
DG	-	Director General
EACC	-	Ethics and Anti-Corruption Commission
EOT	-	Extension of Time
ERP	-	Enterprise Resource Planning
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
JKIA	-	Jomo Kenyatta International Airport
KAA	-	Kenya Airports Authority
KEMFRI	-	Kenya Marine and Fisheries Institute
KES	-	Kenya Shillings
KNBS	-	Kenya National Bureau of Statistics
KNH	-	Kenyatta National Hospital

KPA	-	Kenya Airports Authority
KPC	-	Kenya Pipeline Company
KRC	-	Kenya Railways Corporation
KWS	-	Kenya Wildlife Service
LTD	-	Limited
MD	-	Managing Director
MIA	-	Mombasa International Airport
MOU	-	Memorandum of Understanding
M.P.	-	Member of Parliament
MGR	-	Meter Gauge Railway
NEMA	-	National Environment Management Authority
NGO	-	Non-Governmental Organization
NHC	-	National Housing Corporation
NIB	-	National Irrigation Board
NLC	-	National Land Commission
NSSF	-	National Social Security Fund
OAG	-	Office of the Auditor General
PAP	-	Project Affected Persons
PIC	-	Public Investments Committee
PPAD	-	Public Procurement and Asset Disposal Act
PPDA	-	Public Procurement and Disposal Act
PS	-	Principal Secretary
REREC	-	Rural Electrification and Renewable Energy Corporation
RVR	-	Rift Valley Railways

SGR	-	Standard Gauge Railway
TF	-	Tourism Fund
USD	-	United States Dollar
WIP	-	Work in Progress

CHAIRPERSON'S FOREWORD

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 National Assembly Standing Order 206 to examine the working of public investments based on 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.

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.

The Committee's operations were affected by the covid-19 pandemic that made it difficult to have physical meetings and examine documents submitted at the earlier stages of the pandemic due to the containment measures instituted by the Government. This meant that the Committee had to reduce its frequency of sittings and amount of time spent in examining each State Corporation's Audit Reports.

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.

This report contains observations, findings and recommendations arising from examination of reports of the Auditor-General for thirty (30) 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.

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 accountable.

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.

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 24th Report of the Public Investments Committee report on Audited Financial Statements for **thirty (30) State Corporations.**

HON. ABDULLSWAMAD SHARRIF NASSIR, MP

CHAIRMAN, PUBLIC INVESTMENTS COMMITTEE

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 based on 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. the Constitution.

    b. the National Assembly (Powers and Privileges) Act (Cap. 6).

    c. the State Corporations Act (Cap. 446).

    d. the Public Procurement and Disposal Act, 2005.

    e. the Public Procurement and Disposal Regulations, 2006.

    f. the Public Procurement and Assets Disposal Act, 2015

    g. the Public Finance Management Act, 2012.

    h. the Public Audit Act 2003, and

    i. the Public Audit Act, 2015 among others.

    j. The National Assembly Standing Orders

1.2 Committee Membership

3. The Committee comprises of the following Members:

Name of Member	Constituency	Party
The Hon. AbdullswamadSharrif Nassir, MP **Chairperson**	Mvita	ODM
The Hon. Ahmed Abdisalan Ibrahim, MP **Vice-Chairperson**	Wajir North	ODM
The Hon. Raphael Bitta Sauti Wanjala, MP	Budalangi	ODM
The Hon. Thomas Joseph Kajwang', MP	Ruaraka	ODM
The Hon. Omar Mohamed Maalim Hassan, MP	Mandera East	EFP
The Hon. Mishi Mboko, MP	Likoni	ODM
The Hon. Julius Kibiwott Melly, MP	Tinderet	JP
The Hon. Joshua Kandie, MP	Baringo Central	MCCP
Hon. Babu Owino Paul Ongili, MP	Embakasi East	ODM
Hon. James Githua Kamau Wamacukuru, MP	Kabete	JP
The Hon. Mathias Nyamabe Robi, MP	Kuria West	JP
Hon. Mary Wamaua Njoroge, MP	Maragwa	JP
Hon. Mohamed Hire Garane, MP	Lagdera	KANU
The Hon. Rahab Mukami Wachira, MP	Nyeri County	JP
Hon. Paul Kahindi Katana, MP	Kaloleni	ODM

Hon. Rashid Kassim Amin, MP	Wajir East	WDM-K
Hon. Teddy Mwabire, MP	Ganze	ODM
Hon. Zachary KwenyaThuku, MP	Kinangop	JP

1.3 Committee Secretariat

4. The secretariat facilitating the Committee comprises -

Evans Oanda	-	Principal Clerk Assistant II
Mr. Mohamed Boru	-	Clerk Assistant II
Ms. Marlene Ayiro	-	Principal Legal Counsel II
Mr. Cyril Mutali	-	Research Officer III
Ms. Deborah Mupusi	-	Media Relations Officer III
Ms. Euridice Nzioka	-	Audio Recording Officer
Mr. Wilson Angatangori	-	Senior Sergeant-at-Arms

1.3 Committee proceedings

5. The Committee held one hundred and twenty (120) sittings in which it closely examined the audited financial statements of thirty (30) State Corporations and the Reports therein by the Auditor General.

6. In its inquiry into whether 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 considered 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 KENYATTA NATIONAL HOSPITAL (FY 2013/14-2017/2018)

EXAMINATION OF THE REPORTS OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF KENYATTA NATIONAL HOSPITAL FOR THE FINANCIAL YEARS 2013/14 TO 2017/2018

Dr. Evanson Kamuri, the Ag. Chief Executive Officer of the Kenyatta National Hospital accompanied by Mr. Carylus Odiango (Director, Corporate Services), Dr. Julius Ogato (Ag. Director, Clinical Services), Mr. Michael Kihuga (Deputy Director, Finance), Mr. Elphas Choge (Deputy Director, Human Resources) Mr. Zablon Gichaba (Chief Accountant) and Mr. John Kamau (Chief Accountant) appeared before the Committee to adduce evidence on the audited accounts of Kenyatta National Hospital for the financial years 2012/13 to 2016/17.

<u>Inventories FY 2012/13</u>

10. The Committee heard that as reported in 2011/2012, the inventory balance of KSh. 278,456,000 as at 30 June 2013 excluded deficits and surpluses amounting to KSh. 13,045 and KSh. 60,732 respectively. Although a Board of enquiry to investigate the cause of deficit, surpluses and obsolescence was established, the results of the investigation were not made available for audit review and the adjustment was not effected in the inventories balance of KSh. 278,455,439 as at 30th June 2013.

11. Consequently, and as in the previous year, the validity and accuracy of the inventories balance of KSh. 278,456,000 as at 30 June 2013 was not ascertained.

<u>Management Response</u>

12. The Management informed the Committee that instances where surplus stock was noted during the stock take, the respective bin cards (S3) were ruled with the actual stock count and the same formed part of the inventory balance reported in FY 2012/13. The stock figure of KSh. 278,455,439 included surpluses of KSh. 60,732 and therefore the inventory balance in the financial statements was fairly stated. No adjustments were required.

13. The report of Board of Enquiry (BoE) was availed for audit verification and the recommendations had since been implemented. Surpluses noted by the auditor were because of poor maintenance of stock records. The records were corrected to reflect the confirmed stock figures.

14. In the cases where deficits were noted, appropriate disciplinary action (including surcharge) was taken on the culpable officers.

Committee Observations

(i) Reconciliations were done and the matter was resolved.

(ii) The Hospital had automated its stock management process for better accounting and to avoid repetition of the audit query.

Committee Recommendation

The accounting officer for the Kenyatta National Hospital should always adhere to statutory timelines on provision of documents for audit, failure to which the sanctions provided for under the Public Audit Act, 2015 ensues.

Trade and other receivables FY 2012/13 - 2017/18

15. The Committee heard that as reported in 2011/2012, the trade and other receivables balance of KSh. 1,623,919,000 as at 30th June 2013 included receivables from institutional debtors, individual debtors, Ministry of Health (WB) and temporary imprest amounting to ksh168,908,395, KSh.2,041,978,997, KSh.2,467,265 and KSh.1,140,686 respectively which had been outstanding for a considerably long period of time. Similarly, the balance of KSh. 1,623,919,000 included KSh.487, 956,316, KSh.2,339,380,KSh.132,324 and KSh.26,210,154.30 all totaling KSh.516,639,174.70 for NHIF, RD cheque, Rojeans café and rent respectively which had been outstanding for more than one year.

16. Although a provision for bad and doubtful debts of KSh. 2,872,602,000 was made for individual debtors (main hospital) and KSh. 144,568,000 for other receivables from the Ministry of Health, the recovery in full of these debts was doubtful.

Management Response

Institutional debtors

17. Management informed the Committee those institutional debtors related to debts owed by institutions which had formalized credit facility with the Hospital but failed to settle medical bills within the stipulated credit period. The Hospital had been making follow-up for the payments through demand letters and suspension of accounts where the institutions were unresponsive.

<u>Individual debtors – Ksh. 2,041,978,997</u>

18. Management informed the Committee that the hospital rendered services to all patients referred for specialized healthcare without discrimination. Some of the patients who were attended to were indigents and upon clinical discharge, were unable to settle their medical bills. The patients were released from the hospital on unsecured credit based on a commitment to settle their bills in the future in line with the credit policy. Efforts to collect the due receivables from this category of patients were unsuccessful. Most demand letters sent to the debtors' last recorded addresses demanding settlement of debts were returned to hospital.

19. Also included in the impairment allowance were bills relating to unclaimed bodies that were disposed-off by the Hospital as per the provisions of the Public Health Act.

20. In addition, the management had sought reimbursement of bills incurred by indigents from the Ministry of Health but with to no avail.

21. The impairment allowance for accounts receivable was provided for in line with International Public Sector Accounting Standards. The process of having the impaired debts written off would be initiated in line with the Public Finance Management Act Regulations.

Ministry of Health (World Bank) - KSh. 2,467,265

22. Management informed the Committee that the debt related to an amount owed by the Ministry of Health for training where several KNH staff were trained both locally and abroad between 1996 and 1998 under the World Bank Project that was being administered by the Ministry. The Hospital settled this obligation with the understanding that the Ministry was to reimburse the hospital from the World Bank Grant. This debt remained outstanding to the date of appearance before the committee.

Temporary Imprest

23. Management informed the Committee that the long outstanding imprest was owed by former Hospital employees who left service due to death; dismissal; retirement or resignation before fully accounting for imprests issued to them in the course of their duty. The officers were yet to clear with the hospital and therefore their final dues (other than pension) had not been released. Since recoverability of the debts was doubtful provision had been made in line with International Public Sector Accounting Standards.

NHIF Debt

24. Management informed the Committee that over the years, NHIF claims had increased in volume because of the wide range of services covered by the Fund as well as the transfer of free maternity program to the Fund. However, the rate at which NHIF was paying claims did not match the rate the Hospital submitted the claims.

25. The management was consistent in continuously following up on payment of outstanding claims as well as engaging the Fund to improve on settlement of claims within the credit period as per existing contract.

Return to drawer (RD) cheques

26. Management informed the Committee that this related to personal cheques that were received in the year 2004 and prior years for patients' medical bills. These cheques were drawn by well-wishers who were helping patients to meet their medical bills obligations but were unfortunately dishonoured upon presentation to the bank. Efforts to have the drawers replace the cheques were not fruitful.

27. The hospital no longer accepted personal cheques as a mode of payment to avoid recurrence of the same. The long outstanding debts whose recoverability were doubtful were properly provided for in the financial statements as impaired in line with International Public Sector Accounting Standards (IPSAS**).**

Rojeans café - KSh. 132,324

28. Management informed the Committee that the debt related to rent, water and electricity bills related to Mr. James M. Mathenge of P.O Box 32429 Nairobi, T/A Rojeans Café for

the period between July 1988 and June 1992. The lease of the café was terminated in 1992 for non-payment of bills. Efforts to recover the debt confirmed that the tenant passed on. A provision for doubtful debt was made for this debt in line with International Public Sector Accounting Standards.

Rent - KSh. 26,210,154.30

29. Management informed the Committee that the debt related to rent that was owed by registrar doctors whose payroll was devolved with the introduction of devolved government system. The County Governments delayed in remitting deductions to the Hospital as at the time of audit. However, the Hospital had since received the rent owed and the matter resolved.

Reconciliation issues

30. The Committee heard that the balance of KSh. 1,623,919,000 included amounts of KSh. 487,956,316 due from National Hospital Insurance Fund (NHIF). However, the financial statement of NHIF as at 30th June 2013 showed an amount of KSh.120, 552,483 owed to the hospital. The resultant difference of KSh. 367,403,833 in the financial statement was not reconciled or explained as at 30th June 2013.

Management Response

31. The Management informed the Committee that the variance in the balances reported by KNH and NHIF was due to the difference in the accounting of claims made by both parties. KNH recognized the debt after claims were raised upon discharge of patients. On the other hand, NHIF recognized the debt as payable at the end stage when claims were fully authenticated and were ready for payment.

32. The Hospital engaged NHIF on reconciliation of the balances reported by the two institutions on an annual basis. Subsequently, items noted as causes of differences were followed up for resolution.

Committee Observations

(i) Though the explanation from management was acceptable on the matters of discrepancy between the figures reflected by the KNH and NHIF resulting from the difference on when each recognized the amount; the ministry's failure to repay expenditures on training of staff; creditors that had no initial formalized credit arrangement with the Hospital; Return to Drawer Cheque; treatment of imprest was however due to a large extent management failure to adhere to Regulation 93(3) of the Public Finance Management a Regulations of 2015 that demands surrender of imprest within seven days of return to duty station failure to which the accounting officer should recover the monies.

(ii) The hospital had several long outstanding debts whose recoverability was doubtful. These included debts owed to the Hospital by the Ministry of Health for doctors training programme, return to drawer (RD) cheques which were dishonoured and Rojeans café.

(iii) The Hospital was also owed KSh. 1,300,000,000 by NHIF as part of services offered under the National Hospital Insurance Fund. There was however a discrepancy in the outstanding amount as NHIF claimed the amount to be KSh. 56,022,916. The Hospital attributed the difference to a lag in NHIF's claim mechanism which took time to reflect the updated debt status. A Committee had been formed between the two institutions to resolve the matter.

(iv) Being a service provision entity and in breathing life to Article 43(2) which provides that no person shall be denied emergency medical treatment, the KNH will continue having debts that may not be recovered.

<u>Committee Recommendations</u>

(i) The KNH should provide for adequate funds for bad and doubtful debts in its books to cushion debtors that are emergency in nature.

(ii) The KNH and NHIF should use same accounting standard (reconciliation) to avoid discrepancies on the amount due to KNH from NHIF.

(iii) The Office of the Audit General should concurrently audit KNH and NHIF debts and report on them in the next audit cycle.

(iv) The Chief Executive Officer of the KNH should ensure that any officer allocated imprest surrenders within seven days failure to which recovery should ensue as

provided for under Regulation 93(6) of the Public Finance Management Regulations of 2015.

Prepayment issues

33. The Committee heard that a balance of Ksh. 1,623,919,000 also included prepayments totalling ksh. 31,733,575 that related to supply contracts for three firms in the amounts of ksh. 15,792,611, KSh. 2,213,309 and KSh. 13,727,655. As similarly observed in the previous year, the first prepayment was in dispute while the second one was under investigation. The third pre-payment related to micro filming project at the hospital which was not completed as at 30th June 2013.

Management Response

High Voltage Communications Limited – KSh. 15,792,611

34. The CEO appraised the Committee that the amount was an advance payment made in the May 2001 for the supply, delivery, and installation of submersible pumping equipment into helipad borehole and defluorination plants for boreholes at helipad and laundry. A dispute arose in the performance of the contract necessitating the parties to refer the matter to arbitration.

35. An arbitral award was made in favour of the Hospital on 26/11/2012 amounting to KSh. 14,876,645 but realization of the award was fruitless since the Registrar of Companies confirmed that the firm's file was missing from their electronic data base. In the absence of the Company's file and records at the Registry, the Management was unable to pursue any legal recourse for recovery of the advanced sums.

Glotex Medical Kenya Limited – KSh. 13,727,655

36. The Management informed the Committee that the amount was advance payment made in 2003 for the supply of nuclear medicine materials. The supplier failed to perform and the Hospital demanded refund of the amount. It was established through the Registrar of Companies that the firm was not registered; therefore, it was not possible to institute legal action against a non-existing entity.

Microtec Office Supplies – KSh. 2,213,309

37. The Management informed the Committee that the Company was awarded the tender for delivery and installation of microfilm equipment and to microfilm inactive medical records at a contract sum of KSh. 3,688,849.72 in May 1999. The supplier delivered and installed the requisite microfilm equipment and embarked on the exercise of microfilming inactive files. The supplier was paid an advance payment of 60% of the contract price but only performed 34% of the work.

38. The Hospital was unable to follow up on the recovery of the amounts advanced since section 4(1) of the Limitation of Actions Act, Cap 22 provides that actions founded on contract may not be brought after the end of six (6) years from the date on which the cause of action accrued.

Surcharge of then Chief Executive Officer for the loss

39. The Management was going to seek direction from the Board of Management on recovery of the loss totalling to KES. 31,733,575.90 from the then Chief Executive Officer.

Committee Observations

(i) The audit query on the matter of High Voltage Communications Limited, Glotex Medical Kenya Limited and Microtec Office Supplies was handled in the 19th Report of the Public Investments Committee.

(ii) The matter was under investigations by the Ethics and Anti-Corruption Commission as per the Committee's recommendation.

(iii) The Committee's recommendation for the surcharge of the then Chief Executive Officer, Dr. Meshack Onguti for the loss totalling KES. 31,733,575.90 had not been implemented.

(iv) The Management and Board of the Hospital had not done enough to follow up on the loss of public funds.

Committee Recommendations

(i) The Board of KNH should fully implement the PIC recommendations, as contained in the 19th Report, on the matter within three months of adoption of this report by

surcharging of the then Chief Executive Officer, Dr. Meshack Onguti for the loss totalling KES. 31,733,575.90.

(ii) The Committee on Implementation should follow-up on Public Investments Committee's recommendations on the matter and ensure implementation.

Letters of Credit

40. The balance of KSh. 1,623,919,000 similarly included an amount of KSh. 96,519,385 in respect of letters of credit issued by the hospital to foreign based firms for supply of various goods and services. As in the previous year, the goods and services were not recognized and accounted for in these financial statements.

Management Response

41. The CEO stated that the letters of credit related to consumables received in the hospital but were not expensed due to lack of requisite documentation occasioned by poor storage standards that were in place between the year 1999 to 2004. In FY 2007/08, letter of credits amounted to 282 Million. The Hospital managed to trace documentation relating to supplies totalling to 186 million and subsequently made the relevant adjustments in the Hospital books.

42. However, efforts to trace requisite documentation relating to the balance of 96 million had not been fruitful to date. The Hospital was in the process of seeking appropriate authorization to expense the same on basis of the available information and adjust KNH books accordingly.

Committee Observation

43. **It was mysterious to learn that letters of credit and related documentation could disappear from the Hospital.**

Committee Recommendation

44. **The EACC should investigate the circumstances under which documentation relating to issued letters of credit got lost from the KNH with a view to preferring charges against those that were involved in the disappearance of the said documents.**

Property, Plant and Equipment (2012/13)

45. The Committee heard that Property, Plant and Equipment balance of KSh.11, 685,532,000 as at 30th June 2013 included four (4) parcels of land valued at KSh. 50,600,000 which had been excised and allocated to other parties. Further, the property, plant and equipment balance of KSh. 11,685,532,000 also included three (3) parcels of land valued at KSh. 329,000,000 whose ownership was contested between Kenyatta National Hospital, Kenya Medical Training College and National Quality Control Laboratory.

46. Consequently, it was not possible to ascertain the ownership status of the parcels of land in dispute, and that the balance of KSh. 11,685,532,000 as at 30 June 2013 was fairly stated.

Management Response

Excised and allocated land –Valued at KES. 50,600,000

47. The parcels of land in question were:

No	Title No.	Area Ha	Reserved/ Intended Use	Current Owner
1	LR No.209/11460	0.3164	KNH	Isaac Gathungu Wanjohi
2	LR No.209/12767	0.2260	KNH	Chai Developers
3	LR No.209/12822	0.1221	KNH	Grace Njoki Gakiria
4	LR No.209/13319	0.0217	KNH	Stanley Lagat

48. The Management wrote several letters to National Land Commission (NLC) to revoke the title deeds for the illegally/irregularly allocated land to private entities. Vide letter dated 27th January 2016, the Hospital requested the Commission to place caveats on the four (4) titles and to investigate the authenticity of the titles with a view to revocation of the same.

49. The NLC responded vide letter dated 4th March 2016 indicating that they had directed the responsible directorate to take the necessary action. The Hospital followed up with NLC vide letters dated 11th May 2016 and 7th June 2016 respectively. KNH sent a further

reminder to NLC vide letter dated 28th February 2017 and had not received any response as at the date of appearance before the committee. Vide letter dated 6th April 2017, the Management sought the intervention of the Chief of Staff and Head of Public Service and was awaiting a response.

Implementation of PIC Recommendation to Surcharge the then Chief Executive Officer for any loss incurred

50. There was no loss incurred in respect of the four (4) parcels of land irregularly allocated- LR.No.209/12822; LR.No.209/13319; LR.No.209/12767; and LR.No.209/11460. The Hospital took upon itself since the matter came to its attention in the year 2005 to pursue the placement of caveats on the said parcels of land with the relevant authorities to have the titles revoked. The process commenced in 2006 and was ongoing as at the date of appearance before the committee.

51. In February 2012, the Ministry of Lands confirmed that caveats were placed on LR.No.209/12767 on 26th January 2007 and LR.No.209/12822 on 28th February 2000.

52. A civil suit No.599 of 2014 was filed by Chai Developers Limited against NQCL seeking orders to withdraw the caveat placed on LR.No.209/12767. From the Court file, KNH established that the parties entered a consent order to withdraw the caveat. The Hospital requested NLC to place a caveat on LR.No.209/12767, revoke the title and investigate the authenticity of the said title.

53. In respect to LR.No.209/13319, the Ministry of Land indicated that the file could not be traced and thus a caveat could not be placed. However, pursuant to Gazette Notice No.9340 dated 18th December 2015, the Government issued a notice of its intention to acquire parcels of land for Kenya Urban Roads Authority (KURA) for the construction of the Hospital-Mbagathi Link Road. LR.No.209/13319 that was irregularly allocated was a subject of the aforesaid gazette notice. To that end, KNH launched its claim for compensation with NLC for the said parcel of land among others. In response, NLC indicated that it had received a memo from the Director of Valuation and Taxation indicating that LR.No.209/13319 was registered to one Sammy Langat. Upon investigations, NLC conducted an inquiry in which the Hospital made its presentation and

the Commission concluded that LR.No.209/13319 fell outside KNH land and upheld the title by Sammy Lagat.

Committee Observation

54. **It was suspect that KNH captured LR No. 209/13319 in its books of accounts only for it to be found to belong to a private individual (Mr. Sammy Lagat) later.**

Committee recommendation

55. **The EACC should investigate the circumstances under which the KNH land was acquired by private individuals with a view to making appropriate recommendations on the the recovery of the said land.**

Three (3) parcels of land – Valued at KES. 329,000,000

56. Parcels of land in question were:

- LR No.209/14269 – 0.14 Ha
- LR No.209/12767 – 0.531 Ha
- LR No.209/12822 – 3.8 Ha

57. Vide ministerial circular No.16/2005 issued by the Permanent Secretary, Ministry of Lands and Housing on repossession of irregularly/illegally allocated public land, the four (4) institutions located in the KNH complex – KNH, KMTC, UON-CHS and NQCL formed an ad-hoc committee to carry out a joint exercise to implement the directives of the circular. The Committee established that the three (3) parcels belonged to the following institutions:

- LR No.209/14269 – KMTC
- LR No.209/12767 – KMTC
- LR No.209/12822 – NQCL

58. The three (3) parcels of land did not belong to the Hospital and were erroneously reflected in the KNH books. The appropriate adjustments would be made in the financial statement of FY 2018/2019.

Committee Observations

(i) It was not clear on how the three parcels of land were captured in KNH's record books in the first place for them to be found to belong to some different government entities. Since their right ownership had been amicably reached, the matter should be considered resolved.

(ii) The matter relating to LR No.209/12767 has been pending since 2006.

Committee recommendations

(i) The KNH should keep proper and accurate books of accounts at all times

(ii) The KNH Chief Executive Officer should expedite conclusion on the issues relating to LR No.209/12767.

Hectares-National Quality Control Laboratory (NQCL)

59. 1.35Ha belonging to NQCL was initially included as part of the Hospital land under title LR No.25138. By virtue of a resolution of the KNH Board of Management, the Hospital accepted to cede 1.35Ha that belonged to NQCL and the process of excision was ongoing.

60. Adjustment was made in KNH books and in financial statements for the period ending June 30th, 2018 to de-recognize the proportion of parcel of land LR No. 209/25138 measuring 1.35Ha that was owned by NQCL. In addition, a disclosure note was included in the financial statements.

Committee Observation

61. This matter was adequately addressed and therefore resolved.

Jointly owned land by KNH, KMTC and UON – Valued at KES. 220,000,000

62. Title deed LR/No.209/13978 that measured 2.544 hectares was jointly owned by Kenyatta National Hospital Management Board, Kenya Medical Training College and the Council of University of Nairobi. The purpose of the land was recreation.

63. Adjustment was made in KNH books in FY 2015/16 to recognize only a third proportion of this parcel of land. Further, a disclosure note was included in the financial statements.

Committee Observations

64. **The matter was satisfactorily addressed and query resolved.**

NATIONAL HOSPITAL INSURANCE FUND (NHIF) LOSS OF KSH.323,843,000 (FY 2012/13)

65. The Committee heard that the operating and maintenance cost of KSh.3, 543,468,000 for the year ended 30th June 2013 included National Hospital Insurance Fund (NHIF) loss of KSh.323,843,000. The loss was the net of rebate received from NHIF and the amount the Hospital spent in the treatment of NHIF members. According to information available, the Hospital entered a contract with NHIF in August 2008 to treat NHIF members at a rebate rate of KSh.2, 400 for inpatient care per day. However, the contract expired in august 2010 and had not been renewed as at 30 June 2013.

66. Information available in the contract document indicated that the contract provided for a variation for the rate of rebate depending on the quality management reports and increases of scope of services. However, this rebate rate had remained the same despite the continued losses.

67. In the circumstances, it was not possible to confirm the propriety of this expenditure/loss amounting to KSh.323,843,000 for the year ended 30th June 2013.

Management Response

68. The accounting officer informed the Committee that the NHIF loss arose from the difference between patients' actual medical bills incurred by members of National Hospital Insurance fund (NHIF) and the applicable rebates as per the then existing medical service contracts.

69. The Hospital entered two years renewable medical service contract with the NHIF with effect from 1st August 2008. Upon expiry of the contract, it was renewed with the same terms with effect from 1st August 2010. The contract provided for continuous engagement between the parties.

70. The management continuously made follow ups vide letters Ref: KNH/ADM/CR/40 dated 2nd October 2013, Ref: KNH/CEO/54/(9) dated 3rd June 2014, Ref: KNH/CS/23/A/21 dated 6th February 2014, Ref: KNH/CS/232/A/45 dated 11th February 2015 and Ref: KNH/CS/232/A/55 dated 18th September 2015, where appeals were made to NHIF to consider reviewing of the reimbursable rates in order to avoid losses to the hospital.

71. Upon exhausting all the negotiation mechanisms without success, the hospital management sought to discontinue the loss-making contracts vide letters to the Fund and the Ministry of Health from the year 2014 to 2016. However, the Hospital did not discontinue offering services to NHIF members because the Fund responded vide letter Ref: HF/FIN/29 VOL VIII/116 dated 7th April 2014 explaining inability to increase the rebate that had been coupled with litigations causing delayed adjustment of premiums.

72. Further, the hospital was directed by the Ministry of Health vide letter Ref: MOH/M1/4/1/1(32) dated 30th May 2014 to continue offering the services on the same terms despite making losses.

73. Consequently, the engagement resulted to signing of a new contract on 21st March, 2019 which had since enhanced the number of claimable services that include:

(i) Inpatient rebate per day at Ksh.4,000

(ii) Surgical packages where reimbursement is made per case up to a maximum of the cost allocation as stipulated in the contract.

(iii) Radiology services i.e. C.T Scan, M.R.I and ultrasound at KSh.8,000, KSh.15,000 and KSh.3,000 respectively.

(iv) Dialysis at KSh.9,500

(v) Chemotherapy and radiotherapy services reimbursed at a cost approved by the Fund

74. Over the years, the engagement with NHIF had seen review of claimable rebate that had resulted to the gradual decline of the annual loss from FY 2016/17 as tabulated below.

Period	**FY 2013/14**	**FY 2014/15**	**FY 2015/16**	**FY 2016/17**	**FY 2017/18**
Loss KSh. Million	348	393	412	165	88
(Decrease)/increase of loss annually %	-	13%	5%	(60%)	(46%)

75. A disclosure note in relation to NHIF loss had been made in the financial statements.

Committee Observations

(i) **The loss arose in instances where the cost of providing medical services was higher than the rebate amount.**

(ii) **The signing of a new contract with NHIF on 21st March, 2019 enhanced the inpatient rebate per day at Ksh.4, 000 from KSh. 2, 400 which has reduced the amount of loss.**

(iii) **The services provided by Kenyatta National Hospital were specialized in nature hence the relatively high cost.**

(iv) **Management was in discussion to increase the reimbursement for both rebate and surgical procedures payable in Level 6 hospitals to minimize losses.**

Committee Recommendation

76. **The explanation offered was satisfactory. However, KNH and NHIF management should always be proactive in negotiations and signing of new contracts that responds to the needs of the medical environment. Further, the Office of the Auditor General should relook at the figures in both the NHIF and KNH and report on them in the next audit cycle.**

BORROWINGS (FY 2012/13 TO FY 2017/2018)

77. The Committee heard that, as previously reported, the borrowings balance of KSh.1, 199,863,000 as at 30th June 2013 related to a loan received in 2007/2008 from the Kingdom of Spain, in form of medical equipment. According to information available, the loan was payable by the Hospital at an interest rate of 3% per annum on a reducing balance for the first six (6) years and thereafter, the interest plus principal for the next nine (9) years with effect from 1st July 2008. However, according to records seen, no interest had been paid or accrued in the five financial years 2008/2009, 2009/210, 2010/2011, 2011/2012 and 2012/2013.

78. Although indications were that the Management had sought assistance from the Ministry of Health towards settlement of the loan, response from the ministry was not availed for audit

review. As a result, it was not possible to confirm the accuracy of the loan and that the long-term liability balance of KSh.1,199,863,000 as at 30th June 2013 was fairly stated.

Management Response

79. The accounting officer informed the Committee that the Government of the Republic of Kenya and the Kingdom of Spain signed a loan agreement on 29th July 2005 for a loan of Euros 14 million (KSh. 1,199,862,823) in form of medical equipment to KNH.

80. There was no formal subsidiary agreement executed between National Treasury (NT) and KNH detailing how KNH was to service the Spanish loan though the Hospital recognized the assets (medical equipment) and the Spanish loan in its books (principal amount).

81. The Hospital through various correspondences to The National Treasury, had since January 2008 been expressing its inability to service the loan due to its poor financial performance over the years. The Hospital management had been consistent in their request for the Government to take over the loan and convert it into a grant. The latest request was dated 5th April 2017, Ref: KNH/ADM/CR/138.

82. Further, the Hospital vide letter Ref: KNH/FIN/278/VOL.1/40 dated 5th March 2019 requested National Treasury for confirmation of the loan balance to the Office of the Auditor General balance as at 30th June 2018. Subsequently, the National Treasury responded with a confirmation that the loan was being serviced (principal & interest) vide letter Ref: DMD 4/78 dated 20th March 2019.

Committee Observations

(i) There was no formal subsidiary agreement executed between National Treasury (NT) and KNH detailing how KNH was to service the Spanish loan, though the Hospital recognized the assets (medical equipment) and the Spanish loan in its books (principal amount).

(ii) It was curious that KNH was reflecting the loan together with its interest in its books as unserviced while treasury was servicing the same. This shows that there was a total breakdown in communications between the two government entities.

Committee Recommendation

83. **The National Treasury and the KNH should share information on the loan repayments to ensure that that the KNH reflects accurate status of the loan.**

<u>RECEIVABLES FROM EXCHANGE TRANSACTIONS FY 2013/14</u>

<u>Payment to Monarch Insurance</u>

84. The Committee heard that receivables balance of Ksh.1,018,659,000 included KSh.23,684,480 being an amount paid by Kenyatta National Hospital on behalf of Monarch Insurance Company in respect of claims under staff superannuation scheme for period December 2005 to September 2007. The payment was authorized by Kenyatta National Hospital Board's special meeting of 30th January 2014 and the money was to be refunded to hospital thereafter.

85. However as at the time of the audit, the money had not been refunded and the management had not indicated when the same would be refunded. In the circumstance and in the absence of any other information to the contrary, it was not possible to confirm the validity and accuracy of the receivables from exchange transactions balance of KSh.1,018,659,000 as at 30th June 2014.

<u>Management Response</u>

86. The accounting officer informed the Committee that the hospital had taken a group life insurance cover for staff with Monarch Insurance for the period December 2005 to September 2007. However, there was a disagreement between the parties (Monarch and KNH) on the amount of money to be paid as additional premium for the stated period.

87. During this time and to assist the staff dependants receive death in service benefits the hospital borrowed KSh.23,684,480 from the staff Superannuation Scheme in anticipation that Monarch Insurance Company would later settle the insurance claims. However, up to date Monarch Insurance is yet to settle the amount.

88. Several consultative meetings had been held with the management of Monarch Insurance. The progress on resolution of the issue had been slowed by frequent change of the management at Monarch Insurance. However, the Hospital would continue making a follow up on settlement of the debt.

Committee Observation

89. **The Hospital management was following up with the insurance company for reimbursement of the amount spent but no progress had been made so far. This had taken inordinately long time to conclude.**

Committee recommendation

90. **The Hospital Management should sue the Monarch Insurance Company for reimbursement of its money together with the accrued interest.**

NATIONAL HOSPITAL INSURANCE FUND (NHIF) LOSS (FY 2013/14 TO 2017/2018)

Free Maternity Loss

91. The Committee heard that the General Expense of KSh.2,074,480,000 included a loss of KSh.133, 900,000 occasioned by the free maternity services offered by the hospital as per the letter Ref.ACC/FCM HS/1/28A dated 1st April 2014 from the Cabinet Secretary, Ministry of Health which communicated the decision from the Government to reimburse an amount of KSh.17,500 per delivery. However, Kenyatta national Hospital received complicated maternal referrals and as a result, the costs were higher and the reimbursable amount of KSh.17, 500 had remained the same despite the high costs. The Hospital would therefore continue to incur losses if the reimbursable amounts were not reviewed.

Management Response

92. The management informed the Committee that in July 2013, the Government of Kenya rolled out free maternity services program through a presidential declaration to encourage women to give birth at health facilities under skilled personnel. The policy aimed at reducing maternal complications as well as maternal mortalities in Kenya. Under this programme, referral hospitals were to be reimbursed on every delivery conducted in the facility at KSh. 17,500 with the assumption that this will be adequate with/without delivery complications.

93. The cost of offering maternity services includes related complications that require specialized treatment in renal, intensive care unit and pre-term care. The cost also included

pre-natal and post-natal care. The Hospital's actual cost of offering free maternity services exceeded the reimbursement from the Government and therefore resulting to losses.

94. The management vide ref: KNH/FIN/13/26 dated 1st July 2015 appealed to the Principal Secretary MOH for review of the reimbursement rate to Ksh.39,000. However, this proposal did not yield a positive consideration.

95. In July 2017, the Government transferred the Free Maternity Scheme to Linda Mama Programme under the NHIF management. The Linda Mama covers delivery and peri delivery incidental costs only. The hospital had since engaged NHIF in full implementation of the programme where NHIF agreed to take care of post-natal and delivery complication through Letter ref HF/CB/12/3/ (97) dated 11th April 2018. The reimbursable amounts include:

- Delivery package KSh.17,500
- Complications arising from pregnancy related rebate of KSh.4,000 per day
- Three months post Natal at rebate of KSh. 4,000 per day for baby's complication leading.

96. A disclosure note in relation to free maternity loss had been made in the financial statements.

Committee Observations

97. **The Hospital's actual cost of offering free maternity services exceeds the reimbursement from the Government and therefore resulting to losses.**

Committee Recommendations

(i) The Audit query was resolved.

(ii) The National Treasury should allocate adequate resources to offer free maternity services.

(iii) The KNH should re-engineer its operations and ensure that they minimize the cost while offering services to Kenyans.

PROPERTY, PLANT & EQUIPMENT (FY 2014/15 TO 2017/2018)

Hospital Management Information System

98. The Committee heard that the Property, Plant and Equipment balance of KSh.11,736,391,000 included Capital Work In Progress of KSh.420,797,000 out of which KSh.26,986,031 related to payment made to Systems Partners for the provision of Hospital Information Management system. However, out of KSh.26,986,031 paid KSh.5,397,206 related to 15% paid in addition to 60% paid earlier because of addendum to the original contract which had provided for 20% payment to be made after testing and commissioning of the system.

99. Further the project was to take a period of six (6) months in the year 2013/2014, but as at the time of this audit, the system was still under testing stage having not achieved its intended purpose. In addition, the original contract and performance bond expired before completion of the project. No explanation had been provided for breach of the contract.

Management Response

Background

100. The ICT Board and Accenture consulting firm conducted a study in the year 2012 and developed an ICT master plan which would have cost KSh.4 billion to be implemented. The Hospital Management Information System (HMIS) that was procured in year 2013 was a stop gap measure as the hospital waited funding of the ICT master plan.

Challenges faced during implementation

101. The modules in the Funsoft HMIS as delivered required customization to ensure effective implementation. Customization that was carried out by the vendor was not fully acceptable to KNH. This together with the pro-longed re-mapping of processes to align to standard practices and the interface challenges experienced during integration with District Health Information System and mobile pay system, led to the undue delay in completion of the project.

Board and Management action

102. In the HMIS report of 17th August 2016, it was noted that the vendor was not able to complete the work as per contract hence the system was to be commissioned as IS. It was

recommended that the hospital acquires a more robust HMIS, and immediately embark on Business Process Re-engineering in line with the ICT strategy.

103. During the 130th regular Board meeting held on 22nd June 2016, the Board compelled Management to move with speed in concluding the negotiations with the vendor. Subsequently, KNH Management and the vendor signed a maintenance SLA in February 2017 and commissioned the system as IS.

Value for Money

104. At commissioning, many of the hospital process were automated following the implementation of the software and services that were previously done manually could now be done online and on real-time. The hospital had since continued to use the system for all the implemented modules waiting funding for the full HMIS as per the ICT strategy.

105. Despite the challenges arising from the implementation of Funsoft, there had been notable growth in internally generated revenue over the years from KSh. 3.6 billion in FY 2012/13 to KSh.5.2 billion in FY 2017/18

The HMIS contract

106. The original contract stipulated that payment terms would be made in 3 instalments as indicated below:

- Supply, delivery and installation - 60%
- Testing and Commissioning - 20%
- After six months from going live data - 20%

107. However, due to the protracted implementation period, it was deemed necessary to separate the payment on testing and commissioning from 20% to two separate payments of: Testing 15% and commissioning 5%.

108. An addendum as raised on 25th February 2015, after negotiation with the vendor, amended the terms of payment to:

- Supply, delivery and installation - 60%

- Testing (upon attainment of 70%) - 15%
- Commissioning - 5%
- Six months after commissioning - 20%

109. This reduced the amount payable by the second milestone from 80% to 75%.

110. The payment of 15% at testing stage, following the addendum, was after attainment of the 70% software implementation as envisaged in the addendum.

111. Implementation progress to 100% thereafter became slow. The vendor demanded for payment on 'additional modules' during customization. Management resolved to commission the HMIS as-is, after reaching an agreement with the vendor that there would be no further claim for any payment beyond the amount already paid at 75% of contract price despite the project implementation being estimated at 80%. The system was fully commissioned in June 2017 and all rights of ownership documents handed over.

Performance Bond

112. Although the first performance bond expired before the completion of the project, the vendor was asked to renew the performance bond, which was renewed up to 30th December 2015.

Current automation status

113. The Hospital sourced, through open tender, for a Consultant for Business Process Re-engineering (BPR) to review the Hospital process and bottlenecks so as to inform the automation needs of the entire Hospital and guide the Hospital through the automation process.

114. The Consultant reviewed all KNH business processes that led to the documentation and validation of "AS IS" and "TO BE" KNH processes. An integrated Health Management Information System and ERP technical specifications were developed and the Hospital Management proceeded to advertise an international open tender for the supply, delivery, installation, testing, commissioning and support of the integrated health management information system.

115. The KNH tender, as advertised, covered automation requirements for the end-to-end Hospital processes: Health Management Information System (HMIS), covering the clinical modules; Enterprise Resource Planning System (ERP), covering the hospital administrative and support modules; and Supporting ICT Infrastructure for HMIS, ERP, Database Management System and end to end IT security. This was subsequently cancelled on Friday 15th June 2018 on the strength of the advisory that the Hospital automation needs would be met under the Health Information Technology (HICT) solution being implemented by the Ministry vide letter REF: MOH/MES/ADMIN/18/04/12.

116. The Hospital was, however allowed to tender for the Enterprise Resource Planning System (ERP) and Supporting ICT Infrastructure for HMIS, ERP, Database Management System and end to end IT security. This tender has since been awarded and implementation was ongoing. The ERP will go a long way in addressing what was not achieved through the HMIS.

<u>Committee Observation and Recommendation</u>

117. **The explanation offered was adequate and the matter resolved.**

<u>Refurbishment of Private Wing</u>

118. The Committee heard that the Property, Plant and Equipment balance of KSh.11,736,391,000 included work in progress of KSh.420,797,000 out of which KSh.168,888,213 related to payment made on 30th Jun, 2015 to Aram investments for Kenyatta Prime Care Centre (KPCC-Private Wing) refurbishment. However, the contract was awarded to the third lowest bidder at KSh. 204,831,547.20 while the lowest bidding was KSh.148,899,879.80 resulting to unexplained over payment of KSh.55,391,667.30. Further, physical verification revealed that several defects like broken door closures, paint peeling-off, telephone and nurse calls communication network were not working and bath tabs were too high for patients use. The management did not provide explanations for these anomalies.

<u>Management Response</u>

Tender Award

119. The said lowest bidder who had quoted KSh.148,299,879.80 failed the technical stage and therefore could not proceed to the financial stage. The technical evaluation criterion of setting limits within plus (+) or minus (–) 10% of the official limits was provided for in the standard tender documents.

120. The evaluation criteria were set and carried out as per the Terms of Reference set out in the Procurement Regulations 2006 clauses 46 – 54 and the Public Procurement and Disposal Act Section 66 which mandated the committee to carry out preliminary, technical and financial evaluation.

121. Pursuant to Public Procurement and Disposal Act 2005 section 9(c)(i) and Public Procurement Regulation 2006 Section 29 on tender document which states that "*The Authority shall avail the standard tender documents to procuring entities* ". In addition, the (PPOA) Public procurement & Disposal General Manual section 7(g) indicates that standard tender documents have been developed by the PPOA and MUST be used with minor necessary modifications.

122. Subject to the above provisions of the Law, the Hospital prepared a tender document from the standard tender document availed by PPOA. The criteria set out were a provision derived from the standard tender document (appendix P4).

123. The 1st and 2nd lowest bidders were therefore non-responsive based on this criterion.

Defects

124. The refurbishment works were practically completed and handed to the users on 28th July 2015 as per completion certificate No.KNH/SP/15/Vol.3 accompanied by a snag list of defects to be addressed during the defect liability period. Certificate of making good defects Ref. No. 1033 has since been issued together with the final account for the project.

125. The nurse call communication system initially provided by the contractor did not meet the specification and therefore was rejected and subsequently omitted from the project and not paid for as illustrated in the final accounts. Subsequently the hospital tendered for the system from a different contractor and the same was installed and was operational since then.

Committee Observation and Recommendation

126. **The matter was adequately explained and therefore resolved.**

Provisions of Hot Water System

127. The property, plant and equipment balance of KSh.11,736,391,000 included capital work in progress of KSh.420,797,000 out of which KSh.6,383,748 related to payment made on 30th June, 2015 to Wilken Solar for the provision of hot water at hospitals KPCC. Further, the hot water systems worked for only five months (from 3 October, 2014 to 20 March, 201). The hospital did not get value for the money spent on hot water systems.

128. In the circumstances, it was not possible to ascertain the propriety of the expenditure on work in progress and that the balance of KSh. 11,736,391,000 as at 30th June, 2015 was fairly stated.

Management Response

129. The hot water system was installed and handed over to the Hospital in October, 2014. Failure of the hot water system in March 2015 was occasioned by power surge from the KPLC power supply line on 19th March 2015 which damaged the water re-circulation pump motor and the booster electrical elements. The cause of the damage could not be attributed to the contractor.

130. To address the power surge and restore the hot water system, the hospital awarded a contract for additional works that included phase failure relays and surge protector in the bill of quantities. The system was restored and was fully functional.

131. The cost of replacing the damaged items (circulation pump and heating elements) was KSh.623,000. The additional works were to enhance protection and upgrade the power supplied which included relays surge protectors, thermostats, pressure switches, armoured cables and labour. This cost the Hospital KSh.879,200.

132. The additional money spent was to make the system work after initially investing KSh 6.3million in solar panels and tanks which formed the bulk of the solar water heating system. In this case, no money was lost as the heating system was restored.

Committee Observations

(i) Failure by the KNH to conduct a proper due diligence resulted into the unforeseen effects of the power surge.

(ii) KNH management had failed to claim compensation from KPLC on the items lost due to the power surge.

<u>Committee Recommendation</u>

133. **The then KNH CEO should be reprimanded for failure to claim compensation from KPLC.**

<u>UNSUPPORTED COSTS FY 2014/15</u>

<u>Subsistence Allowance</u>

134. The Committee heard that the employee costs figure of KSh.7,104,007,000 in the statement of financial performance included additional subsistence allowance of KSh.725,060 paid to two doctors whose supporting documents and regulations were not availed for audit verification. In the circumstances, the propriety of KSh.725,060 included in the employee's costs of KSh.7,104,007,000 for the year ended 30th June, 2015 could not be confirmed.

<u>Management Response</u>

135. The amount of KSh.725,060 had since been fully recovered from the two doctors.

<u>Committee Observations</u>

(i) The amount of KSh.725,060 had since been fully recovered from the two doctors.

(ii) The daily subsistence allowance paid to the two doctors who were attending training in Singapore was insufficient hence the additional allowance.

(iii) Management should have sought approval of the Board of Directors before making the additional payment to the doctors.

<u>Committee Recommendation</u>

136. The then accounting officers of the KNH should be reprimanded for approving and illegality notwithstanding the recovery of the amount from the two doctors.

<u>UNSUPPORTED COSTS (FY 2014/2015)</u>

Subsistence Allowance

137. The employee costs figure of KSh.7,104,007,000 in the statement of financial performance included additional subsistence allowance of KSh.725,060 paid to two doctors whose supporting documents and regulations were not availed for audit verification. In the circumstances, the propriety of KSh.725,060 included in the employees' costs of KSh.7,104,007,000 for the year ended 30 June, 2015 could not be confirmed.

Management Response

138. The amount of KSh.725,060 had since been fully recovered from the two doctors.

Committee Recommendation

139. **The matter was resolved.**

Restated Expenditures

140. The statement of changes in net assets accumulated deficit fund balance of KSh. 684,734,000 includes restated accumulated deficit fund balance of KSh.479,125,000 as at 30 June, 2013. Further, the restated accumulated deficit fund balance of KSh.479,125,000 includes unsupported restated expenditure of KSh.18,436,000 for the year ended 30 June, 2013. Consequently, the restated accumulated deficit fund balance of KSh.684,734,000 for the year ended 30 June, 2015 could not be confirmed.

Management Response

141. The supporting journal vouchers with related explanations for the restatement of KSh.18,436,458 were availed for verification to the auditor. These adjustments related to corrections of prior years' postings as summarized below:

No.	Details	Amount (KSh)
1.	Expensing of Theatre loose tools Net book value	(10,179,083)

2.	Correction of Motor Vehicles accumulated depreciation	412,064
3.	Recognition of gain on disposal of motor vehicle	483,568
4.	Correction of Motor Vehicle sales proceeds	(997,560)
5.	Recognition of repairs and maintenance expense	(8,155,447)
	Overall effected on accumulated fund	(18,436,458)

Expensing of Theatre loose tools Net book value

142. This relates to correction of theatre tools which were recognized as assets in prior years instead of being expensed in the respective year of purchase.

Correction of Motor Vehicle accumulated depreciation

143. This relates to correction of erroneous depreciation of motor vehicle that had been disposed.

Recognition of gain on disposal of motor vehicle

144. This relates to recognition of the correct prior years disposal gain on motor vehicle.

Correction of Motor Vehicle sales proceeds

145. This relates to correction of mis-posted sales proceeds from sale of motor vehicles.

Recognition of repairs and maintenance expense

146. This relates to repairs and maintenance expenditure for prior year restated to the year the service was provided.

Committee Observation

147. **This was a reconciliation matter that had not been done in time and by the time the audit was being done. It was however done later and matter resolved.**

Committee Recommendation

148. **The accounting officer for the KNH should always ensure prompt reconciliation of the Hospital's accounts.**

Trade and Other Payables from Exchange Transactions (FY 2014/2015 to FY 2017/2018)

149. The trade and other payables from exchange transactions balance of KSh. 954,975,000 included long outstanding accounts payables of KSh.76,298,473. No explanation had been provided for failing to clear these long outstanding account payables. Consequently, it was not possible to ascertain whether the trade and other payables from exchange transaction balance of KSh.954,975,000 as at 30 June, 2015 was fairly stated.

Management Response

150. Circularization to all suppliers with long outstanding balances was done in FY 2016/17. Based on the responses and statements of accounts received, reconciliation was done to determine the status of the suppliers' invoices in the KNH books.

151. From the reconciliation done, long outstanding suppliers' invoices aging beyond 730 days totalling to KSh. **104,781,898.60** were not claimed by suppliers. In line with clause 4.3(f) of the KNH Finance Policy and Procedures Manual, write-back had been made in the books and effected in the financial statements for the year ended June 30, 2019.

152. The long outstanding invoices that were identified as claimed by suppliers were be settled upon submission of the requisite support documentation.

Committee Observations

153. **It was not good financial management for the management of the KNH to wait till the financial year 2016/2017 to write to suppliers asking them for documents when this should have happened when the said payables fell due. Further, it was not clear whether the payments had been made as at the time of compiling this report.**

Committee Recommendation

154. **The accounting officer for the KNH should always ensure that documents on payables are in order and payments made promptly.**

RECEIVABLES FROM NON- EXCHANGE TRANSACTIONS (FY 2015/2016)

155. The receivables from exchange transactions balance of KSh.1,093,208,000 included accrued investment income of KSh.11,873,000 out of which accrued investment income of KSh.146,227 related to a cash investment of KSh.162,499 which was invested long time ago. However, it was not clear why the interest of KSh.146,227 was not credited to the Hospital's bank account as at the time of audit. Consequently, the validity and accuracy of the receivables from exchange transactions balance of KSh.1,093,208,000 as at 30 June 2016 cannot be confirmed.

Management Response

156. Mr. Olenja, former internal auditor, filed suit against the hospital on 17th October 1994 for wrongful termination. A default judgment was entered against the hospital on 10th December 1997 for KSh. 167,500 plus interest together with Mr. Olenja's terminal benefits. The Hospital filed an application to set aside the judgment. However, the court imposed a condition that Hospital must deposit KSh.100,000 in an interest bearing joint account.

157. As ordered by the court, the Hospital opened joint account with M/S J.A Guserwa and Co. Advocates awaiting the outcome of the hearing. The Hospital placed a call deposit on 2nd September, 1999 with National Bank of Kenya. The accumulated accrued interest as at 30th June 2016 was KSh.146, 227 and was still a liability owed by the bank to the Hospital as at that date.

158. The Hospital Management has since followed up with National Bank of Kenya to credit the earned accumulated interest to date. Interest earned (KSh.150,927.13) net withholding tax (22,639.07) has been credited in the account. The hospital has sought to have the matter dismissed for want of prosecution.

Committee Observation

159. **The matter had taken inordinately long in Court.**

Committee Recommendation

(i) The accounting officer for the KNH should apply for expeditious conclusion of the matter.

(ii) The judiciary is requested to expedite adjudication of matters related to KNH.

EMPLOYEE COSTS (FY 2015/2016)

160. The statement of financial performance for the year ended 30 June 2016 reflected employee costs totalling to KSh.7,698,143,000 in relation to which the following anomalies were noted:

(i) The law/regulation used to pay locum/overtime of KSh.422,140,127 and staff medical out-patient allowance of KSh.78,117,605 included in the employee cost was not presented for audit review.

(ii) The locum/overtime of KSh.238,356,841 and unexplained special locum/overtime of KSh.183,783,286 paid to the Hospital's doctors and nurses amounted to double payments as overtime services were paid/catered for under extraneous allowance paid during the year.

(iii) The payment of staff medical out-patient allowance of KSh.78,117,605 amounted to double payment as the Hospital has also incurred staff medical in/outpatient expenses of KSh.229,385,000 on the staff.

(iv) The Hospital has 4,754 staff comprised of 200 doctors, 25 dentists, 14 pharmacists 1,718 nurses, 463 administrative staff and 586 paramedics and others. However, the staff establishment approved by the parent Ministry was not made available for audit review.

(v) The Hospital has two doctors who have attained the mandatory retirement age of sixty years but are still in service.

161. In the circumstances, it was not possible to ascertain the propriety of the expenditure totalling KSh.500,207,732 on Locum/overtime and medical allowance and whether the expenditure of KSh.7,698,143,000 in the statement of financial performance for the year ended 30 June, 2016 is fairly stated.

Management Response

Locum/overtime/ Special Locum

162. The Hospital engaged doctors and nurses on locum based on approval granted by the Board of Management through Board resolution 10/97 of 14th March, 1997**.** Subsequently, review of the rates was approved by the Board in the year 2012 vide board meeting held on 28th June, 2012 item 18.

163. Locum engagement is based on unforeseen shortages that arise out of emergencies, special projects, expanded services, as well as capacity gaps in highly specialized areas such as Intensive Care Unit, Burns Unit, Newborn Unit, Specialized Surgery, Theatres, Paediatrics, Cancer Treatment Centre, Maternity, Accident & Emergency and Orthopaedic departments. Management stopped engagement of staff on locum with effect from 1st January, 2019 and replaced with temporary appointments to cover the existing capacity gaps.

Overtime & Extraneous Allowance

164. The Hospital did not pay to staff overtime. The item noted by the auditor in the payroll reflecting as “overtime” relates to payments made in lieu of locum. The Public service payroll system (IPPD) did not have a code for locum payments and therefore the Hospital

was instructed to use the code labelled ‘overtime’ in the IPPD system. Extraneous allowance was paid based on the circular Ref. No. MSPS/2/1/3A/VOL.III/(77) of 12th January, 2012 as compensation staff for working under strenuous environment for long hours on continuous basis. Therefore, in view of the above facts, no double payment was made to staff.

Staff medical outpatient allowance

165. Payment of out-patient medical allowance to staff was a negotiated item anchored in the then current CBA. The Hospital Management anticipated negotiating the item in the next CBA with a view to having the payment of the same stopped.

Staff composition

166. The Hospital was declared a State Corporation vide Kenya Gazette Legal Notice No. 109 of 1987. Consequently, the Parent Ministry separated and transferred KNH payroll from the Ministry Headquarters to KNH with effect from 1st July, 1987. The establishment was 6,193 staff by then. However, documentation of the approved establishment was not provided.

167. From July 2009, the funding for the Hospital was capped at 4756 by the ministry being the number of staffs on the payroll as at 30th June 2009.On 24th June 2014, the Hospital commissioned Delloite and Touche to conduct a job evaluation exercise which established the staff requirement as 5,966**.** This was to be presented to the Parent Ministry for approval once the SRC Job Evaluation report was released. However, before this could be done, the Government directed the Hospital Management to liaise with the State Corporation Advisory Committee (SCAC) to develop the new HR instruments which includes staff establishment.

168. The instruments had since been approved by the Board and the same forwarded to SCAC for approval through the Ministry of Health on 4th July 2019 and 7th August 2019. The approved instrument in which the management was making a follow-up on were:

- Organizational structure, staff grading and establishment,
- Career guidelines,
- Human Resource Policies and Procedure Manual.

Doctors due for retirement

169. The two doctors are; Dr. Medhat Mohammed Amin (gynae-oncology) and Dr. Henry Otieno Abwao (oncology), who were aged 62 and 65 years respectively as at the time of audit.

170. Dr. Amin and Dr. Abwao were not general medical practitioners. They were medical specialists whose experience, knowledge, skills and technical expertise were not readily available in the local market. In addition, Dr. Amin's training (Gynae-oncology) was not available in the local Universities. However, Management identified and trained three (3) Doctors in oncology and two of them had since resumed duty and are providing the required specialized services.

171. Dr. Abwao had since exited from the service with effect from 25th July 2017. However, Dr. Amin is still providing specialized services to the Hospital under sessional consultancy which was not a permanent engagement. Succession planning had been incorporated in the Hospital strategy to attract, retain and develop specialized skills.

Committee Observations

(i) Majority of the responses in these audit reservations were adequately responded to safe for failure to submit the outpatient medical allowance policy to the auditor for audit verification. It was curious that the KNH did not have an approved staff

establishment though the process to have it approved by the mother ministry and the State Corporations Advisory Committee had commenced.

(ii) **It further emerged that the KNH did not have a succession planning policy leading to retaining workers that had attained the retirement age.**

<u>Committee Recommendations</u>

(i) The State Corporation Advisory Committee should expedite processing approval of the KNH staff establishment and Human Resource Instruments.

(ii) The KNH board should develop a policy on succession management at the Hospital to ensure that critical departments are well resourced and that whenever staff retire, there are ready officers to take over.

(iii) The accounting officer for the KNH should ensure that the KNH has and applies an allowance policy as approved through the collective bargaining agreement negotiation process.

<u>ADMINSTRATIVE EXPENSES (FY 2015/2016 TO FY 2017/2018)</u>

172. Included in the statement of financial performance for the year ended 30 June 2016 was administrative and general expenses totalling to KSh.525,633,000. The balance included legal fees amounting to KSh.21,341,000 paid to law firms for legal representation of the Hospital but without the Attorney-General approval and concurrence as required by the Attorney-General Circular Ref. AG/CONF/6/E/247 VOL.II of 16 April 2014.

173. No explanation had been provided for why this legal requirement was breached. In the circumstance, the propriety of legal fees was totalling to KSh.21,341,000 for the year ended 30 June 2016 cannot be ascertained.

<u>Management Response</u>

174. The contents of the circular dated 16th April 2014 were brought to the attention of the Management by the Auditor General during the audit for the year ended 30th June 2016.

The said circular, although addressed to all Cabinet Secretaries and Principal Secretaries, had never been brought to the attention of Chief Executive Officer, Kenyatta National Hospital.

175. Following the audit query raised for the year ended 30th June 2016, the Management wrote to the Hon. Attorney General vide letter date 15th May 2017 seeking clarifications as to the scope of the said circular. The Hon. Attorney General indicated that State Corporations exist as independent legal entities capable of suing and being sued in their own name. In this capacity, State Corporations may seek any range of services including hiring of internal counsel as well as procuring external counsel subject to a competitive procurement process as provided by the law.

176. The Hospital further sought clarification on salient issues in the circular and the Hon. Attorney General (AG) advised that KNH should seek **post facto approval** of external advocates in such routine and non-complex matters and provide retainer agreements or service level agreements detailing among others the scope of service and duration of the agreement.

177. Pursuant to the said AG's advice, Service Level Agreements were executed between KNH and the Law Firms prequalified by the Hospital and engaged in the provision of legal services during the financial period 2016/2017 to 2018/2019. Pursuant to paragraph 5 and 9 of the Office of the Attorney General circular Ref. No. AG/CON/6/D/144 Vol.II dated 6th April 2017, KNH sought post facto approval of appointment of the external advocates engaged by the Hospital for the period 1st July 2016 to 30th June 2019.

178. On 26th October 2018, a Judicial Review Miscellaneous Application No.364 of 2018 was filed by the Law Society of Kenya seeking inter alia order to quash the AG's Guidelines on provision of legal services and prohibit the AG from interfering with procurement of legal services by State Corporations and application of the Advocates Remuneration Order as between the State Corporations and the Advocates.

179. The Court in its ruling dated 4th June 2019 issued an order quashing paragraph 18 to 24 of Guidelines D, H and L of circular ref.AG/Circular/2018 dated 1st March 2018. Further, the court issued an order restraining the Hon. AG in any manner implementing or seeking to

enforce the implementation of, or further implementation of paragraphs 18 to 24 of Guidelines D, H and L.

180. Accordingly, although the Hon. AG had not responded to the post facto approval sought, the audit query was effectively overtaken by the ruling of the court to the extent that the Honourable Attorney General never had authority to require such approval in the first instance.

Committee Observations

(i) **There was a communication breakdown on the circular requiring State Corporations to seek the Attorney General's permission before hiring external legal services as it was addressed to Cabinet Secretaries and Principal Secretaries.**

(ii) **It was not clear whether the addressees communicated the same to the State Corporations under them, which appears not to be the case on the KNH. However, such circular was quashed by the Courts and therefore inoperative.**

Committee recommendation

181. **Government circulars meant for State Corporations should be communicated to individual State Corporations through the State Corporations Advisory Committee.**

SECURITY INVESTIGATION EXPENSES (FY 2015/2016 TO 2017/2018)

182. The statement of financial performance under administrative and general expenses reflects security investigation expenses totalling to KSh.6,690,000 in respect of meal allowances paid to the Hospitals security officers for the year ended 30 June 2016. However, the regulations that support of the payments were not availed for audit review. No explanation had been provided for paying security officers meals allowances for working in their duty stations.

183. Consequently, the propriety of expenditure totalling to KSh.6,690,000 included in administrative and general expenses statement of financial performance for the year ended 30 June 2016, could not be confirmed.

Management Response

184. The Hospital was a key Government installation that requires armed 24-hour security based on intelligence advisory. Accordingly, police officers deployed in the Hospital were called upon to work over and above the normal call of duty including lunch time, weekends and public holidays and hence payment of meal allowances as was the practice in other Government facilities.

185. Following consultations with the Inspector General of Police**,** payment of meal allowances to police officers covering the Hospital was stopped with effect from November 2017 on the basis that police officers were deployed within their duty station.

Committee Observations

186. **The allowances paid to police totalling KSh 6,690,000 was irregular as the police were working in their workstations. This had since stopped.**

Committee Recommendations

(i) The then accounting officer for the KNH should be reprimanded for irregularly paying allowances to police officers.

(ii) The accounting officer should only pay allowances lawfully approved by the Salaries and Remuneration Commission.

BOARD MEMBERS (FY 2015/2016 TO 2017/2019)

187. The statement of financial performance reflects Board expenses totalling to KSh.14,877, 000 as at 30 June 2016. However, a review of records on the Board members indicated that the Hospital had eleven board members with one community constituting 36% of the Board contrary to the National Cohesion and Integration Act 2008 which state that no single ethnic community should constitute more than 33% of the board members of a national institution. In the circumstance, the Board as currently constituted is in breach of the Law.

Management Response

188. Section 7(1) of the National Cohesion and Integration Act, 2008 provides that all public establishments shall seek to represent the diversity of the people of Kenya in the employment of staff. Section 7(2) states that no public establishment shall have more than one third of its staff from the same ethnic community.

189. First, members of the KNH Board of Management were not considered employees of the Hospital. Secondly, the Board is established under the State Corporations Act, Cap.446 through Legal Notice No. 109 of 6th April 1987. The Act provides that the Board shall consist of:-

a) A non-executive chairman, appointed by H.E. the President

b) The Chief Executive Officer, KNH;

c) The Principal Secretary, Ministry of Health or an officer designated by him in writing;

d) The Principal Secretary, National Treasury or an officer designated by him in writing;

e) The Principal, College Health Science of the University of Nairobi;

f) The Chief Executive Officer, Kenya Medical Training College;

g) Not more than 5 other members of whom not more than 2 shall be Public Officers appointed by the Minister of Health.

190. Pursuant to the above Legal Notice, the appointment of any person to the Board of the Hospital is out of control of the Hospital Management.

Committee Observations

(i) Though some membership positions are statutory depending on the government position one holds, the Cabinet Secretary responsible for Health has five members he or she appoints that can help balance ethnicity in the Board.

(ii) Further, it was noted that the imbalance increased from 36% in 2015/2016 to 43% in 2017/2018 indicating that there was no corrective measure from the Cabinet Secretary to address the requirements of Section 7(2) of the National Cohesion and Integration Act 2008.

Committee Recommendation

191. **The Cabinet Secretary in charge of Health should ensure compliance with Section 7(2) of the National Cohesion and Integration Act 2008 when appointing directors of the KNH Board.**

ACQUISITION OF KNH LAND FOR CONSTRUCTION OF HOSPITAL ROAD AND MBAGATHI WAY LINK ROAD (FY 2016/2017 AND 2017/2018)

192. The Kenya Urban Roads Authority (KURA) in their Gazette Notice No. 9340 of 18th December, 2015 and 6441 of August, 2016 compulsorily acquired seven (7) acres of Kenyatta National Hospital (KNH) land with Hospital's internal valuation of KSh.4,219,257,210 for construction of Hospital Road and Mbagathi Way Link Road. According to available information, KURA was to pay compensation of KSh.1,859,297,000 to Kenyatta National Hospital (KNH) for the acquired portion of land. However, no compensation had been made to KNH as at the time of audit in March 2018 despite commencement of the road construction. The excised land had been included in the property plant and equipment balance of KSh.11,609,470,000.

193. Under the circumstance, ownership and accuracy of the property, plant and equipment balance of KSh.11,609,470,000 in the statement of financial position as at 30 June 2017 could not be confirmed.

Management Response

194. Pursuant to Gazette Notice No.9340 dated 18th December 2015, the National Land Commission (NLC) gazetted its intention to acquire part of KNH land for the construction of the proposed Hospital Road-Mbagathi Way Link Road. Vide Kenya Gazette Notice No.92 of 12th August 2016, NLC issued a notice of inquiry for hearing of claims for compensation by interested parties in the land required for the construction of the Link Road. The Hospital delivered its memorandum of claim for compensation on 29th August 2016 to the tune of **KES.4,219,257,210** for the following KNH land affected by the Link Road:

- 209/13982 – 2.1695 Ha
- 209/13319 – 0.0217 Ha
- 209/11460 – 0.2173 Ha
- 209/12822 – 0.0308 Ha

195. Further, the Hospital engaged a property valuer to conduct a valuation of the approximate **7 acres** portion of land acquired for the construction of the Link Road, which was valued at **KES.3,142,000,000.**

196. During a stakeholders meeting called by Kenya Urban Roads Authority (KURA) on 31st January 2017 and 8th February 2017 respectively, KNH raised the issue of compensation to which KURA responded that the matter should be dealt with by NLC.

197. As a follow up with NLC, the Hospital wrote to the Commission on 28th February 2017 seeking compensation noting that vide letter dated 30th November 2016, NLC had written to KURA for payment to the tune of **KES.1.859,297,000** for the parcels of land affected by the Link Road. Of this amount, compensation for KNH land amounted to **KES.1,759,787,500**.

198. NLC vide letter dated 9th March 2017 responded stating that KNH was not entitled to compensation. The letter posited that compensation would have only followed if there were demolition of structures and improvements of the specific corridor. The Hospital sought intervention from Office of the Head of Public Service and the Attorney General (AG). In the interim vide letter dated 18th December 2018, the Hospital wrote to NLC requesting disbursement of the compensation sum owed to the Hospital.

199. Vide letter dated 20th June 2019, the AG wrote to the Director General, KURA to clarify on the issue of compensation to NLC and vide letter dated 23rd July 2019, the AG informed the Hospital that KURA June 2019 confirmed that they had indeed received a request to deposit KSh.1,877,889,970 with the NLC in respect of KNH land for the Mbagathi Way Link Road. KURA approached the NLC and was advised that the award was made in error or contrary to the law. KURA therefore did not seek exchequer for the compensation from the National Treasury.

200. The Hospital noted the letter dated 23rd July 2019 did not address the issue of compensation or at all. Consequently, the Hospital vide letter dated 5th August 2019 wrote to Principal Secretary, MoH seeking the Ministry's confirmation on the Hospital's enquiry on the compensation or in the alternative whether the Hospital can seek an unequivocal response

directly from the AG on whether the Hospital is entitled to compensation for land the construction of the link road. The Ministry of Health was yet to respond.

201. It is noteworthy that the Hospital had in accordance with its development and financial plans earmarked the land taken up by the Mbagathi – Upper Hill Link Road for allocation to the KNH Staff Superannuation Scheme being compensation for an actuarial deficit of KSh.3.9 billion as at June 2018 owed to the Scheme by the Hospital. In essence therefore, the Hospital sought the assistance of the PIC and other relevant entities for the support in compensation either in cash or in kind of another parcel of land within the city that can be used to compensate the scheme for the outstanding actuarial deficit liability. An adjustment has been done to remove the excised land from KNH books in FY 2018/19.

Committee Observations

i) **Despite efforts from the management of KNH to get compensation for the compulsorily acquired land, it had not succeeded.**

ii) **It was curious that the Office of the Attorney General, Ministry of Health and the Head of the Public Service had failed to offer the way forward to the matter. Further, there were contradictory treatments of government agencies seeking compensation on compulsorily acquired land such as the KWS was compensated while the Bomas of Kenya was not.**

Committee Recommendation

202. **The Attorney General should expeditiously issue guidelines to government agencies on whether they are eligible for compensation whenever their land has been compulsorily acquired.**

IMPAIRMENT ALLOWANCE (FY 2016/2017)

203. The receivables from exchange transactions balance of KSh. 1,178,717,000 included in the statement of financial position as at 30 June, 2017 was the net amount obtained from the gross balance of KSh.6,632,454,000 less impairment allowance of KSh.5,453,737,000 as given in note 25 to the financial statements.

204. The impairment allowance of KSh. 5,453,737,000 included long outstanding debts of KSh.3,759,665,395 and whose recoverability was doubtful. In addition, the impairment allowance of KSh.5,453,736,000 included a provision of KSh.1,248,877,758 whose schedule of beneficiaries was not availed for audit review.

205. Under the circumstance, the receivables from exchange transactions balance of KSh.1,178,717,000 included in the statement of financial position as at 30 June 2017 could not confirmed.

Management Response

206. The hospital rendered services to all patients referred for specialized and emergency healthcare without discrimination. Some of the patients who were attended were indigents and upon clinical discharge are unable to settle their medical bills. These patients were released from the hospital on unsecured credit based on a commitment to settle their bills in the future in line with the credit policy. Efforts to collect the due receivables from this category of patients have been unsuccessful. Most demand letters sent to the debtors' last recorded address demanding settlement of debts had been returned to hospital.

207. Also included in the impairment allowance were bills relating to unclaimed bodies that were disposed -off by the Hospital as per the Public Health Act.

208. In addition, the management had sought Ministry of Health reimbursement of bills incurred by indigents. It was expected that with introduction of universal health coverage this was likely to be mitigated.

209. The impairment allowance for accounts receivable had been provided for in line with International Public Sector Accounting Standard. The process of having the impaired debts written off had been initiated in line with the Public Finance Management Act Regulations.

210. The listing of beneficiaries of the entire number of impaired receivables of **KSh. 1,248,877,758** had since been availed to the auditors.

Committee Observations

211. **The matter arose due to management's failure to provide a schedule of the beneficiaries for audit review. The said schedule has since been provided for review.**

Committee recommendation

212. **The accounting officer for the KNH should always adhere to statutory timelines on submission of documents for audit verification.**

CASH AND CASH EQUIVALENTS FY 2017/2018

213. Included in cash and cash equivalent balance of KSh. 851,478,000 as at 30 June 2018 as disclosed at note 24 to the financial statements in National bank recurrent account balance of KSh. 5,887,874 for which the reconciliation statemented receipts in bank statement not in cash book of KSh. 32,035 and payment in bank statement not in cashbook of KSh.149,986 and whose clearance status during the time of the audit in the month of March 2019 was not disclosed.

214. Further, the cash and cash equivalent balance include National Bank revenue account balance of KSh. 450,578,049 for which the reconciliation statement reflected un-presented cheques totalling KSh. 578,049 and receipts in bank statement not in cash book totalling to KSh. 5,351,543 and whose clearance status was also not availed for audit review.

215. In the circumstances, the accuracy of cash and cash equivalent balance of KSh. 851,478,000 as at 30 June 2018 could not be confirmed.

Management Response

216. KSh. 32,035 credited in KNH Recurrent General account was unapplied payment returned by the bank. The payment had since been processed and KNH books updated accordingly.

217. The amount of KSh. 149,986 debited in KNH account on 31st August 2017 was an erroneous debit made by the National Bank. The bank credited back the amount in KNH Recurrent General account on 30th August 2019.

218. The amount of KSh. 578,049 which appeared as payment in cash book not yet recorded in bank statement from KNH Revenue bank comprised of KSh. 86,792 being EFT and KSh. 491,257 being Mpesa collections of shift No. 31650 occasioned by system error which doubled shift amount. The error was detected and corrected in FY 2018/19. However, the same was erroneously corrected again in June 2018 resulting to double adjustment in KNH Revenue cashbook. The error is now corrected and KNH books adjusted.

219. The receipts in bank statement not in cash book totalling of KSh. 5,351,543 as at 30th June 2018 were receipted in July 2018 as tabulated below:

Details	**Rcpt No**	**Rcpt Date**	**Amt**
Dr. Mugo	3837400	18/7/18	66,000.00
Sobowa	3845522	23/7/18	21,864.58
Equity Biznet	3837423	18/7/18	356,945.00
Equity Biznet	3837423	18/7/18	985,945.00
Equity Biznet	3837395	18/7/18	543,945.00
Equity Biznet	3837395	18/7/18	713,945.00
Equity Biznet	3837395	18/7/18	305,945.00
Equity Biznet	3837395	18/7/18	339,945.00
Child Doctor	3837402	18/7/18	3,920.00
Prof Macligeyo	3839127	19/7/18	38,744.00
Ministry of Defense	3836040	18/7/18	345,400.00
Makueni County	3835061	18/7/18	150,000.00
NHIF	3845138	23/7/18	1,478,945.00
Total			**5,351,543.58**

Committee Observation

220. **This a reconciliation issue that had not been done at the time of audit which had since been done.**

Committee recommendation

221. **The accounting officer for the KNH should always ensure prompt reconciliation of the Hospital's books of account.**

INCONSTANCIES IN DEPRECIATION POLICY (FY 2017/2018)

222. Section 7.3.4 of the approved hospital Finance Manual stipulate that the straight-line method of depreciation shall be applied for property plant and equipment. However, a review of the depreciation method used during the year indicated that the reducing balance method been applied as indicated in the property, plant and equipment movement schedule at Note 28 to the financial statements and significant accounting policy No. 4(c) on property, plant and equipment at page 94 of the financial statements which state that depreciation is calculated on reducing balance basis.

223. In addition, computer and related devices as per the policy should be depreciated within three years at the rate of 33.33% using straight line method of depreciation. However, a rate of 30% has been applied using reducing balance method. No justifiable explanations have been provided for these inconsistencies.

Management Response

224. Over the years, the Hospital has been using the reducing balance method to depreciate fixed assets as disclosed in the summary of significant accounting policies included the financial statements. The finance manual as currently approved stipulated use of straight-line method but the hospital is yet to implement due to the complexity of method change over.

225. In order to maintain comparability & consistency of policy on depreciation method, the hospital has reconsidered to retain the use of reducing balance method and through the review of the Finance manual.

Committee Observations

226. **The KNH was inconsistent in the way it treated depreciation outside the available policy. Such inconsistencies return inconsistent asset values.**

Committee Recommendation

227. **The accounting officer for the KNH should ensure consistency in treatment of depreciation of the Hospital's assets.**

2.2 NATIONAL HOSPITAL INSURANCE FUND (NHIF) (FY 2017/18)

EXAMINATION OF REPORT OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF NATIONAL HOSPITAL INSURANCE FUND FOR THE FINANCIAL YEAR 2017/18

Mr. Nicodemus Odongo, the Ag. CEO of the National Hospital Insurance Fund accompanied by Pogisho Tomtom (SAM, Financial Reporting), Janet Boit (Legal Officer), Benard Njenga (Ag. Director of Finance), Johnson Ouma (Ag. MSCM) and Franciscah Mwanza (Financial Accounting appeared before the Committee to adduce evidence on the report of the Auditor General on the financial statements of the Fund for the financial year 2017/18.

INACCURACIES IN THE FINANCIAL STATEMENT

228. The Committee heard that the following discrepancies were noted by the auditor between the balances in the Financial Statements and balances in the supporting schedules:

Item	Financial Statements Balance (KSh)	Supporting Schedule Balance (KSh)	Variance (KSh)
Interest on Investment	1,859,477,224	1,857,535,800	1,941,424
Staff cost	4,179,069,661	4,174,922,564	4,147,097
Finance Expenses	315,770,266	315,760,968	9,298
Outstanding Contributions	3,143,657,067	3,108,472,510	35,184,557
Interest receivable	107,110,161	103,354,669	3,755,492
Trade and Other Payables	5,458,176,094	5,446,826,193	11,349,901
Self-employed Contributions	3,880,651,567	3,874,774,672	5,876,895

Total	**18,943,912,040**	**18,881,647,376**	**62,264,664**

Management Response

Interest on investment.

229. Management concurred that there was a variance of KSh. 1,941,424 between the Financial Statements balance and the Supporting Schedules balance. This variance was because of adjustments made on the financial statements from the original figure of KSh. 1,857,535,800 presented in September 2018 to KSh. 1,859,477,224 following recommendations by the auditor. This difference was reconciled via journal voucher and the supporting schedule now agrees with the financial statement.

Committee Observation

230. **Reconciliations had since been done and verified by the OAG thereby resolving the matter.**

Staff Cost

231. The CEO concurred with the audit observation indicating that there was a variance of KSh. 4,147,097 between the financial statement and payroll amount. The variance between the payroll schedule and the financial schedules was attributed to direct payments made as terminal dues to staff who had exited the Fund and the interns.

232. Whereas staff costs were generally processed through the payroll module, these payments go through accounts payable module and any adjustments made are done through journal vouchers in the general ledger.

Committee Observation

233. **The difference has since been reconciled and the matter resolved.**

Finance Expenses

234. Management informed the Committee that the difference related to unposted entries at the time of the audit. These entries were then posted via journal voucher effectively changing

the financial statement figure for finance expenses from KSh. 315,760,968 to KSh.315,770,266 which were further broken down to bank charges totalling to KSh. 16,380,663 and commissions adding up to KSh. 299,389,603**.**

235. The supporting schedules of the finance expenses amounting to KSh. 315,770,266 was finally reconciled with the financial statements.

Committee Observation

236. **The reconciliations had since been provided and verified by the OAG thereby resolving the matter.**

Outstanding Contributions

237. Management informed the Committee that the variance was because of employers whose contributions receivable totaling to KSh. 35,184,557 had not been recognized as at the end of the financial period. Adjustment was done via a journal voucher and the schedule updated to reflect the correct position.

238. The financial statements and supporting schedule for outstanding contributions had since been reconciled and the two statements agreed to the financial statement balance of KSh. 3,143,657,067.

Committee Observations

(i) The reconciliation had since been done and verified by the Committee;

(ii) Employers can pay by MPesa for their employees if the amount is not more than KSh. 70,000;

(iii) NHIF has instituted measures of returning unidentified contributors to avoid putting money in the suspense account;

(iv) The NHIF has never sent contributions in the suspense account to the unclaimed financial assets authority;

(v) NHIF collected about KSh 3 billion per month; and

(vi) NHIF had a surplus of about KSh. 300 million annually.

Committee Recommendation

239. **The NHIF should update the existing system that instantly reflect contributions once made.**

Interest Receivable

240. Management concurred with the audit observation indicating that the increase in interest receivable of KSh. 3,755,492 arose as a result the Fund using 364 days in computation of interest receivable from the investment deposits. During the audit process the auditor recommended that the management changes the number of days for calculating interest receivable from 364 days to 365 days.

241. A journal voucher to adjust the account was passed following the reconciliation. The financial statements and supporting schedule for outstanding contributions amounting to KSh. 107,110,161 were therefore reconciled.

Committee Observation

242. **Reconciliation had since been done and the matter resolved.**

Trade & Other Payables

243. Management concurred with the audit query indicating that the Fund had erroneously cast its Trade and other payable figure as KSh. 5,589,548,572 was quoted in the report instead of the correct figure of KSh 5,446,826,194. The statements have since been amended to reflect the correct position. The Fund's financial statement now indicate KSh 5,446,826,194 as shown under Note 34 of the notes to the financial report and therefore reconciled.

Committee Observations

244. **Reconciliation had since been done. It was a posting error.**

Self Employed Contributions

245. Management acknowledged existence of a variance of KSh. 5,876,895 between the financial statements and supporting schedules. However, it indicated that this was Mpesa transactions which reflected in the system without complete member details and required follow up with the contributor to update the individual contributions. This process of

reconciliation was done and concluded during the audit. A Journal voucher was passed to adjust the financial statements and reconciled them with the supporting documents.

Committee observation

246. **Reconciliation was done and verified by the OAG.**

Variances in the statement of Budget and actual amounts (FY 2017/18)

247. The Committee heard that statement of comparative budget and actual amounts reflected actual income for the year of KSh. 49,242,494,491 and actual expenditure of KSh. 45,846,782,444. However, the statement of financial performance reflected total income of KSh. 39,513,824,440 and total expenditure of KSh. 39,217,901,574 resulting in unreconciled difference of KSh. 9,728,670,151 and KSh. 6,628,880,870 respectively.

Management Response

248. Management informed the Committee that this variance arose because of a difference in presentation format for the two statements. Based on the reporting format for statement of financial performance, the scheme revenues were reported as surplus after netting off the scheme benefits. The statement of comprehensive income therefore carried the surplus or deficit whereas the statement of comparison of budget and actual carries gross income. For example, the Civil servant amount in the financial statement **(page 57 – note 7)** was the surplus from the Civil Servant Medical scheme of KSh. 44,624,453 while the figure for the statement of comparison of budget and actual amounts was the actual amount received during the period amounting to KSh. 5,095,519,893.

249. In addition, the income in financial statement was the contract amounts receivable for the enhanced schemes while the comparative statement captures the actual cash received. On the expenditure side, the difference of KSh. 6,628,880,870 in actual expenditure is also attributed to the difference in reporting framework. This is explained by the fact that the financial statement actual expenditure of KSh. 39,217,901,574 excludes benefit payments for the enhanced schemes which have been netted off in the incomes to arrive at the surplus or deficit figure of the schemes.

250. The above-described presentation format had been used before and was responsible for the challenges experienced. Going forward, the Fund has since changed the reporting format beginning 2018/2019 reporting period to the new format showing actual gross receipts and expenditure.

Committee Observation

251. **The explanation provided was satisfactory.**

Committee Recommendation

252. **The OAG should confirm compliance of new reporting format while auditing the 2018/19 financial statements**

PROPERTY, PLANT AND EQUIPMENT

Land situated at Karen – 10 Hectares

253. The Committee heard that the Property, Plant and Equipment balance of KSh.14,122,454,327 in the statement of financial position as at 30th June 2018 included land valued at KSh.298,589,665 which included an amount of KSh.93,712,675 for land Ref. No.LR 24968/2 measuring 10 hectares situated at Karen.

254. However, the ownership of this parcel of land was in dispute and the matter was pending in court. Further, information available indicated that the DCI had commenced investigation to establish whether there was fraud in the transfer of ownership of the land and prosecute any person who may have been identified as having breached the law as per the PIC recommendations of the 21st and 22nd report.

Management Response

255. Management informed the Committee observed that issue was cited in prior years and discussed by the PIC since 2009/ 2010 Financial Year. The Directorate of Criminal Investigations commenced the inquiry/ investigations on the land and its acquisition in the year 2018. The Fund was notified of the same vide their letter Ref: DCI/IB/LFIU/SEC/2/16/VOL.X/541 dated 19th November 2018. The DCI convened a meeting between the Chief Land Registrar from Ministry of Lands, the Land Surveyor from Survey of Kenya, Chief Valuer from Nairobi City County Government and all parties who

held titles to the land. The DCI had since taken titles to the impugned land for use in the investigations.

256. All the previous CEOs and Legal Officers handling the matter had since exited the Fund. Given the ongoing court cases facing the former Chief Executives, Legal Officers and Chief Finance Officer, without handing over the offices to the current acting officers, it was impossible to provide any more information given the court order issued in December 2018 prohibiting the suspended officers from interacting with serving officers and accessing NHIF offices (CEO presented the Court order).

Committee Observations

- **(i) The matter was conducted in the 22nd PIC report**
- **(ii) In November 2018, the DCI took a copy of the title and investigations were underway**

Committee Recommendation

257. **The Implementation Committee should follow up the matter as per its mandate**

Proposed Resource Centre at Karen Land

258. The Committee heard that the Property, Plant and Equipment balance of KSh. 14,122,454,327 as at 30th June 2018 included work in progress balance of KSh. 1,444,687,484 being payments for drawings and designs for the proposed Resource Centre and whose construction had not yet commenced since the land was acquired fifteen years ago. Management explained that construction of the Resource Centre had not yet commenced because of lack of approvals from parent Ministry and the land ownership dispute in court.

259. Although the issue had been discussed by the Public Investment Committee, no action had been taken on the PIC recommendations of 22nd report that the Fund should expeditiously pursue the prosecution and conclusion of the case to its logical conclusion.

Management Response

260. The acting CEO of NHIF indicated that as a result of the foregoing dispute of the Karen land where the proposed resource Centre was earmarked for construction, no progress could be made in terms of construction, over and above the lack of approval by the Ministry until the disputes were solved. In addition to the issue of prosecution, the DCI had since taken up the matter and that he was carrying out investigations as explained in above.

261. This was a historical matter which had recurred in audit reports from the previous periods. All the previous CEOs and Legal Officers handling the matter have since exited the Fund. Given the ongoing court cases facing the former Chief Executives, Legal Officers and Chief Finance Officer, without handing over the offices to the current acting officers, it was impossible to provide any more information given the court order issued in December 2018 prohibiting the suspended officers from interacting with serving officers and accessing NHIF offices.

Committee Observations

- **(i) The committee had handled this matter in its 19th report.**
- **(ii) OAG had not acted on the Committee recommendations thus far on procurement and performance audit.**

Committee Recommendation

262. **The Implementation Committee should follow up the matter pursuant to its mandate.**

Construction of Multi-Storey car Park

263. The Committee heard that the National Hospital Insurance Fund entered into an agreement with local construction firm for construction and completion of a multi storey car park at a contract sum of KSh.909,709,305. According to information available, the project commenced in May 2002 and was scheduled for completion in August 2003. Records available, however, indicated that the contract sum was later revised upwards to KSh.1,179,611,756 representing approximately 337 % above the original contract sum of KSh.909,709,305.

264. Although records available indicated that the car park was completed in July 2008 at a total cost of KSh.3,342,120,239, a further amount of KSh.626,635,998 and KSh.4,706,521 was

incurred in 2009/2010 and 2010/2011 respectively on the Car Park increasing its total expenditure to KSh.3,973,462,758 as at 30 June 2011 or resulting to an increase of approximately 337% over and above the original contract sum of KSh.909,709,305. Further and as similarly observed in the prior years' reports, the escalation of costs of the car park by 337% over and above the original cost has not been justified.

265. Although the issue had been discussed by the Public Investment Committee, no action had been taken on the Public Investment Committee recommendations as per the 19th and 21st reports which recommended that the director of Ethics and Anti-Corruption Commission should institute and fast track investigation on the project with a view to preferring charges against all those who would be found culpable.

Management Response

266. Management averred that the EACC had not reported on the investigations into the matter as at the time of appearance before the Committee.

267. Further, this was an historical matter which has recurred in audit reports from the previous periods. All the previous CEOs and Legal Officers handling the matter have since exited the Fund. Given the ongoing court cases facing the former Chief Executives, Legal Officers and Chief Finance Officer, without handing over the offices to the current acting officers, it was impossible to provide any more information given the court order issued in December 2018 prohibiting the suspended officers from interacting with serving officers and accessing NHIF offices.

Committee Observation

268. **There was no progress on implementation of the PIC's 19th and 22nd Reports especially in enjoining DCI on the investigations.**

Committee Recommendation

269. **The Committee on Implementation should follow up the matter pursuant to its mandate.**

Integrated Revenue Management System

270. The Committee heard that the Property, Plant and Equipment balance of KSh.14,122,454,327 included additions to computers and related equipment of KSh.973,387,872. The additions further included the total cost of proposed acquisition of an Integrated Revenue Management System of KSh.495,205,588. Available information indicated that on 4th June 2018, the Fund entered a contract ref RFP/SSSM NO./001/2017-2018 with an IT Solutions firm for provision of Integrated Revenue Management System.

271. Although the Fund had not acquired the system as at 30th June 2018, the total cost of the system was included under additions to computers and related equipment thus resulting to an overstatement of Property, Plant and Equipment by KSh.495,205,588. Further, the total amount accrued under trade payables in respect to the system amount to KSh.469,591,506 resulting in unexplained variance of KSh.25,614,082.

272. Further information indicated that the procurement of the system was single sourced as no evidence of competitive bidding was availed for audit verification. This was contrary to Section 96 of the Public Procurement and Assets Disposal Act, 2015 which required the accounting officer to take such steps as are reasonable to bring the invitation to tender to the attention of all those who may wish to submit tenders. Further, although direct procurement method was used, no evidence was availed to the effect that the underlying circumstances met the conditions set for direct procurement as laid down in Section 91 of the Act.

273. Management was therefore in breach of the Public Procurement and Assets Disposal Act, 2015 and the propriety of KSh.495, 205,588 charged in the financial statements in respect of the Integrated Revenue Management System could not be confirmed. In the circumstances, it has not been possible to ascertain whether the Property, Plant and Equipment balance of KSh.14,122,454,327 as at 30 June 2018 is fairly stated.

Management Response

274. Management concurred that the total cost of Integrated Revenue Management System was included in additions to computers and related equipment under the Property, Plant and Equipment even though the Fund had not acquired the system as at 30th June 2018. This was done on the basis that the procurement and contract for the provision of the services

were entered in the financial year 2017/2018 and therefore the Fund had an obligation to recognize expenditure in the same period. Following the recommendations by the audit, the contract amount of KSh. 495,205,588 were reversed and removed from the Plant, Property and Equipment (PPE) in the subsequent financial year.

275. On the issue of single sourcing procurement method, the NHIF initiated a procurement of the Integrated Revenue Management System through a single source selection method. The Open tender, as a procurement method, was not used as per section 96 of Public Procurement and Assets Disposal Act 2015. NHIF relied on section 124 (12 a & b) of Public Procurement and Assets Disposal Act 2015 for use of single source as a selection method as this was the most appropriate method due to the following cases:

(i) The service provider had exclusive rights for the system used for Revenue Collection and Management. The Integrated Revenue Management System was a highly customized and proprietary to the Fund with source code availability limited to the software provider.

(ii) The task was a continuation of the previous tasks carried out by the same service provider. The continuation was technologically appropriate since Infrastructure was already setup in all NHIF branch/Satellite offices, 180 Health Care Providers and Contracted Banking Institutions thus eliminated disruption to service provision and compatibility related problems.

276. The Fund further followed the conditions laid down in Section 91 (2) of Public Procurement and Assets Disposal Act 2015 which states thus "*The Procuring entity may use an alternative procurement procedure only if that procedure is allowed and satisfies the conditions under this Act for use of that method"*

277. Section 124 (14 - 15) of Public Procurement and Assets Disposal Act 2015 states that *"Single Source Selection Shall require a placement of advertisement of the intention to single source and invite anyone who wishes to bid and in the event that there's a response to the advert then all interested suppliers shall be invited to submit proposals. Where an*

alternative method is selected a report shall be prepared and submitted to the Authority for approval". In view of the above NHIF complied with these two requirements by:

- placing the intention to single source in the company's website on dated 25th April 2018;
- submitted justification report to the Public Procurement and Regulatory Authority for approval.

278. The management provided the following documents to buttress their case:

- Authority to advertise Tender for Purchase of Revenue Collection Management System on NHIF Website
- Communication from Procurement to ICT to place the advert on the website
- Evidence of Advert placed on the website
- Tender Notice
- Request to PPRA
- Approval from PPRA

279. The matter of procurement of the Integrated Revenue Management system was an ongoing court case following the arrest and charging of the proprietors and some NHIF officials (Case No. ACC NO. 48 OF 2018).

<u>Committee Observations</u>

(i) The reasons advanced for direct procurement were not satisfactory. single sourcing can only be done if there is only one service provider. Though management indicated that it was Webtribe ltd that had a source code for all the NHIF infrastructure across the country, the Committee found this assertion misleading.

(ii) There was no feasibility study done.

(iii) The NHIF did not notify the ICT authority as per the circular from Head of Public Service Ref OP/CAB.39/1A dated 23rd February, 2018.

(iv) The matter had been investigated by the DCI and appropriate charges preferred in court. It was however pending in Court.

(v) The system was being used by the NHIF as at the time that the NHIF management appeared before the Committee

(vi) The software was procured at KSh. 495 Million. The NHIF was paying for the use of the software at an average (roughly) cost of KSh. 24 million per month (this figure was based on the volume of money that passed through the system). This was a very huge figure.

(vii) The letter from PPRA Ref: PPRA/P&R/22 VOL.I.(42) dated 4th April 2018 done to CEO of the NHIF (Geoffrey Mwangi) did not authorize such procurement. There was a raft of preconditions to be fulfilled which NHIF did not fulfil.

(viii) Since the arrest, NHIF stopped paying webtribe ltd. The NHIF had already paid KSh. 179 million.

(ix) The tender to buy the software was only posted on the NHIF website without even advertising in the dailies. The memo further indicated that the tender had been awarded to Webtribe ltd.

(x) NHIF Management's confirmation to the Committee that it had not sought AG's opinion on whether it could continue making payments to webtribe indicated laxity although it was not paying webtribe since its contract had lapsed.

<u>Committee Recommendation</u>

280. **The Committee requests the judiciary to expedite hearing and determination of the matter.**

Dr. Peter Kamunyo, the Chief Executive Officer of the National Hospital Insurance Fund, accompanied by Ms. Fansisca Mwanza (Manager, Financial Accounting), Mr. Richard Kirop (Senior Accountant), Rose Kakhungu (Legal Officer) and Mr. Nobert Tomtom

(Finance Officer) appeared before the Committee to adduce evidence on the audited financial statements of the National Health Insurance Fund for the financial year 2018/2019.

Unquoted Investments

281. As disclosed at note 27 to the financial statements, unquoted investment balance of KSh.385,342,946 as at 30th June 2018 included a balance of KSh.331,142,946 in respect of a loan advanced by the Fund to Moi Teaching and Referral Hospital (MTRH) at an interest rate of 3 % per annum. However, the loan was not supported with a signed loan agreement between the Fund and MTRH. Although the management had acknowledged the omission, it was not clearly explained how the anomaly will be resolved and the fall back plan in case of default by the Hospital. Further, the loan balance had not been reflected in MTRH financial statements for the year ended 30 June 2018. The unquoted investment balance of KSh. 385,342,946 also included consolidated bank shares of KSh. 54,200,000 which were not traded and for which no dividend had been paid in the past. Under the circumstances, the investment in consolidated bank shares was impaired.

282. Consequently, the validity of unquoted investment balance of KSh. 385,342,946 as at 30 June 2018 could not be confirmed.

Management Responses

283. There was no signed contract between NHIF and MTRH for the loan. In line with provisions of section 34 (b) of the NHIF Act of 1998, the NHIF board approved a credit facility for purchase and acquisition of medical equipment to the MTRH**.**

284. From the records, it was discovered that the MTRH was given a draft contract in August 2018 but did not respond to the same**.** The lag time in follow up for action was part of the challenges being experienced by the current leadership due to huge information gaps because of no handover given the arrest of the Fund's top leadership in November/ December 2018 and the court restrictions thereof.

285. The Fund reflected the MTRH loan under the unquoted investments as required by the IAS 39 where financial instruments are initially recognized when an entity becomes a party to the contractual provisions of the instrument.

286. The Fund continues the recovery process of the loan from MTRH claims submitted at a monthly rate of KSh. 3,178,918 even as the Fund pursues legal ways to deal with the missing contract issue.

287. On investments at the consolidated bank, the Fund had no reason to believe that that the investment in consolidated bank ltd was impaired considering that the Bank remained a going concern and the Fund could claim full ownership of the investment. The bank has since confirmed to the Fund of the shareholding of 4.8% of the consolidated bank. There has not been any dividend.

Committee Observations

MTRH loan

(i) **The matter arose due to the direction from the Ministry and not the need assessment from the MTRH;**

(ii) **NHIF admitted that it was an omission to send money to MTRH without a signed a contract. There was no urgency to remit the money;**

(iii) **Issue still outstanding as the County programme framework (CPF) 2017-2022 has not been supported;**

(iv) **The cost sharing arrangement between International Atomic Energy Agency and GOK has not been supported;**

(v) **Draft contract dated 14 August 2018 has not been signed despite various engagements between the NHIF and MTRH. It was however inconceivable to negotiate for a contract after payments had been made.**

(vi) **Loan not reflected in the books of MTRH. The payment was made directly to Kenya Nuclear Energy Board;**

(vii) **It was not clear how the procurement was done, by who and how money was sent;**

(viii) **The NHIF had written to consolidated bank seeking refund**

(ix) **The status of the recovery from MTRH as at 31st July 2020 is KSh 311,794,623**

(x) **The KSh. 68.8M had been paid in legal fees to outside lawyers when there were internal lawyers.**

(xi) **NHIF confirmed that some parts of the equipment (linear accelerator) are still in the port of Mombasa**

Committee Recommendations

(i) **The Committee recommends that the NHIF should, as much as possible, use its internal legal department to avoid unnecessary wastage of public funds.**

Investments in consolidated

(i) **Since there was no dividend from the consolidated bank, it should be captured as non-performing loan.**

(ii) **The amount invested in the bank had not been earning dividends despite the consolidated making profits. The Shares had not been trading at NSE. This was not a prudent financial investment when holding capital that was not earning any dividends and increase in value. The last audited report on consolidated bank indicated that it was negative KSh. 7.7 billion. The NHIF did not have any other investment in the consolidated bank other than this**

Committee Recommendations on investments

(i) **The management of the NHIF should withdraw all the investments it made to Consolidated Bank that have not been generating interest.**

(ii) **The accounting officer for the NHIF should only invest funds on banks that are profitable and after requisite approvals from the Board and the National Treasury**

TRADE & OTHER RECEIVABLES

Temporary Imprest

288. The trade and other receivables balance of KSh. 4,787,930,583 as at 30 June 2018 included temporary imprest of KSh.27,488,747 out of which KSh.1,055,254 had been outstanding for years and whose recoverability was doubtful. This is contrary to Section 93 (5) of the Public Finance Management Regulations, 2015 which states that a holder of a temporary

imprest shall account or surrender the imprest within 7 working days after returning to duty station. Section 93 (6) further provides that in the event of the imprest holder failing to account for or surrender the imprest on the due date, the Accounting Officer shall take immediate action to recover the full amount from the salary of the defaulting officer with an interest at the prevailing Central Bank Rate. Consequently, the recoverability of the imprest amount of KSh.1,055,254 was doubtful.

Management Response

289. The amount of KSh 1,055,254 included in temporary imprest amount of KSh. 27,488,747 had been provided for as doubtful receivable in the financial statements as required by the International Accounting standard No. 36 after assessment of impairment. The long outstanding imprests were thereafter written off by the Board of Management in a meeting held on 27th September 2017 alongside staff receivables of KSh. 2,104,123. It was observed that this was an omission in the books. The figure has since been adjusted in the books.

Committee Observations

(i) The matter is still outstanding as the impugned imprest has not been recovered. Most of them date back to late 1990s from the Ministry.

(ii) Treasury authority to write off debt was not provided hence it was irregular for the NHIF to write off without such an approval

(iii) Currently, officers given imprest and fail to surrender is recovered within 7 days of return to duty

(iv) The Board had irregularly approved a total write off of KSh. 1 billion that incudes KSh. 1M on imprest not surrendered without treasury approval.

Committee Recommendations

290. **The Committee recommends that the amount of KSh. 27,488,747 should be restated in the books up and until National Treasury approves write off. Further, the NHIF should request the National Treasury to consider for a write off .**

Interest Receivable

291. The trade and other receivables balance of KSh.4,787,930,583 included interest receivables of KSh.107,110,161. However, and as reported in the previous year, the balance included KSh.1,712,243.78 whose supporting documents were not availed for audit review. Further, a recalculation of interest receivable during the year showed a balance of KSh.103,354,669 which differed with the reported balance of KSh.107,110,161 resulting in unexplained variance of KSh.3,755,492.

Management Response

292. It was agreeable that included in the amount of KSh. 107,110,161 was an amount of KSh.1,712,243. This amount related to entries posted and brought forward from the previous years. Following recommendations by the audit, a journal voucher was passed to adjust the balance and the statement reflect the correct position.

293. A variance of KSh. 3,755,492 existed between the financial statements and supporting schedule. The increase in interest receivable of KSh. 3,755,492 arose as a result the Fund using 364 days in computation of interest receivable from the investment deposits. During the audit process the auditor recommended that the management changes the number of days for calculating interest receivable from 364 days to 365 days. A journal voucher to adjust the account was passed following the reconciliation. The financial statements and supporting schedule for outstanding contributions amounting to KSh. 107,110,161 were therefore reconciled.

Committee Observations

(i) **The variance in the books of account was caused by the NHIF management's accounting method that covered a different period. Also, NHIF failed to provide documents for audit within the required timelines as per the Public Audit Act 2015 and the PFM Act 2012.**

(ii) **Journals and schedules supporting documents were provided later and will be reviewed together with 2018-2019 financial statements to confirm correctness**

Committee Recommendations

(i) **The NHIF should stick with and use proper accounting standards.**

(ii) The accounting officer for the NHIF should always adhere to statutory timelines on submission of documents for audit failure to which sanctions provided for in the Public Audit Act 2015 and the PFM 2012 ensues.

Ageing Analysis

294. The trade and other receivables ageing analysis at note 28 to the financial statements cast to KSh.3,716,006,861 which differ with the total trade and other receivables balance of KSh.4,787,930,583 as disclosed at note 28 to the financial statements resulting in unexplained difference of KSh.1,071,923,722.

295. Consequently, the accuracy and validity of trade and other receivables balance of KSh.4, 787,930,583 as at 30 June 2018 could not be confirmed.

Management Response

296. The trade and other receivable balances shown under note 28 of KSh. 4,787,930,583 reflected the correct position of the receivables as at 30th June 2018. However, due to adjustments made on outstanding contributions, Mpesa revenue receivable and Interest receivables figures during the audit process the debtor's ageing analysis was not cast correctly to reflect the adjusted position. This error did not have any effect on the financial position of the Fund. It is therefore correct to conclude that this was a casting error that has since been rectified.

Committee Observations and Recommendations

(i) Journals and schedules (supporting documents) have been provided and reconciliations done.

(ii) The matter was resolved.

Staff Cost

297. The staff costs expenditure of KSh. 4,179,069,661 as disclosed in note 17 to the financial statements included an amount of KSh. 8,777,057 paid to sixty-five (65) officers employed

during the year. However, the supporting recruitment documents including advertisements of the vacancies, short listing, interviewing, and recruitment reports were not availed for audit verification.

298. Consequently, the propriety of the expenditure totalling KSh. 8,777,057 included under staff cost for the year ended 30 June 2018 could not be confirmed.

Management Response

299. It was true that the Fund spent KSh. 8,777,057 in paying 65 officers recruited during the financial year 2017/2018. The Fund wishes to concur with the audit opinion that the recruitment was un-procedurally done in that, no approval was obtained from the Board of Management. The process was not competitive as there was no advertisement for the vacant posts. This is contrary to provisions of NHIF Act, 1998 and NHIF Human Resource Procedures manual. The Board initiated disciplinary action against the Director Human Resource and Administration and further wrote to the Attorney General seeking direction on how to deal with responsible managers who were arrested and currently facing other charges and therefore under suspension. Advisory opinion from the same office was also being awaited on action to take on staff recruited under such circumstance.

Committee Observations

(i) **Appearing before the Committee on 30th September 2020, the then NHIF CEO, Mr. Geoffrey Mwangi, contradicted the current NHIF Management by stating that the NHIF Board approved hiring of the staff queried in the audit report. He further averred that there was an advertisement in the media during the first quarter of 2018 in which the 65 vacancies were advertised.**

(ii) **The hiring of 65 staff was reportedly part of implementation of a needs assessment carried out by Delloitte Consulting and reviewed and approved by NHIF Board.**

(iii) **It is the NHIF board that suspended the head of HR in 2019. By then, the former NHIF CEO had been suspended (late 2018).**

(iv) **Current management confirmed that the head of HR was instructed by the then CEO, Geoffrey Mwangi, to hire the officers.**

Committee Recommendation

300. **The Committee recommends that the accounting officer for the NHIF should always be guided by the employment policies.**

Staff Welfare

301. Included under other operating expenses as disclosed at note 19 to the financial statements was expenditure on staff welfare of KSh.39,784,850 for the year ended 30 June 2018. A review of the staff welfare expenditure revealed that an amount of KSh.1,460,000 was paid to nine (9) board members and one staff as Christmas gift during the year under review. However, management did not provide justification or the basis for this payment.

302. Consequently, the propriety of the expenditure totalling to KSh.1,460,000 paid as Christmas gift and included under staff welfare could not be confirmed for the year ended 30 June 2018.

Management Response

303. NHIF Board of management is vested with the responsibility of providing the strategic direction of the organization. During the year under review, they steered the organization towards achieving great milestones in member registration and enhancement of benefits to members. In this regard therefore, approval was sought from the Chief executive Officer for payment of a token of KSh. 100,000 per Board member in appreciation of services rendered. Further to this, eight members of staff, and not one as noted in the audit report, who retired from the service during the year were also awarded a token of appreciation for the services rendered to the Fund.

Committee Observations

(i) **Considering that there was no policy document providing for the payment of tokens to Board Members, such payments could not be justified.**

(ii) **The said payments were approved by the then NHIF CEO following a request memo from the then Ag. Corporation Secretary and head of legal services.**

Committee Recommendation

304. **The current NHIF Board and Management should recover the Ksh. 100,00 irregularly paid, as token of appreciation, to former Board Members.**

Board Expenses

305. As disclosed at note 18 to the financial statements, board expenses of KSh.38,613,988 included seminars and conferences expenditure amounting to KSh.13,115,573. The expenditure on seminars and conferences includes KSh.4,633,631 paid to Harvard Business School for training of two board members on the 2018 Session of Audit Committee in a New Era of Governance course. However, Board approval for this training was not availed for audit verification. In addition, it was not clear why the training was not done locally to minimize on the expenditure.

306. Further, the board expenditure on seminars and conferences included an amount of KSh. 993, 220 that was paid as imprest to two officers for payment of per diem to board members attending a devolution conference in Kakamega and Mombasa ASK show. However, the imprest were directly expensed under board expenses. The seminars and conferences expenditure also included an un-supported balance of KSh.3,923,119 described as transfer to provisions. Although management has explained that these are imprest issued for board expenses and wrongly described as transfers to provisions, no evidence was availed to support this claim.

307. Under the circumstances, the propriety of board expenses of KSh.38,613,988 for the year ended 30 June 2018 could not be confirmed.

Management Response

308. The expenditure on seminars and conferences amounting to KSh. 4,633,631 paid to Harvard Business School for training of two board members on the 2018 Session of Audit Committee in a New Era of Governance course was approved by the Chief Executive Officer through internal memo REF: HF/LD/66/VOL.V/65 dated 18th June 2018. This was in line to the requirements of good governance to continuously train the members of the board of management.

309. Imprests totalling to KSh. 993,220 were issued to two officers for devolution conference in Kakamega amounting to KSh. 484,400 and ASK show in Mombasa amounting to KSh. 508,800. These officers were to pay sitting allowance and per diem to board members attending the devolution conference and the ASK Mombasa. The Board members could not be issued with Imprest because they had an outstanding imprest. These amounts were charged to the Board expense account since they were payment to the board members.

310. The seminar and conference expenditure reflected an amount of KSh.3,923,119 described as transfer to provisions. This figure comprises of un-surrendered imprest due for board members as at 30th June 2018.

311. The imprests were subsequently surrendered after June 2018.

Committee Observations

(i) **The issue remains outstanding as the basis of paying was not supported.**

(ii) **The imprest of KSh. 993,220 was surrendered and surrender schedules provided and were given to the auditors during the meeting for verification.**

(iii) **There is no justification of the two members going for training at a cost of KSh 4.6M in USA. This training could have been done locally. In was done between 22nd and 31st July 2018. Approvals were done by the then CEO, Geoffrey Mwangi, upon a memo from the then Ag. Corporation Secretary (Ruth) dated 18th June 2018.**

(iv) **Appearing before the Committee, the then CEO of NHIF Mr. Geoffrey Mwangi averred that the NHIF Board Charter bears all the activities of the Board for a particular year and is confirmed in the first session of the new Board. The training was reportedly included in the Service Charter. Mr. Mwangi said that the activity in USA was co-funded by World Bank contrary to the current NHIF management's evidence tabling amount spent exclusively by NHIF as per the memo dated 18th June 2018.**

Committee Recommendation

312. **The EACC should investigate the circumstances under which the two Board Members were chosen to attend the USA training; whether the NHIF paid for the function and**

the amount with a view to recovering the overspent money and prefer charges if there was an abuse of office.

CLAIMS PAYABLE

313. The statement of financial position reflected claims payable balance of KSh. 540,013,236 as at 30 June 2018 and included claims due to Kenyatta National Hospital (KNH) totalling to KSh.55,276,819. However, information available indicate that the records at KNH reflected that the Fund owed KNH KSh.712,187,022 in un-paid claims resulting in unexplained variance of KSh. 656,910,203. No clear justification was provided for failing to reconcile and clear these long outstanding claims.

314. Consequently, the accuracy and validity of claims payable balance of KSh. 540, 013,236 as at 30 June 2018 could not be confirmed.

Management Responses

315. As at 30th June 2018, the Fund had an outstanding claim due to KNH totalling KSh. 55,276,819 and not KSh 712,187,022 as claimed by the Kenyatta National Hospital. The Fund recognized claims payable based on full documentation received and verified as at the end of every period. The same was done for the period ending 30th June 2018. NHIF management had further given the hospital a statement of account of all the paid claims to enable them carry out a reconciliation and submit any outstanding claims.

Committee Observation

316. **In the FY 2018/2019, efforts were made to reconcile the books. As at December 2019, reconciliation was done and concurred by both KNH and NHIF to be KSh. 91m. Auditors verified this and the matter settled.**

Committee Recommendations

(i) The Committee recommends that the Office of the Auditor General should audit, in the 2022/2023 audit cycle, and advise on which state corporation owe the other.

TRADE CREDITORS

317. Trade creditors balance of KSh. 700,113,542 as at 30th June 2018 and as disclosed at note 34 to the financial statements included balances totalling to KSh. 605,011,512 that were accrued before the respective goods were received and services rendered in full contrary to the generally accepted accounting principles (Matching concept).

Management Response

318. Trade Creditors balance of 700,113,542 as at 30th June 2018 included balances accrued before goods and services were rendered in full. The matching concept is an accounting practice whereby firms recognize revenues and their related expenses in the same accounting period. In accruing the above expenditure, the Fund took Cognizant's of the fact that the procurement and contracts for the provisions of goods and services were all entered in the financial year 2017/2018 and therefore the Fund had an obligation to recognize expenditure in the same period.

319. In addition, the Fund relied on the prudence concept of Accounting principle which makes sure that assets and income are not overstated and provision is made for all known expenses and losses whether the amount is known for certain or just an estimation i.e. expenses and liabilities are not understated in the books of accounting. However, the Fund resolved to adjust the financial statements and restate the balances to exclude the transactions.

320. The following is an itemized break down of the KSh. 605,011,512 that were accrued by the Fund in the financial year 2017/2018 and now fully reversed.

	CONTRACT	PAYEE	AMOUNT	TREATMENT
1.	NHIF/069/2017-2018	CEES & N'S Limited	1,950,000	Reversed
2.	NHIF/021/2017-2018	Mustard Group	34,684,283.07	Reversed.
3.	NHIF/050/2017-2018	Seretu Enterprises	6,242,490.75	Reversed

		Limited		
4.	NHIF/027/2017-2018	Kajeje Limited	26,660,775.85	Reversed
5.	NHIF/047/2017-2018	Gumtree Kenya Limited	10,230,022.00	Reversed
6.	NHIF/053/2017-2018	Tazni International LTD	11,400,000.00	Reversed
7.	NHIF/027/2017-2018	CEES & N'S Limited	9,750,000.00	Reversed
8.	NHIF/O27/2017-2018	MAAL Ventures	14,250,000.00	Reversed
9.	NHIF/007/2017-2018	Fourtell East Africa	20,252,434.25	Reversed
10.	RFP/SSM 001/2017/18	Web tribe	469,591,506.60	Reversed
	TOTAL		**605,011,512.52**	

Committee Observations

(i) **It was not clear to the Committee why the NHIF made all the reversals on the entries that were done if indeed there was a procurement plan and the budget available. However, the NHIF management confirmed that the reversal was done due to the Auditors' advise. Payment could only be done after delivery of the goods and services**

(ii) Journals and schedules supporting documents were later provided and will be reviewed together with 2018-2019 financial statements during the audit. As such the Committee may not be able to establish the true status

Committee recommendations

(i) The NHIF should use the approved accounting standards when preparing financial statements.

(ii) The Office of the Auditor General should review the journals and schedules on the impugned entries during the production of the NHIF's FY 2019/2020 Audit Report.

Budgetary Performance

321. During the year under review, the Fund's actual revenue amounted to KSh. 49,242,494,591 against budgeted revenue of KSh. 51,594,992,475 resulting in a revenue shortfall of KSh.2,352,497,884. Further, actual expenditure for the year amounted to KSh. 45,846,782,444 against budgeted expenditure of KSh. 47,990,419,988 resulting in an overall under absorption of KSh. 2,143,637,544. It is therefore clear that the Fund did not fully achieve its budget objectives which adversely affected delivery of the intended services to the public.

322. Therefore, there is need for the Fund to review its budget making process with a view to coming up with a vibrant budget implementation follow up mechanism and feedback process with a view to ensuring that all projects and activities are implemented as planned for the Fund to meet its mission and objectives for the benefits of the Citizens of Kenya.

Management Response

Revenue

323. The budgeted revenue of Kes 51,594,992,475 was achieved at 95% leading to a shortfall of Kes 2,352,497,884. The shortfall in revenue collection for the financial period 2017/18 was due to a depressed economy that was occasioned by the pro-longed electioneering period. The economic slowdown in the run-up to the general election and subsequent extended electioneering affected the manufacturing, tourism, exports, and the MSME's sectors. As a

result, the Government lowered its 2017 economic growth forecast to reflect uncertainty around the elections. The Fund performance was directly affected by economy fluctuations especially in the informal sector where the retention rate was lower than expected.

Expenditure

324. The budgeted expenditure of Kes 47,990,419,988 was utilized at 96% resulting to under absorption of Kes 2,143,637,544. The estimated expenditure of Kes 47,990,419,988 included benefit/claims estimates for all the schemes. Health status was determined by a number of factors such as personal (individual characteristics, behaviors and lifestyle choices), social, economic and environmental factors. Health statistics are also driven by age and disease prevalence in a population. The healthcare expenditures are predicted using models however, the actual costs may vary.

325. The variance of the financial year 2017/2018 actual and budgeted were within the generally accepted error margin of less than 10% as provided for by the relevant Treasury circulars outlining guidelines for the preparation of the annual budgets for state corporations.

Committee Observation and Recommendation

326. **The matter was adequately addressed and therefore resolved.**

Non-Compliance with Public Procurement and Assets Disposal Act, 2015

327. During the year under review, the Fund engaged a Company for provision IT related services including emailing filtering solution at a total cost of KSh. 11,323,440 out of which an amount of KSh. 944,574 was paid in advance leaving an outstanding balance of KSh. 10,378,866 as at 30 June 2018. However, the Company was identified through quotations despite the amounts exceeding maximum threshold of KSh. 2,000,000 for the quotations as contained in the Public Procurement Regulations.

328. This was also contrary to Section 96 of the Public Procurement and Assets Disposal Act, 2015 which require the accounting officer to take such steps as are reasonable to bring the invitation to tender to the attention of all those who may wish to submit tenders. Management was therefore in breach of the law and the propriety and value for money of

the related expenditure totalling to KSh. 11,323,440 for the year ended 30 June 2018 could not be confirmed.

Management Response

329. In the FY 2014/15, NHIF procured the services of M/s Message Labs for the provision of Mail Filtering Solution contract no. HF/045/2014-2016 for an annual amount of KES 4,000,000.00 and Enhancement of Help Desk facility Solution contract no. HF/046/2014-2016 for an annual amount of KES 4,326,000.00. In the subsequent FY 2015/16 in the month of December it procured an Anti-Spam Solution contract no. HF/030/2015-2016 at an annual amount of KES 2,900,000.00.

330. With due regard to the issue raised by the Auditor concerning the advance payment of KES 944,574.00 to the service provider before goods were delivered, perusal of the records indicated that the payment was in respect of contract for supply and installation of anti-spam solution quotation number HF/074/2011-2012 that was paid on 27th June 2014 after the supplier installation of the remote anti-spam software. Therefore, this was not related to the payments made to the supplier in the financial year 2017/2018.

331. On the issue raised on quotation threshold of KES 2,000,000.00 as per the requirement of the Public Procurement and Disposal Act 2015 section 96, NHIF would like to respond as follows:

332. The said contracts as outlined above were initiated in the FY 2014/15 and FY 2015/16 (December 2015) before the commencement of the current Public Procurement and Disposal Act 2015. The Act commenced on 7th January 2016 after the above said procurements were done.

333. During that time the Fund relied on the Public Procurement Regulations of 2006 which provided for the minimum threshold for goods procured through open tender at KES 6,000,000.00 and maximum threshold for goods procured through quotation at KES 2,000,000.00 leaving a lacuna with respect to how the procurements that were above the maximum amount of KES 2,000,000.00 for Quotations and below the minimum amount of KES 6,000,000.00 for Open Tender were to be dealt with. Considering the criticality of the solution that was being procured as far as the Funds business is concerned and the above

stated lacuna, NHIF proceeded with the procurement process since they were competitive enough since the regulation provides that quotations should be from more than 3 firms.

334. This procurement matter under discussion is part of the historical issues of the Fund, occasioned by transitional gaps between the previous procurement law and the subsequent procurement law effective 2015.

Committee Observations

(i) **The NHIF used the Public Procurement and Disposal Act 2005 in a contract signed on 25th August 2016. The Public Procurement and Asset Disposal Act 2015 became effective on 7th January 2016.**

(ii) **The Quotations were sent in 2015 and therefore NHIF was right to use the 2005 law. The Office of the Auditor General however erroneously applied the PPDA 2015 when reporting on the matter**

Committee Recommendation

335. **The query was adequately addressed and matter resolved.**

2.3 KENYA NATIONAL QUALIFICATIONS AUTHORITY (FY 2018/2019 & 2019/2020)

EXAMINATION OF THE REPORTS OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF KENYA NATIONAL QUALIFICATIONS AUTHORITY (KNQA) FOR THE FINANCIAL YEAR 2018/2019

Dr. Juma Mukkwan, the Director General/ Chief Executive Officer of the Kenya National Qualifications Authority (KNQA appeared before the Committee to adduce evidence on the audited financial statements of the Kenya National Qualifications Authority for financial year 2018/2019.

UNQUALIFIED REPORT (FY 2018/2019)

336. The Committee heard that the authority was issued with unqualified report.

Contested Mandate of the Kenya National Qualifications Authority

337. While examining the accounts of the Kenya National Qualification Authority and though not raised in the audit report, the Committee noted that the Authority has been embroiled in a legal tussle on its mandate. Of contention is whether the Authority had exclusive mandate, as per the Kenya National Qualification Act 2014 to equate qualifications to the exclusion of other government agencies that legitimately interpret statues establishing them conferring such a mandate to them. Such entities include the Kenya National Examination Council, the Technical and Vocational Training Authority, and the Commission for University Education.

338. Further, it further it emerged that some sections of the Kenya National Qualifications Framework Regulations 2018 were ultra vires to the principal Act and that the said regulations may not have gone through the requisite approval processes by the National Assembly before implementation.

Committee Recommendation

339. **The Attorney General should urgently convene a stakeholder working group with membership from the Kenya National Qualifications Authority, the Commission for University Education, the Kenya National Examination Council, the Technical and**

Vocational Training Authority to harmonize all the overlapping or contested provisions including proposing legislative reforms on equation of qualifications.

2.4 KENYATTA INTERNATIONAL CONVENTION CENTRE (FY 2013/14-2016/17)

EXAMINATION OF THE REPORTS OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF KENYATTA INTERNATIONAL CONVENTION CENTRE FOR THE FINANCIAL YEARS 2013/14 TO 2016/17

Mrs. Nana W. Gecaga, Director General of Kenyatta National Convention Centre accompanied by Mrs. Jane M. (Corporation Secretary), Mrs. Grace Gichuru (Internal Audit Manager), Mr Luvale Muganda (Ag. Director, Corporate Services) and Mr. Livingston Kipyego (Ag. Finance and Accounts Manager) appeared before the Committee to adduce evidence on the audited financial statements of the Kenyatta National Convention Centre for financial years 2013/14 to 2016/17.

LAND FY 2013/14 to 2018/19

340. Included in property, plant and equipment balance of KSh 2,778,173,000 as at 30 June 2014 was the value of land of KSh 1 billion under note 13 which excluded land commonly referred to as COMESA Parking area and Court yard on which the first President monument stands. Further, the land on which the Garden Square Restaurant stands stood under disputes between the Corporations and Nairobi City County. However, a letter from the Chief of Staff and Head of Public Service and Cabinet Secretary, Ministry of Lands, Housing and Urban Development clarified that the land in dispute was already gazetted as a monument as part of Corporation. In addition, the Cabinet Secretary was directed to urgently issue the ownership title to the Corporation.

Management Response

341. The land that was valued is the land where the Corporation's tower block currently stands. The other two land parcels i.e. the COMESA grounds and Garden square restaurant stands appear as unallocated Government Land. Management has made concerted efforts through the relevant authorities to have its name included in the Title where the Corporation's Tower block stands and to have the unallocated Government land allocated to the Corporation. The Third Parcel of land where Statute of the First President of the Republic of Kenya stands is gazetted as a national monument and as such cannot form part of the Corporation's property

Committee Observations

(i) **Despite management efforts to have the ownership document for the three parcels of land, they have not been given out.**

(ii) **The Garden Square land was handed to the KICC by the Nairobi City Council but then it has a court case and is ongoing currently. The restaurant is depositing the rent to the court. M/s Armstrong Kasuku owns the restaurant.**

(iii) **The title for the land where the Tower stands is under the National Treasury to hold in trust for the Ministry of Tourism.**

(iv) **The Comesa Grounds land is part of unallocated land**

(v) **The Cabinet Secretary to the National Treasury (Incorporation) Act has powers to hold land in trust of other government agencies.**

Committee Recommendations

(i) **KICC Management conduct a search of all its land and update its asset register.**

(ii) **The KICC Management should secure ownership documents of all her properties.**

TRADE AND OTHER RECEIVABLES FY 2013/14 TO 2018/2019

342. The trade and other receivables balance of KSh. 364,423,000 as at 30 June 2014 included an amount of KSh. 314,048,683 most of which was owed by various Government Ministries and Departments as well as Kenya National Assembly which owes KSh 47,311,344. The Public Investment Committee's previous resolutions directed the management of the Corporation to aggressively pursue the ministries and department to collect the debts.

343. The huge uncollected receivable put a strain on effective service delivery by the Centre to the public.

Management Response

344. Management had put in place stringent measures to recover its outstanding debts on account of rent, leased parking and conference revenue. A considerable amount of the same had been recovered thereby bringing down the outstanding debts.

Committee Observations

i) **KICC is facing a challenge of collecting old debt. Between 2016 to-date, KICC is owed KSh. 150 million but prior to 2016, debts amounted to KSh. 600 million.**

ii) **The National Assembly debt of KSh 47m is for an activity of 2006 whose documents on whether the event happened is contested.**

Committee Recommendation

345. KICC Management should aggressively pursue its debtors and ensure their settlement.

VALUATION OF ASSETS FY 2014/15 AND 2018/2019

346. The statement of financial position reflects KSh. 2,903,754,000 as the balance for property, plant and equipment as at 30 June 2015. However, the last valuation exercise for the entity's assets was last conducted in 2006 which contravenes International Accounting Standard No. 16 which stipulates that property, plant and equipment should be revalued after every five years.

347. In the circumstance, Property, Plant and Equipment balance of KSh. 2,903,754,000 as at 30 June 2015 was not fairly stated

Management Response

348. The Corporation noted the anomaly and acted on it. The process of Asset valuation was kick started immediately. This was however a challenge due to unavailability of funds and budget constraints. However, the tender was floated and a consultant picked. A complete asset tagging and valuation exercise was carried out during the FY 2017/2018

Committee Observations

349. **Valuation was done in the Financial Year 2017/2018 and should be verified by the OAG and reported to the Committee. Further, it is noted that the land at KICC has not been included in the asset register.**

Committee Recommendation

350. **The KICC Management should ensure that all its properties are valued within the required timelines and reflect their fair value in the financial statements**

TRADE AND OTHER RECEIVABLE FY 2014/15 TO 2018/2019

351. As reported in the previous year, the trade and other receivable balance of KSh. 524,559,000 (2014: KSh. 364,423,000) as at 30 June 2015 includes an amount of KSh. 358,603,420 most of which is owed by various Government Ministries and Departments as well as National Assembly which owes KSh. 47,311,344 and which has been outstanding for considerably long period. However, the Public Investment Committee of the National Assembly has directed the management of the Corporation to aggressively pursue the Ministries and departments to collect the debts.

352. In view of the foregoing, the huge uncollected receivables put a strain on effective service delivery by the Corporation to the public.

Management Response

353. Management has put in place stringent measures to recover its outstanding debts on account of rent, leased parking and conference revenue. A considerable amount of the same has been recovered thereby bringing down the outstanding debts and issued demand letters to a considerable number of its debtors. The process is ongoing and in addition to that debt collectors have been pre-qualified to render debt collection services with a view to assisting the Corporation to recover its outstanding debts

Committee Observations and Recommendations

(i) **Management has put in place measures to recover the debt and the outstanding amount has been reduced.**

(ii) **The accounting officer for the KICC should aggressively pursue its debtors and ensure their settlement.**

<u>BANK ACCOUNTS – USE OF DEFUNCT NAME FY 2014/15</u>

354. The Corporation maintains four (4) accounts at Kenya Commercial Bank these being operations, development, US dollar and call deposits accounts all of which reflect the name of Kenyatta International Conference Centre. With the operationalization of Tourism Act 2011, the organization's name has since changed to Kenyatta International Convention Centre. Consequently, continued use of the defunct account names exposes fraudulent activities.

<u>Management Response</u>

355. The Management regularized the issue by effecting the change of names in all the Corporation's bank accounts

<u>Committee Observation and Recommendation</u>

356. **The explanation offered was satisfactory and the matter resolved.**

<u>WEAK INTERNAL CONTROLS IN VEHICLE MOVEMENTS FY 2014/15</u>

357. During the year under review, it was observed that logbooks for various months regarding the three vehicles did not include details of fuel consumption an indication of weak internal control. Further, work tickets for another two vehicles availed for audit verification, were for the month of September 2014 only other than for the whole year.

<u>Management Response</u>

358. Measures with respect to management and movement of vehicles had been put in place. Currently one work ticket for each vehicle is operated until filled up. Regular check-ups are also carried out to ensure that there is compliance to the existing procedures.

<u>Committee Observations and Recommendation</u>

359. **The explanation offered was satisfactory and the matter resolved. State Corporations with a large fleet of vehicles should use digital logbooks.**

BUDGETARY CONTROL FY 2014/15

360. The Corporation overspent over and above the approved budget on the votes regarding selling and distribution costs by KSh. 104,349,560 representing 40% over expenditure.

Management Response

361. During the year under review, the Corporation experienced an increase in bookings leading to increase in events held at the Centre. This led to increase in selling and distribution costs which was in tandem with the conference and other (Hire of equipment, catering etc.)

Committee Observation and Recommendation

362. **The explanation offered was satisfactory and the matter is resolved.**

Mrs. Nana W. Gecaga, Director General of Kenyatta National Convention Centre accompanied by Mrs. Jane M. (Corporation Secretary), Mrs. Grace Gichuru (Internal Audit Manager), Mr Luvale Muganda (Ag. Director, Corporate Services) Mr. Livingston Kipyego (Ag. Finance and Accounts Manager), Hon. Sara Bonaya (Chairperson of the KICC), Mr. Joseph Wamae (Board Member, KICC), Ms. Jane Adam (Boar Member, KICC) and Ms. Lucy Macridis (Board Member, KICC) appeared before the Committee to adduce evidence on the audited financial statements of the Kenyatta National Convention Centre for financial year 2015/16 and 2016/17.

FLAWED PROCUREMENT PROCESS – WORLD TRADE ORGANIZATION (WTO) CONFERENCE FY 2015/2016 to 2018/2019

363. During the 10^{th}. WTO ministerial conference held at Kenyatta international convention Centre, the Corporation made tender awards for goods and services and works to various firms. A review of the procurement process revealed that procurement process was disregarded the public procurement and Disposal Act 2005 and Public Procurement and Disposal regulations, 2006

- minutes of tender committee not provided for audit verification
- Tender committee was not procedural constituted

- the corporation made several procurements of goods and services worth KSh 70,823,765 without competitive bidding as required by procurement of laws and regulations.
- single sourcing of procurement to 15 different companies for total sum of KSh 1,432,333,345
- Five companies had signed contracts which amounted to KSh 894,976,341
- A local company had signed a contract worth KSh 64,976,341 but no award letter was issued. Another company undertook some partial works and submitted claim of KSh 9,946,420 despite the fact no letter of contract or award letter was given.aslo the company was not registered with register of companies.
- The Board of Director were involved in flawed procurement process they participated in the process
- The Corporation has so far received claims amounting to KSh 701,031,000 from various suppliers for works which had not been paid due to lack of documentation.

<u>Management Response</u>

364. The corporation contested the payment of WTO related projects due to failure to adhere to the Public Procurement and Disposal Act 2005 and Regulations 2006 as required under the law. However, the suppliers filed various cases in court which were heard by arbitral tribunals and judgement passed in favour of suppliers.

365. The Corporation further contested the arbitrator's award and filed several applications seeking to set aside an arbitral award but it was unsuccessful. The suppliers further moved to attach the Corporation's assets to recover the decretal sums as awarded by courts and arbitral tribunals.

366. Further, the Corporation sought assistance from the Attorney General by seeking opinions on whether to settle the claims and in some instances the Attorney General advised the Corporation to pay to avoid incurring costs and interests in the suit.

367. Management further moved to engage the services of the Office of the Auditor General with a view to undertaking a special audit in respect of WTO related projects and other

related pending bills. The report was finally prepared by the Office of the Auditor General. The Auditor General was of the considered opinion that any issue pending in court was not within their mandate and left it to court for determination. Arising from their decision, management waited for court decision and the opinion of the Attorney General and settled the matters in line with the directives provided by the two judicial bodies.

368. The Corporation currently has strengthened its procurement processes by ensuring that the procurement of goods and services are undertaken in strict adherence to law and only contracts are prepared based on a proven legal procurement process**.**

Committee Observations

(i) The management failed to provide answers to all the seven issues raised in the audit report and as such this matter remains unresolved.

(ii) The Office of the Auditor General conducted a Special Audit on the matter dated 19th September 2018 with a recommendation that KICC liaises with Treasury to provide funding for settling genuine claims of KSh 386,931,288 out of the many claims totalling to more than KSh. 1.4 billion; KCC Management should adhere to the Public Procurement and Financial Management laws and the internal audit functions be strengthened in terms of capacity to be able to offer oversight on control process, compliance with systems and laws. The OAG outlined that the following officers are culpable in flouting of public procurement and public financial management laws be accountable subject to the law (Mr. Fred Simiyu – former MD; Mr. Maurice Anyango- Ag. Head of Procurement; Mr. Joel Terer – former Ag. MD).

(iii)The Special Audit Report brings out much more issues than the ones indicated in the FY 2015/16 audit under consideration of the Committee. The OAG requested for time to go and verify whether that was the position.

(iv)It was curious that the Special Audit Report done on the WTO matter was never tabled in Parliament.

Committee Recommendation

369. **The Committee recommends that queries relating to WTO be handled under the Special Audit Report on WTO that was tabled on 23rd October 2018.**

Over-Expenditure on Board Expenses 2015/16

370. A review of the statement of comparison of the budget and actual amounts showed that the Corporation spent KSh. 22,200,000 on board expenses against a budgetary provision of KSh. 14,813,000 resulting to an over-expenditure of KSh. 7,387,000 or 49.9% above the budgeted amount. There was no evidence that the over expenditure was approved contrary to the provisions of Section 44 of the Public Finance Management Act 2012.

Management Response

371. Management has put in place stringent measures to ensure Board expenses for any financial Year do not exceed the stipulated budget by checking on its activities and planning well in advance through its Annual Board calendar and strict adherence to the calendar. The amount provided in the Corporation's Board budget Expenses is provided in strict compliance to the relevant circular as provided by Government from Time to time. The Corporation has also ensured that, there is clear separation of Management's roles and that of the Board therefore safeguarding against undertaking activities not provided in the Corporation's Board Calendar/ Almanac.

Committee Observations

372. **The KICC management failed to respond to the specific query raised i.e failure to get approval to overspend from the mother ministry. It was further clarified by the CEO that the sittings in issue relate to the WTO matter that was also queried.**

Committee Recommendations

The Committee recommends that :

(i) **the CEO should submit payment schedules and minutes for the overpayments to the Office of the Auditor General for audit verification during the 2022/2023 audit cycle.; and**

(ii) **this paragraph will be handled in the Special Audit Report on WTO.**

Motor Vehicles Not Registered in the name of the Corporation (FYs 2016/17 to 2018/2020)

373. During the year under review the Corporation bought three vehicles for KSh. 20,875,000. However, a scrutiny of the logbooks showed that the three vehicles were registered in name of Kenyatta International Convention Centre Management Limited and not in name of the Corporation. Although it was explained that the problem arose as a result of Personal Identification Number (PIN) mix up at the Kenya Revenue Authority, the issue has not been resolved with a view of having the logbooks issued the name of Kenyatta International Convention Centre.

Management Response

374. The Motor Vehicles were registered erroneously under the name of the Kenyatta International Conference Centre Management Limited which is the name of the previous entity. The National Transport and Safety Authority (NTSA) used the entities Kenya Revenue Authority Personal Identification Number (PIN) mistakenly. The anomaly has since been addressed and the registration of the three motor vehicles has since been changed to Kenyatta International Convention Centre.

Committee Observations and Recommendations

375. **The matter was adequately addressed and resolved.**

Lack of Asset Register FY 2016/17

376. The Corporation did not maintain assets register in place hence control over the assets could not be adequately achieved. In the foregoing, it has not been possible to confirm that property, plant and equipment balance of KSh. 3,999,900,000 as at 30 June 2017 is fairly stated.

Management Response

377. The Corporation undertook an asset valuation and tagging exercise in 2017/2018, the exercise was complete and the market value of the plant property and equipment incorporated in the Corporations Financial Statements for the Period ended 30th June 2019

Committee Observations

378. **The Committee observed that the Management failed to appreciate that the query required response on why KICC had not registered its assets. It was later admitted that this was lapse in the previous KICC management which has now been rectified. However, the alleged Asset Register has not been verified by the OAG. Further, the National Museums has laid a claim of the KICC land. This matter is in Court.**

Committee Recommendations

The Committee recommends that:

(i) **The KICC should always register all her assets; and**

(ii) **The KICC land should be registered under the KICC and not the National Museums**

Failure to Honour Tenancy Agreement FY 2016/17 to 2018/2019

379. Availed information indicated that the Corporation's 18th floor was occupied by the Private Secretary to the third President for the period between 1 July 2013 to 1 July 2016 accruing a total debt of KSh. 36,096,972 though no lease agreement was availed for audit review. The likelihood that the debts will be recovered remain doubtful.

Management Response

380. The office space was requested by the presidency through the office of the Comptroller of State House. Management followed closely with a view to ensuring the office of the Comptroller of State House executed the Lease agreement as it was the practice as required however the same was not executed after several persistent requests. With a view to ensuring that the Corporation did not continue lose revenue, Management then requested the occupants to vacate the office and the same was leased to another tenant and continued to pursue the recovery of rent arrears.

Committee Observations

The Committee observed that:

(i) **Correspondences from the Government had never acknowledged that it gave the retired President the Office Space 18th Floor at the KICC.**

(ii) This debt of KSh 36 million was part of the total debtors captured in the books for which management was pursuing recovery.

Committee Recommendations

The Committee recommends that the debt be considered as a bad debt and written off if it cannot be recovered.

Grants from the Ministry FY 2017/2018

381. Further, review of the documents and correspondences between the Ministry and the Corporation revealed the following:

- In a letter Ref. MOT/1/97 dated 24th February, 2016 from the Principal Secretary, Ministry of Tourism and addressed to Ag. Managing Director, the Ministry requested transfer of KSh. 480,000,000 meant for the World Trade Organization Conference from KICC to the Ministry. It is not clear why the Ministry had to request the transfer of the same money they had transferred to the Corporation for the furtherance of the conference activities.
- The Corporations management failed to demonstrate whether the said amount was transferred to the Ministry or not
- They did not provide an account of all the monies received for the conference by providing the budget for the WTO, actual amount received, expenditure to date and bank balance either through deposit account or by any other means appropriate to the Corporation.

382. In view of the above, it was not possible to confirm the receipt of KSh.480,000,000 and expenditure for the same amount for the year 2015/2016.

Management Response

383. The Corporation did not remit any money to the Ministry of Tourism as requested in a letter Ref. MOT/1/97 dated 24th February, 2016 due to commitments already entered into. The matter was discussed in the 6th Special Board meeting held on 24th February 2016 which resolved not to return the money but instead justify retention of the funds to the mother

ministry; request public works to undertake financial evaluation of the works and projects done on 10th ministerial WTO conference

Committee Observations

384. The Board of KICC refused to return the monies to the mother ministry advanced to the Convention for use on WTO payments even after being directed by the PS to do so. The letter from the PS dated 16th February 2016 asking for return of the Ksh 480 million payment was presented to the Committee for review.

Under Revenue Collection FY 2017/2018

385. During the year under review, KICC managed to collect local revenue amounting to only KSh.620,872,000 compared to the budgeted figure of KSh.1,334,276,000 resulting to shortfall of KSh.713,404,000 (53.46%) of the budgeted amounts. Further there was a shortfall of revenue collected in the year under review (KSh.620,872,000) in comparison to last year's 2016/17 collection of KSh.1,307,872,000. The huge shortfall of the revenue was not explained

Management Response

386. The shortfall in revenue was because of the effects of election activities which led to cancellation of major events that were to happen during the FY 2017/2018.

Observations and recommendations

387. **The Committee observed that the under collection was caused by electioneering period economic shocks. The response was satisfactory.**

Unsupported Prior Year Adjustment FY 2018/19

388. The statement of changes in equity reflects a debit balance of KSh.354,779,836 recorded as a prior year adjustment whose details were not disclosed. In the absence of the proper details and the related supporting documentation, the authenticity of KSh.354,779,836 could not be confirmed.

Management Response

389. The accounts were amended accordingly and the details supporting the adjustments were availed during the audit of the Corporation's Financial Statements for 2019/2020**.**

Committee Observations

390. **The committee observed that documents were not provided for audit within the required timelines. Even in the submitted documents to the Committee, there was no documents relating to the Changes in Equity or net assets and therefore the matter remains unresolved until the relevant documents have been verified.**

Committee Recommendation

391. **The Committee recommends that the management of the KICC should present the statement of changes of Equity for audit verification during the 2022/2023 audit cycle.**

Management of Assets FY 2018/2019

392. The statement of financial position reflects a balance of KSh.4,044,860,041 under property, plant and equipment as at 30th June 2019. Valuation of assets was conducted in the year under review. However, the valuation figures as detailed in the valuation report/assets register have not been incorporated in the financial statements. Further, the amounts reflected in the financial statements for four (4) categories of assets differ with the amounts in the valuation report by KSh.1,280,037,322 as detailed below.

	Item	**Figure as per valuation report (KSh)**	**Figure as per financial statements (KSh)**	**Variance (KSh)**
1.	Freehold land	2,296,000,000	1,000,000, 000	1,296,000,000
2.	Buildings	1,664,800,000	1,662,052,000	2,748,000
3.	Furniture	21,464,270	81,260,000	(59,795,730)
4.	Office	55,250,052	14,165,000	41,085,052

	Equipment			
	Total	**4,037,514,332**	**2,757,477,000**	**1,280,037,322**

393. In addition, the valuer who had been paid a total of KSh.7.6 million did not give a detailed report on how the valuation was undertaken and why the valuation particularly the freehold land and buildings seem to be undervalued compared to the current market values.

Management Response

394. The correct value of the assets as contained in the valuation report has since been incorporated in the Corporation's financial statements**.**

Committee Observations

395. **The Committee observed that the valuation report altered the total value of the KICC properties since KICC does not have ownership documents of its properties such as garden square whose claim to the said land is in court.**

Committee recommendations

396. **The Committee recommends that the KICC management should pursue expeditious conclusion of the pending cases on land; ensure all ownership documents have been obtained; all properties valued and reflected in the KICC's accounts.**

Tax Payable FY 2018/19

397. As disclosed in Note 17 to the financial statements, the statement of Financial Position reflects the balance of KSh.450,584,782 under non-current liabilities tax payable. The balance includes a tax brought forward of KSh.22,992,595 reconciled tax by the Kenya Revenue Authority demand letter of KSh.413,534,596 and tax due in 2018/2019 of KSh.14,057,591. However, the amounts were not broken down and tax return documents were not available for audit review.

398. Failure to pay tax when due could attract penalties and interest. There is also a likelihood of the Corporation's assets being attached.

Management Response

399. The Corporation had entered into an agreement with the Kenya Revenue Authority after undertaking a reconciliation of taxes exercise and agreed on a payment plan that was being implemented. The corporation was up to date in the payment settlement of its current taxes**.**

Committee Observations and Recommendation

400. **The response offered was satisfactory and therefore the matter resolved. The KICC had reduced the tax liability from KSh 436 million to Ksh 280 million. Interest would be waived when the KICC cleared the principle amount of KSh 436 million.**

Failure to implement IFMIS in procurement FY 2018/19

401. The Corporation had failed to implement IFMIS System and or to link its Enterprise Resource Planning (ERP) with the IFMIS System and was therefore not conforming to the Presidential directive of August, 2014 and a repeated call in 2015 requiring that all State Corporations employ full use of e-procurement.

402. This was in addition to the National Treasury Circular No.19/15 dated 18th August 2015, Ref.DGIPE/A/1/10 category 4-Other projects which stated that "State Corporations are required to ensure that capital projects are captured in the Plan-to-Budget in IFMIS and e-ProMis as appropriate".

Management Response

403. The Corporation had an ERP System and adhered to the PPRA directives on uploading all the tenders on the PPIP (Public Procurement Information Portal) System. The management asked treasury on how to go about it but was advised that this will be considered in the next phase.

Committee Observations and recommendations

404. **The management was implementing e-procurement and integrated it on ERP using Oracle modules.**

Despite that the ERP was adequate in addressing transparency needs of procurement akin to IFMIS, management had commenced engagements with the National Treasury on implementation of IFMIS. This process was ongoing to address the matter once and for all.

Committee Observations and Recommendations

405. **The Committee recommends that the management of KICC expedites and concludes implementation of IFMIS within the 2022/2023 financial year.**

Flawed Procurement Process- World Trade Organization (WTO) Conference FY 2018/19 – on WTO and hence committee holds it in abeyance

406. As previously reported, during the 10th WTO Ministerial conference held between 13th-19th December, 2015 at the Kenyatta International Convention Centre, the Corporation made tender awards for goods and services and works to various firms. A review of the procurement processes however revealed that it was executed in total disregard of the then Public Procurement and Disposal Act,2005 and Public Procurement and Disposal Regulations, 2006 as enumerated hereunder:

- Key procurement records including minutes of tender committee meetings that deliberated on some of the procurements, contract documents and local purchase orders/local service orders were not provided for audit verification. No supervision reports and completion certificates were provided for the completed works which were carried out to ascertain whether the works were carried out as per the specifications.
- The Tender Committee was not procedurally constituted in compliance with the Second Schedule of the then Public Procurement and Disposal Regulations, 2006 and in most cases was not involved in the procurement process for projects which were directly procured. The Corporation made several procurements for goods and services worth KSh. 70,823,765 without going through competitive bidding as required by the public procurement laws and regulations. Further, there was no evidence of any report submitted to Public Procurement Oversight Authority for direct procurements contrary to section 62(3) of Public Procurement and Disposal Regulations, 2006 which stipulates that any direct procurement of value exceeding KSh. 500,000 must be reported to the Authority within 14 days after notification of award.

- Seventeen (17) projects were implemented during the period. However, only five (5) projects had invitation for bids to participate in tenders through restricted tendering method. Out of the five (5) projects, only two (2) were considered by the Tender Committee. Available information indicated that the awards for fifteen (15) tenders was done singly by the then Chief Executive Officer through single sourcing while making references to non-existent bids for tenders by fictitious companies in total disregard of the Tender Committee. The awards to the fifteen (15) different companies were done on diverse dates between 13 July, 2015 and 30, September 2015 for a total sum of KSh. 1,432,333,345.

- Available information further revealed that six (6) of the above tenders were cancelled due to delay in release of funds. In some instances, award letters were terminated but the signed contracts were not terminated hence exposing the Corporation to litigations and resultant costs. Only five of the fifteen companies, had signed contracts, which amounted to KSh. 894,976,341.

- Further examination of records revealed that a local company, had signed a contract worth KSh. 64,976,341 even though it had not been issued with an award letter for a tender. Another company undertook some partial works and submitted a claim of KSh. 9,946,420 despite the fact that there was no letter of award of tender, no signed contract and the company was not registered with the Registrar of Companies.

- The Board of Directors was also directly involved in the flawed procurement process whereby they participated in the revision of cost of the design, supply and installation of computerized conference management system tender. Although the Board had constituted an ad-hoc committee to oversee the implementation of the WTO projects, no report was prepared for consideration by the full board despite the many meetings held. Thus, the committee may not have carried out its oversight role as expected given the haphazard way the projects were initiated, implemented or not implemented at all.

- The Corporation has so far received claims amounting to KSh. 701,031,000 from various suppliers for the works which have not been paid due to the lack of or inadequate documentation.

- In addition, supporting documents availed for audit during the year under review revealed that vendors amounting to KSh. 55,784,840 relating to WTO projects were not provided for in the financial statements for 2017/2018 yet the Centre is yet to resolve issues relating to WTO expenditure.
- Further review of the letter from the Office of the Attorney General and Department of Justice dated 8 March, 2018, Reference AG/CIV/MLG/20/18 addressed to the Chief Executive Officer-KICC in relation to an arbitration between Dimensions Data Solutions, one of the firms contracted to provide services during the WTO conference and Kenyatta International Convention Centre, found the matter to be lacking in merit and ignored the issue raised by the Chief Executive Officer, KICC touching on the illegality, validity and irregularity in the award and possibility of a collusion during procurement award process.
- It is important to note that the Board did approve for restricted tendering which was not adhered to and instead the Management chose single sourcing which was not approved thus rendering the whole process a violation of the provision Section 73 of the then Public Procurement and Disposal Act, 2005 on restrictive tendering.
- The arbitrator did not confirm whether such firm(s) were in the list of prequalified suppliers.
- They did not also confirm whether the process was legal and enforceable.
- The interests of the taxpayers were not taken into consideration.
- The arbitrator stated "the procurement process was in the purview of the procuring entity (KICC) and it was up to the Respondent (Dimension Data) to adhere to the provisions of the Act and not the claimant's responsibility to investigate whether the process was in line with the then Public Procurement and Disposal Act, 2005. This sets a bad president which may not be sustainable as the law is binding to both the contractor /vendor and the procurement entity.

407. From the foregoing, the Corporation was clearly in breach of the Public Procurement and Disposal Act 2005 and Regulations, 2006 and may not have received value for money from WTO projects through the flawed procurement process.

Management Response

408. The corporation contested the payment of WTO related projects due to failure to adhere to the Public Procurement and Disposal Act 2005 and Regulations 2006 as required under the law. However, the suppliers filed various cases in court which were heard by arbitral tribunals and judgement passed in favour of suppliers. The corporation further contested the arbitrator's award and filed several applications seeking to set aside an arbitral award, but it was unsuccessful.

409. The suppliers further moved to attach the Corporation's assets to recover the decretal sums as awarded by courts and arbitral tribunals. Further, the Corporation sought assistance from the Attorney General by seeking opinions on whether to settle the claims and in some instances the Attorney General advised to pay to avoid incurring costs and interests in the suit.

410. Management further moved to engage the services of the Office of the Auditor General with a view to undertaking a special audit in respect of WTO related projects and other related pending bills. The report was finally prepared by OAG. The Auditor General was of the considered opinion that any issue pending in court was not within their mandate and left it to court for determination. Arising from their decision, management waited for court decision and the opinion of the Attorney General and settled the matters in line with the directives provided by the two judicial bodies.

Committee Observations

411. **The Office of the Audit General did a Special Audit Report and presented it to Parliament. It will therefore be prudent to consider this query alongside the said Special Audit Report on WTO.**

Retreat to Mauritius FY 2018/2019

412. It was observed that some Board members and staff of the Corporation went to Mauritius to attend the World Travel Award. However, the following anomalies were noted: -

a) Through payment voucher No.721 dated 2 May 2019, the Corporation made irregular payment of USD14,816 equivalent of KSh.1,506,639 to an accountant and it was noted that the said person is not a Board Member nor was he among the staff nominated to represent the Corporation in the award ceremony.

b) It was also noted that the Board members were paid their per diem in cash instead of making payments through their respective bank accounts and no evidence was availed to show that indeed the members acknowledged the receipts of the money

c) It was further noted that all the per diem requisition forms supporting the payment voucher were not signed and dated by the head of the relevant department but were only signed by the Financial Controller and Chief Executive Officer and no explanation was provided as to why the user department did not approve the per diem.

d) No invitation from the host supporting the payment voucher was provided for audit review.

e) Further, it was noted that twelve (12) members of staff and eight (8) Board members were paid per diem allowances totaling KSh. 6,805,650 to represent the Corporation to attend the award ceremony in Mauritius. It is not clear why the Corporation incurred such high expenses in sending such a huge delegation of staff members in a single award ceremony when less members could have represented the Corporation adequately and reduce such expenses.

413. The management therefore breached Section 68(1) of Public Finance Management Act, 2012 that requires an Accounting Officer for a national government entity to ensure that resources are used in a lawful and authorized manner which is also effective, efficient, economical and transparent.

Management Response

414. The officer was the Corporation's Senior accountant and withdrew the money to pay the Board Members and the staff since they don't have dollar accounts. After receipt of the money all signed against their names in the Payment voucher.

415. The board members signed against the receipt of money.

416. There was invitation letter from the host. In addition, the management had also obtained all the relevant travel approvals from the Parent Ministry as required.

417. The Corporation won two awards i.e. Africa's leading Meetings and Conference Centre 2019 and Africa's leading Business Travel destination 2019 and was accorded the opportunity to host the 2020 World Travel Awards event for the first time in its history. This was the first time the country and the institution won such an international acclaim in its history and reclaimed the following year. It is important to note that this is one of the highest awards an institution/entity can be awarded in hospitality and MICE (Meetings, Incentive Travel, Conventions and exhibitions) industry.

418. The hosting the event was expected to have a positive effect to the country's economy as well the tourism sector through financial gains and putting the country in the world map as a leading Business Events and travel destination. Consequently, the undertaking of such an event would have required proper preparation inform of benchmarking activities. Due to this the management took the Board Members and management to the event with a view to appreciating the modalities of understanding the same.

Committee Observations

419. Surrender documents of the people that travelled were provided to the Committee and verified and therefore the matter resolved. Invitation letters to the trip were provided and verified. The trip was approved by the mother ministry having confirmed availability of budget and that there was value for money for the trip considering the high number of events there together with marketing Kenya to host the event come 2022.

Committee Recommendations

420. **The Committee recommends that going forward, the KICC should transfer monies to individual beneficiary accounts for ease of accountability.**

2.5 KENYA NATIONAL HIGHWAYS AUTHORITY (FY 2017/18 TO 2019/2020)

EXAMINATION OF THE REPORTS OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF KENYA NATIONAL HIGHWAYS AUTHORITY FOR THE FINANCIAL YEARS 2017/18 TO 2019/2020

Mr. David Muchilwa, the Ag. Director General of Kenya National Highways Authority accompanied by Eng. Nicholas Musuni (KENHA Board Member) Mr. James Bowen (Director, Corporate Services), Eng. Samuel Omer (Director, Highway Planning and Design), Ms. Norah Odingo-Kajwang (Corporation Secretary) Mr. Eliud Munene (Deputy Director, Survey), Mr. Chanje Kera (Deputy Director, Finance), Mr. Samuel Kumbe (Deputy Director, Communication) and Eng. Stanley Mwawasi (Deputy Director, Public Private Partnership) appeared before the Committee to adduce evidence on the audited accounts of the Board for the financial year 2017/18 to financial year 2018/19.

PROPERTY, PLANT AND EQUIPMENT FY 2017/18 TO FY 2019/2020

<u>Undetermined Value of Rental Property</u>

421. The statement of financial position reflected Property, Plant and Equipment balance totalling KSh. 372,411, 102,018 (2017-KSh, 315,677,638,018) as disclosed under Note 27 to the financial statements. Available information indicated that this balance excluded value of land and houses occupied by staff in South Rift region. Their value had not been determined despite the Authority reporting an annual income of KSh. 1,211,500 during the year.

422. The ownership documents were not made available for audit. Consequently, the accuracy and completeness of Property, Plant and Equipment balance of KSh.372, 411, 102,018 as at 30 June 2018 could not be confirmed.

<u>Management Response</u>

423. The value of land and houses occupied by some KeNHA staff at the South Rift Region was not included in the Property, Plant and Equipment as at 30 June 2018. The houses where a few of KeNHA staff reside and rent collected amounting to KSh. 1,211,500 during the year 2017/2018 were built as Resident Engineer's premises under the Lanet-Nakuru-Njoro

Turnoff Road construction project prior to the establishment of the Authority. These values alongside the development expenditures met by the Government over the years up to 2009/2010 in all national trunk roads were not made available to the Authority.

424. Management engaged the authority Registered valuer who undertook a valuation of the property in October 2019 and signed a value of KSh. 148,360,000 and KSh. 41,787,057 to the land and houses respectively. This was after the Auditor General had concluded the report for 2017/18, these values were incorporated into the financial statement for year 2018/19.

425. The Authority had been in possession of the subject land and occupying the offices and houses at the South Rift region since 2009 upon its formation through the Kenya Roads Act, 2017 as the government agency in charge of the construction, rehabilitation, management and maintenance of National Highways network. The Authority was pursuing vesting of the land parcel to back up the occupancy with legal documents for the land parcel ownership. A letter Ref. KeNHA/0.4D/Camps/Vol.3/15 dated march 2021 and another one done in November 2022 had been submitted to the Parent Ministry to facilitate the vesting.

426. If this faled, the Authority would in future remit the rent collected to the State Department of Housing and Urban Development and remove the land and buildings values in the books of accounts.

<u>Committee Observation and Recommendation</u>

(i) **The Ministry of Housing had taken inordinately long time to respond to the requests from the KeNHA on vesting thus delaying the process.**

<u>Committee Recommendation</u>

The Committee recommends that the Ministry of Housing should issue the KeNHA with the vesting orders to enable it to process the title to the said land within the 2022/2023 financial year.

<u>EMPHASIS OF MATTER FY 2017/18 & FY 2018/19</u>

<u>Negative Working Capital</u>

427. The statement of financial position reflects current assets and current liabilities balances of KSh. 40,845,296,104; (2017-KSh. 40,021,627,608) and KSh. 45,507,442,377; (2017-KSh. 26,625,629,243) respectively resulting to negative working capital of KSh. 4,662,146,273. Management had not satisfactory explained measures being undertaken to reverse this trend which could affect the authority ability to meet its obligations as and when they fall due.

Management Response

428. Management concurred with the audit observation. This unfavourable situation was attributed to pending bills due to contractors, consultant's and Project affected persons that accrued due to insufficient Budget and Budget reduction during the project implementation period.

429. The Government had developed the following model to alleviate this situation:

- Public Private Partnership
- Proceeds from Annuity Fund
- Also, amendment of the law to allow Kenya Roads Board to raise a ten Road Development Bond

Committee Observations

430. **The contract signed in December 2016 that is 3 years to give out letters of support is a treasury instrument.**

431. **KeNHA remedy was to do a supplementary budget that comes with ceiling that do not accommodate given guidance by the national treasury**

Committee Recommendation

432. **The Committee recommends that KeNHA should devise other new ideas of financing projects and propose them to the National Assembly for approval.**

EMPHASIS OF MATTER FY 2018/19 and 2019/2020

High Interest on Delayed Contractors Payments

433. Examination of contract payments and outstanding amount over time indicated that the authority had, as at 30 June 2019, incurred cumulative interest expense totalling KSh. 6,405,158,682 due to delay in settling payments owed to the contractors on several projects. This cost on public funds could have been avoided had the payments been made on due time. The management had attributed the cost to insufficient and delayed budgetary funding but had not indicated the measures taken to rationalize its project portfolio to align its implementation with the annual funding calendar

Management Response

434. The interest on delayed payments was attributable to the (a) Insufficient Development Budgetary allocation in prior years (b) Delayed releases of Exchequer by the National Treasury (c) Inadequate Development Budgetary provision in year 2018/19.

435. To ensure that certificates are paid in time to curtail the accrual of interest, the following strategies were being pursued:

- Amendment of the law to give KRB power to raise additional resources
- Involvement of Private sector in Project Financing
- Financing through Road Annuity funding model
- These three models will eradicate pending bills

Committee Observations and Recommendations

(i) **Delayed payment of claims continues to cost taxpayers huge amounts of money that could have been used to implement other development projects.**

Committee Recommendations

The Committee recommends that:

(i) **KENHA Management should procure for services based on the approved budget to avoid over commitment.**

(ii) **The National Treasury should ensure timely release of funds meant for project implementation.**

Eng. Kungu Ndungu, Director General of Kenya National Highways Authority accompanied by JamMr. James Bowen (Director, Corporate Services), Eng. Samuel Omer (Director, Highway Planning and Design), Ms. Norah Odingo-Kajwang (Corporation Secretary) Mr. Eliud Munene (Deputy Director, Survey), Mr. Chanje Kera (Deputy Director, Finance), Mr. Samuel Kumbe (Deputy Director, Communication) and Eng. Stanley Mwawasi (Deputy Director, Public Private Partnership) appeared before the Committee to adduce evidence on the audited accounts of the Board for the financial year 2017/18 to financial year 2018/19.

Contingent liabilities (FY 2019/2020)

436. Note 45 to the financial statements where the Authority has disclosed court cases and claims amounting to KSh.8,755,996,213 (2019 - KSh.19,795,699,268). Management is of the opinion that the outcome of these litigations and claims were yet to be determine. The Authority has therefore not factored in possible future obligations or liability that would arise from the determination of pending court cases and claims during the year under review.

Management Response

437. The amount and timing relating to the cases cannot be reasonably ascertained hence no provisions would be factored beyond the contingent liability note as contained in the disclosure under contingent liabilities. The outcome is uncertain and will occur in the future where upon their occurrence adequate provisions/ accruals will be made.

Committee Observation

438. **The matter of contingent liabilities will continue to exist as they are emergence in nature.**

Committee Recommendation

439. **The Committee recommends that KeNHA should always disclose contingent liabilities in its books.**

Development Payables Pending Bills FY 2019/2020

440. As disclosed in note 38 to the financial statements, the Statement of Financial Position reflects a balance of KSh.36,849,491,761 on respect of trade and other payables from exchange transactions which constituted an amount of KSh.28,704,375,998 being development payables - pending bills as at 30 June 2020 (2019 - KSh.51,219,097,140). The Authority had explained that accumulation of the pending bills was occasioned by failure of the National Treasury to release exchequer for payments of the bills.

Management Response

441. The Authority had a development payables of KSh. 28,704,375,998 which was a significant reduction from the previous year`s amount of KSh. 51,219,097,140. This was attributed to the pending bills due to contractors, consultant and Projects Affected Persons that accrued due to (a) Insufficient budgetary allocation against Authority`s requirements on development projects and (b) Budget reductions over the development project implementation period.

442. To alleviate this situation, the National Treasury, Parent Ministry and the Authority had developed new models of project financing using proceeds from the Annuity Fund and Public Private Partnerships (PPPs) to execute new projects which will abate the increase in pending bills as the Authority would not be expected to disburse funds to the contractors and consultants, but funding would be from the fund set aside by the Parent Ministry and by investors for the PPPs.

443. In addition to the above, the Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works successfully sought the change of Law through the Kenya Roads Board Act, Revised 2019. This change would allow the Kenya Roads Board to raise a ten-year Road Development Bond from the open market to finance pending development bills and incoming commitments from on-going road projects to their successful completion. These measures would progressively reduce the Authority's development outstanding bills.

Committee Observations

444. **The liabilities were due to inadequate budgetary provisions and late exchequer releases. It is however trite that they should be disclosed in the books of account for KeNHA. It was further noted with concern annuity fund has not been operationalized and money in that kitty was returned to the National Treasury when there was pending bills all over.**

Committee Recommendation

445. **The Committee recommends that the KeNHA should only implement projects after assurances from the National Treasury that there are adequate funds to implement the project.**

Delayed Construction of Marigat Bridge and Approach Roads along Marigat - Marich Pass (B17) Road FY 2019/2020

446. During the year under review, the Authority awarded a contract to a firm for the construction of a new bridge at a contract sum of KSh.481,410,875. The intervention included construction of a new bridge of two spans of approximately 55 meters each of composite steel/Concrete and construction of 370m approach roads to the new bridge. The contract was expected to be completed by 18th July 2020. However, the Contractor sought and was allowed an extension of one hundred and seventy-five (175) days citing delays sourcing and approval of material sources, delays in test pilling and resulting changes in test loads; and COVID-19 National Curfew and cessation of movements coupled by bad weather conditions.

447. The extension resulted to cost to the consultants at KSh.24,064,360 with KSh.6,425,000 being spent on the contractor's contingency and the remainder balance KSh.19,661,080 deemed as variation and representing 23.98% of the contract price of KSh 81,983,000. The above are indicatives of inefficiencies in the contract management and administration.

Management Observations

448. Management agrees that the project was behind schedule as at 30/06/2020, as it had a completion date of 18/07/2020. This was due to reasons that were unforeseen by the Contractor, M/s Lafey Construction Company Ltd, such as *Delays occasioned from Geotechnical Investigations*, *Delays in sourcing and approval of material sources* and

Delays from Test-Piling and Resulting Changes in Test Loads. The *COVID – 19 Pandemic* also affected project progress between March and June of 2020 when there was a National Curfew and Cessation of movement. Further delays were occasioned from *Adverse Weather Conditions* and *Insecurity in the Project Area*. The Contractor sought for Extension of time resulting from the reasons stated above and the Employer awarded an extension of time for 175 days.

449. Pursuant to Clause 37.5 that deals with Independent Inspection of the Works, there was No delay occasioned by the Employer. The Engineer delegated powers to the Consultant on 3rd July 2018 before the Contractor's commencement date of 25th July 2018. The Consultant (Engineer's Representative) did not delay in any inspection or issuance of instructions. The Contractor sought for extension of time due to delay in issuance of re-design and tests, however, the Employer did not award any days regarding this.

450. The Covid-19 Pandemic Regulations may have occasioned delays in travel by certain experts such as Pile Integrity Testing experts and specialized mechanics who are required to fix construction machinery that may have broken down, but the Pandemic was beyond the Employer's control.

451. Management agreed that the Works Contractors were awarded an Extension of Time by the Employer for 8.2 months. The Supervision Consultancy contract was also awarded 8.2 months Extension of Time to Supervise the Works. The cost of the additional Supervision period was Ksh 19,431,400.00.

452. Management agrees that delays in mobilization by the Contractor caused by replacement of Key Staff could be attributed to the remote project location and un-conducive climate of the project area leading to a turnover of the Contractor's staff. Pursuant to Clause 2.2 of the Conditions of Contract, the Engineer duly delegated powers to the Consultant to review and approve any key replacement staff of the Contractor except the Site Agent. This assessment or replacement staff was done timely to avoid any project related delays caused by the Engineer.

Committee Observations

453. **It was not clear why the KeNHA should bear the cost given that it was not responsible for the delay. Secondly, justifying weather and Insecurity of the area could not be sustained as the area was always dry and secure. Thirdly, contractors were classified as essential service providers during the Covid-19 pandemic and therefore could not justify delay. Fourthly, geotechnical investigations and mobilising labour were caused by the contractor and not KeNHA.**

454. **The totality of these leaves the Committee with the conclusion that extension should not have been approved and if it was, the cost of supervision of works should have been born by the contractor.**

Committee Recommendations

The Committee recommends that the Ksh 19,431,400.00 paid for supervision of extension of works should be borne by the contractor. KeNHA should get this amount from the liquidated damages before issuance of a practical completion certificate.

2.6 KENYA URBAN ROADS AUTHORITY (FY 2014/2015 TO FY 2019/2020)

EXAMINATION OF THE REPORTS OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF KENYA URBAN ROADS AUTHORITY FOR THE FINANCIAL YEARS 2014/2015 TO 2019/2020

Eng. Silas Kinoti, the Director General of Kenya Urban Roads Authority, accompanied by Eng. Wilfred Oginga (Director, Urban Roads Development), Mr. Reuben Mayienda (Director, Corporate Services) and Eng. Mike Telieny (Ag. Director Road Asset, Corridor Management) appeared before the Committee to adduce evidence on the audited accounts of Authority for the financial year 2014/15 to financial year 2019/2020.

455. The Authority received unqualified audit opinion for the financial year 2014/15 to financial year 2018/2019.

456. The Authority further received unqualified audit opinion for the following donor funded projects:

A. **Nairobi Urban Transport Improvement Project** – Financial year 2014/15 to financial year 2017/18.

B. **Nairobi Outer-ring Road Improvement Project** - Financial year 2014/15 to financial year 2017/18.

C. **Nairobi Missing Link Road and Non-Motorized Transport** - Financial year 2014/15 to financial year 2017/18.

D. **Dualling of Nairobi-Dagoretti Corner Road C60/C61** – Financial year 2017/18.

UNQUALIFIED AUDIT OPINION (FY 2018/2019)

457. The authority was issued with unqualified opinion in the financial year 2018/2019.

PROJECTS BEHIND SCHEDULE (FY 2019/2020)

458. Review of sampled projects for physical verification in March, 2021 revealed that the following projects were behind schedule in completion as detailed out below: -

Rehabilitation of Old Malindi Road – KURA/DEV/LSUR/317/2016-2017

459. The contract was awarded at a contract sum of KSh. 796,371,134 commencing from 13 September, 2017 for twenty-four (24) months and was expected to be completed by 13 September, 2019 and which was later revised to 10 June, 2020. However, physical verification conducted in March, 2021, revealed that the project was about 73% complete with project completion time exceeded by 9 months. This was an indication that the project could result in delays and cost escalation due to extension of time.

<u>Management Response</u>

460. The project was behind schedule due to the challenges encountered during implementation eg. Delayed payments, Effects of Corona Virus, Rainfall. The Contractor indicted that if payment was done on time, he would complete the works within the extended time. However, if the funds were delayed, the Contractor would require another Extension of time to complete the pending works.

<u>Committee Observation</u>

461. **Though the project was substantially complete and currently under Defects Liability Period, the taxpayer lost on timely delivery of services due to the delay in completion.**

<u>Committee recommendations</u>

The Committee recommends that:

- **(i) The accounting officer for the Kenya Urban Roads Authority should always ensure that projects are implemented within the contractual timelines.**
- **(ii) The National Treasury should always ensure timely release of exchequer meant to implement projects**

<u>Garissa Township Roads Upgrade to Bitumen Standard and Performance Based Routine Maintenance</u>

462. The contract was awarded at a contract sum of KSh. 483,366,251 with a project duration of twenty-four (24) months and expected to be completed by 11 November, 2018. However, as at the time of project inspection in March, 2021, the project was about 32% complete with the completion period exceeded by 30 months. There was no evidence that the contract was extended. Further, it was at risk of cost overruns due to delays.

463. Consequently, the service delivery envisioned and the value for money for the delayed project could not be confirmed.

Management Response

464. The contractor had undertaken to provide a crash programme of works to compensate the time lost. The management was working to facilitate payment of pending certificates to the contractor to avoid further delays. Utility companies for power and water had been requested to relocate the services in advance on sections yet to be worked on to ensure uninterrupted work execution. The project completion period was extended to 11th October, 2021. The project was ongoing, and progress was estimated at 60%. The works were expected to be completed by September, 2022.

Committee Observations

465. **The Committee observed that:**

(i) This project had taken inordinately long to complete for reasons that the management failed to advance to the Committee.

(ii) Further, it was not clear whether extension had been sought and granted to complete the project in September 2022. Finally, it was not clear to the Committee whether there was cost escalation arising from the project.

Committee recommendations

466. **The Committee recommends that the accounting officer for the Kenya Urban Roads Authority should always ensure that projects are implemented within the contractual timelines.**

Upgrading of Maua Town Roads KURA/DEV/LVSUR/265/2016-2017

467. The contract was awarded at a contract sum of KSh. 1,021,885,93 with initial project duration of twenty-four (24) months which was later revised to 48 months with expected completion date of 19 May,2019. However, the contractor was unable to complete the project and the work was awarded to three assignees.

468. Two of the three assignees had not completed their components as at March, 2020. As at June, 2020 the project was 70% complete, twenty-two (22) months after the lapse of the completion date. Project inspection conducted in March, 2021 revealed that the contractor was not on site. This was an indication that the project had stalled and was behind schedule.

469. Consequently, service delivery to the public and value for money for the unimplemented project could not be confirmed.

Management Response

470. Management was committed to honouring payments owed to the assignees to enable them complete pending works by 30th June 2021 failure to which the relevant clause of FIDIC conditions of contract would be invoked to charge liquidated damages for the period the works remained incomplete and eventually terminate in the event of the assignee failing to deliver the assigned works.

471. Sihaam Limited had been on site. Subject to the timely release of funds by the National Treasury the works were expected to be completed by 30th June, 2021. The project was ongoing as at 30th March 2022 and progress was estimated at 86%. The works were expected to be completed by June, 2022.

Committee Observations

472. **The Committee observed that the project had taken inordinately long to complete for reasons that the management failed to advance to the Committee. Further, it was not clear whether extension had been sought and granted to complete the project in June 2022. Finally, it was not clear to the Committee whether there was cost escalation arising from the project.**

Committee recommendations

473. **The Committee recommends that:**

(i) **The accounting officer for the Kenya Urban Roads Authority should always ensure that projects are implemented within the contractual timelines.**

(ii) **The office of the Auditor General should audit and report on the cost and time of implementation of this project in the 2022/2023 audit cycle.**

Other Projects behind Schedule

474. Four (4) projects with total contract sums of KSh. 3,746,399,202 carried out at Thika and Nyahururu by-passes, Old Malindi road and Garissa Township roads were behind schedule for more than one- year an indication of uncertainty in their completion.

475. In the circumstances, value for money on the uncompleted projects could not be confirmed.

Management Response

476. The projects had not stalled but have various challenges as highlighted below:

No.	Project Name	Contract Sum	% Completion
1	Thika bypass	1,867,953,057	72.9%
2	Nyahururu bypass	562,127,004	68.2%
3	Old Malindi Road	796,371,134	72.0%
4	Garissa Township Roads	519,948,011	31.5%
	Total	**3,746,399,206**	

a) Thika bypass

477. Thika Bypass project was affected by delayed exchequer disbursements, relocation of services which the Kenya Urban Roads Authority was working with the service providers, re-alignment of the road at Delmonte that required uprooting of farm products which caused delays. However, authority was closely working with the Contractor to ensure that there are no further delays.

b) Nyahururu Bypass

478. Nyahururu Bypass project was affected by delayed exchequer disbursements, relocation of services and denial by the Nyahururu Golf club to cede the road reserve which resulted in a

court injunction lasting for approximately 1 year at the section. However, the Contractor was working to catch up with the lost time.

c) Old Malindi Road

479. The project was behind schedule due to the challenges encountered during implementation eg. Delayed payments, Effects of Corona Virus, Rainfall. The Contractor indicted that if payment was done on time he would complete the works within the extended time. However, if the funds were delayed the Contractor would require another Extension of time to complete the pending works.

d) Garissa Township Roads

480. The delay was caused by the lengthy vesting process from KeRRRA to KURA. The contractor is now on site and recording good progress. The management t is keenly monitoring the progress and if necessary, the extension of time will be processed in accordance with the contract terms.

481. The highlighted projects had made substantial progress (as at 31st March 2022) as indicated below:

No.	**Project Name**	**Contract Sum**	**% Completion**
1	Thika bypass	1,867,953,057	85.0%
2	Nyahururu bypass	562,127,004	94.0%
3	Old Malindi Road	796,371,134	96.0%
4	Garissa Township Roads	519,948,011	60.0%
	Total	**3,746,399,206**	

<u>Committee Observations</u>

The Committee observed that:

(i) **These projects had taken inordinately long to complete for reasons various reasons including delayed exchequer releases and change of scope. It was not clear to the Committee whether extension of time had been sought and granted to complete the projects.**

(ii) **Further, it was not clear why the management-initiated projects before acquisition of land from which the project was to be implemented. Finally, it was not clear to the Committee whether there was cost escalation arising from the project.**

Committee recommendations

The Committee recommends that the accounting officer for the Kenya Urban Roads Authority should always ensure that projects are implemented within the contractual timelines.

Lack of a Board Chairman (FY 2019/2020)

482. The Board operated without a Board Chairman during the year under review. This was contrary to the provisions of Section 11(1)(a) of the Kenya Roads Board Act, 2007, which states that *the Urban Roads Authority shall be managed by a Board which shall consist of the following members 'a non-executive Chairman who shall be appointed by the President from amongst the members appointed under paragraph (g)'*. The Authority was therefore in breach of the law.

Management Response

483. The appointing Authority had been made aware of the situation. The Board Chairman Position was substantively filled following the appointment of Mr. Henry Musemate Murwa on 6th October, 2021.The position however fell vacant following the untimely demise of Mr. Henry Musemate Murwa in November, 2021. Management had communicated to the appointing Authority on the need of filling the position.

Committee observation

484. **The appointing authority's failure to appoint the Chairman of the Board in time affected operations of the Board.**

Committee Recommendation

485. **The Committee recommends that the appointing authority should ensure that Boards of State Corporations are fully always constituted.**

2.7 KENYA ROADS BOARD (FY 2012/2013 TO FY 2019/2020)

EXAMINATION OF THE REPORTS OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF KENYA ROADS BOARD FOR THE FINANCIAL YEARS 2012/2013 TO 2019/2020

Mr. Rashid Mohamed, the Ag. Executive Director of the Kenya Roads, accompanied by Lucy Gathika (Genral Manager, Legal), and CPA Martin Agumbi (Manager, Finance) to adduce evidence on the audited accounts of Kenya Roads Board (Both operations and the Fund) for the financial years 2012/2013 through to 2017/18.

FINANCIAL YEARS (Operations) 2012/2013 through to 2017/2018

486. The Committee heard that the Kenya Roads Board was issued with a clean report in the financial statements for its operations between 2012/2013 and 2017/2018.

FINANCIAL YEARS (FUND) 2012/2013 through to 2017/2018

487. The Committee heard that the Kenya Roads Board was issued with a clean report in the financial statements for its FUND between 2012/2013 and 2017/2018.

FINANCIAL YEARS (Operations) 2018/2019 and 2019/2020

488. The Committee heard that the Kenya Roads Board was issued with a clean report in the financial statements for its operations for the Financial Year 2018/2019 and 2019/2020.

FINANCIAL YEARS (FUND) 2018/2019 and 2019/2020

489. The Committee heard that the Kenya Roads Board was issued with a clean report in the financial statements for its FUND between 2018/2019 and 2019/2020.

Committee Recommendation

490. **The Committee recommends that the Authority should always aspire to maintain clean reports.**

2.8 RIVATEX EAST AFRICA LTD (FY 2015/2016 TO FY 2017/2018)

EXAMINATION OF THE REPORTS OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF THE RIVATEX EAST AFRICA LTD. FOR THE FINANCIAL YEARS 2015/2016 TO 2017/2018

Prof. Thomas Kipkurgat, the Managing Director of the Rivatex East Africa Ltd. accompanied by Patrick Nyaga (General Manager, Corporate Services), Stanley Bett (Chief Accountant) and Silas Chemwaina (Administrator) appeared before the Committee to adduce evidence on the audited accounts of Rivatex East Africa ltd for the financial years 2015/2016 to 2017/18.

INACCURACIES IN FINANCIAL STATEMENTS FY 2015/16

491. The statement of cash flows for the year ended 30 June 2016 disclosed purchase of plant and equipment figure of KSh.461,559,841 while note 16 to the financial statements indicated a figure of KSh.538,834,819 for additions to property, plant and equipment resulting in a variance of KSh.77,274,978 which had not been explained or reconciled.

Management Response

492. The KSh. 461,559,841/- represents the actual outflow of cash that was disbursed to procure washing machine and Steam ager machine during the financial year. The full cost of the machines was KSh. 538,834,819/- as stated in the additions to property, plant and equipment and also captured as work in progress under plant and machinery since they were still under manufacture by the suppliers.

493. KSh. 77,274,978/- was the difference between the full cost and the cash paid out which had not been disbursed as at the date of the financial statements. The same was disbursed in the 2016/2017 financial year for Washing machine and Steam ager machine.

Committee Observation

494. **The matter was satisfactory responded to.**

Committee Recommendation

495. **The audit query is resolved.**

COMPANY LAND FY 2015/16

496. Included in the statement of financial position under Property, Plant and Equipment figure of KSh.1,060,431,032 was a net book value figure for land of KSh.43,562,531. The Company headquarters sat on land measuring 17.18 Ha. (Title No. Eldoret Municipality/Block 12/164). The land was leased from the Government of Kenya at annual rent of KSh. 36,000 for a term of 99 years from 1.1.1976.

497. The title was in the name of Rivatex East Africa Limited and was issued on 30 August 2007. The original title deed was not availed for audit verification. The cost of land reported in the financial statement of KSh.50,322,233 appeared understated given the locality of the land. In addition, the land was also under-utilized given that the company occupied only half of it contrary to Public Finance Management Act 2012 Section 72(1) which stated that the accounting officer for National Government entity achieves value for money in acquiring, using and disposal of those assets. Consequently, the accuracy and completeness of the Property, Plant and Equipment figure of KSh.1,060,431,032 as at 30 June 2016 could not be confirmed.

Management Response

498. The original title deed was availed for verification. The land without fixtures was earmarked for future expansion of the factory upon modernization and had already been utilized to construct the Spinning Department, a shed, the new tailoring unit, the new boilers & extension of the finished goods store.

Committee Observations

(i) Evidence of ownership of the land was provided and verified by the Office of the Auditor General

(ii) Further, a portion of the land had since been utilized for the expansion of the company through the modernization programme financed by the EXIM Bank of India.

(iii) It was Rivatex's policy to value its property after every five years.

(iv) Currently, Rivatex occupies 50% of the land as development is underway

Committee Recommendations

The Committee recommends that:

(i) The accounting officer for Rivatex East Africa Ltd should always provide documents for audit within the required timelines.

(ii) The Query was resolved.

TRADE & OTHER RECEIVABLES FY 2015/16 TO FY 2017/18

Prepayments

499. Included in the trade and other receivables and as disclosed in the financial statements was prepayments of KSh. 14,102,936/- relating to 2013/2014 and prior years. However, no documentary evidence was availed for audit verification to determine the nature of the goods or services paid for and why they had not been delivered three years since the prepayment was made. Consequently, the propriety of the prepayment of KSh. 14,102,936 as at 30th June 2016 could not be confirmed.

Management Response

500. The prepayment of KSh. 13,978,936 was for cotton while the balance of KSh. 124,000 was in relation of the supply of dark room film from Seragraphics which cannot be traced. The prepaid cotton was delivered & received in 2019 as per the goods received notes and delivery notes provided to the Office of the Auditor General for verification.

Committee Observations

501. **The Committee made the following observations:**

(i) The delivery of the cotton worth KSh.13,978,936 was made in 2019 though prepayments were made in 2013/2014.

(ii) There were no bank guarantees from the contracted cotton supplier.

(iii) Rivatex had instituted legal proceedings against the company following consultation with the Board of Directors.

(iv) Rivatex had since stopped using prepayment in its transactions.

Committee Recommendation

502. **The Committee recommends that Rivatex management should ensure deliveries are done before payments are made.**

Long Outstanding Trade & Other Receivables

503. Included in the trade and other receivables balance of KSh. 43,805,179/- were receivables amounting to KSh. 14,384,290/- which had been outstanding for a period of more than 90 days. The management had not provided evidence to show efforts being made to recover the long outstanding amount. Consequently, the accuracy and completeness of the trade and other receivable figure of KSh. 43,805,179 as at 30 June 2016 could not be confirmed.

Management Response

504. KSh. 14,384,290 related to Note 18(a) of which Rivatex had been following up on the debts in line with its debt policy (report on status of recovery provided). Rivatex had managed to collect some of the debts as per the reduced balances in 2017.

Committee Observations

505. The Committee made the following observations:

(i) This matter was discussed in the 21st report with a recommendation that the management of Rivatex recovers the debts. This recommendation has been partially implemented.

(ii) A total of KSh. 1,500,741.98 has been paid with an outstanding balance of KSh. 12,883,548.02. Most of this was owed by the government departments.

Committee Recommendation

506. **The Committee made the following recommendations:**

(i) The Management of Rivatex should continue pursuing the remaining balance.

(ii) Management should include punitive clauses for delayed deliverables by suppliers.

TRADE CREDITORS & PAYABLES FY 2015/16

507. Notes to the financial statement disclosed that the company had accumulated trade creditors and other payables amounting to KSh.51,406,658 as at 30th June 2016 compared to KSh.13,535,674 in the previous year (2014/2015) resulting in an increase of KSh.37,870,984 contrary to Treasury Circular Ref: AG3/101/(7S) which required accounting officers to institute stringent financial controls and maintain financial discipline in order to achieve efficient utilization of resources and ensure strict adherence to financial regulation and procedures and to curb accumulation of pending bills.

508. Further, creditor's ledger and the supporting documents such as Quotation/tenders, Local purchase order, invoices, demand notices or suppliers' statements were not availed for audit verification.

509. Consequently, the accuracy and completeness of the trade creditors and other payables figure of KSh. 51,406,658 as at 30 June 2016 could not be confirmed.

Management Response

510. The creditor's ledger, quotation / tenders, Local purchase order, invoices, demand notices or suppliers' statements were later availed for audit verification. Treasury Circular Ref: AG3/101/(7S) required accounting officers to achieve efficient utilization of resources. Rivatex did not receive any recurrent subventions from the Government for operations or salaries hence it procured goods and services on credit with repayments spread over the agreed upon credit period in line with good business & corporate practice based.

511. Out of the accumulated trade creditors and other payables amounting to KSh. 51,406,658 as at 30th June 2016, KSh 38,774,978 which was the bulk of the total figure was payable to Goller Gmbh for the Washing machine which was still being assembled and was paid on 26th July 2016 upon delivery. The remaining Trade and other payables figure reduced by KSh. 903,994 to KSh. 12,631,680 in line with the credit period.

Committee Observations

512. **The Committee made the following observations:**

(i) **Rivatex did not provide invoices, demand notices or supplier statements, LPOs, quotations at the time of audit for verification hence the reason why the matter was queried.**

(ii) **KSh 38,774,978 which formed the bulk of the total figure queried was payable to Goller Gmbh for the Washing machine which was still being assembled and was paid on 26th July 2016, after the end of the financial year under consideration.**

Committee Recommendation

513. **The Committee recommends that the management of Rivatex should always provide documents for audit verification as required section 62(a),(b) of the Public Audit Act 2015.**

UNSUPPORTED PRIOR YEAR ADJUSTMENTS FY 2015/16

514. Included in the cost of sales balance of KSh. 154,892,211 and as disclosed in note 8 to the financial statements was prior year adjustment figure of KSh. 51,511,214 for which no supporting documents were availed for audit review. In the circumstances, the validity, accuracy, and completeness of cost sales figure of KSh. 154,892,211 for the year ended 30th June 2016 could not be confirmed.

Management Response

515. The prior year adjustment to the cost of sales of KSh. 51,511,214 related to an independent professional valuation of work in progress in line with IFRS 13. The valuation report for the work in progress was later availed for audit verification as it was received after year end giving rise to the prior year adjustment.

Committee Observation

516. **This query arose due to management's failure to provide documents for audit in time. They were later provided and verified by the Office of the Auditor General.**

Committee Recommendation

517. **The Committee recommends that the management of Rivatex should always provide documents for audit verification as required section 62(a),(b) of the Public Audit Act 2015**

Financial Performance FY 2015/16 to FY 2017/18

518. The company recorded turnover of KSh. 98,172,058 during the year 2015/16 as compared to KSh. 118,425,640 during the year 2014/15 a decrease of KSh. 20,253,582 or approximately 17.10%. Net loss increased from KSh. 109,178,538 in 2014/2015 to KSh. 132,543,477 which was approximately 17.62% to bring the accumulated losses KSh. 1,020,603,854. The management attributed the poor performance to constant breakdown in wet processing machine that had hindered the company's ability to supply goods of the right quality and on time.

519. Although the management indicated that it had partially addressed this challenge through acquisition of new machinery, no indication had been provided on the measures being taken to increase the sales volume. If this loss-making trend was not reversed, the company was likely to face financial difficulties in its future operations.

Management Response

520. The company had since put in place various strategies of increasing the sales volume through modernization and restructuring of the sales department. Already the restructuring of sales department had led to 100% increase in sales. The complete modernization coupled with huge demand for the company's products would lead to definite increase in sales.

521. The National government through Exim Bank India loan was investing over KSh.3 billion for complete modernization of the factory. The modernisation would fully address the challenge of low sales due to frequent machine break downs.

Committee Observations

522. **The Committee made the following observations:**

   (i) The poor financial performance was attributed to constant breakdown of machines that hampers the Company to supply finished goods.

   (ii) Restructuring of sales department has seen a 100% increase in sales volume.

(iii) The loan from the Exim Bank was used to buy equipment. Exim Bank prequalified an Indian company, Lakshmi Machines to supply the equipment. The contract was negotiated by the government of Kenya but signed by Rivatex.

Committee Recommendations

523. **The audit query was adequately addressed and therefore resolved.**

Budget Control and Performance FY 2015/16 to FY 2017/18

Receipts

524. The company budgeted to collect income of KSh. 185,575,022 during the year under review. However, KSh. 99,372,058 was realized resulting in a shortfall of KSh. 86,202,964 or approximately 46.45% of the budgeted income.

Management Response

525. The Annual budget projections for revenue & expenditure in line with standard budgeting practices was based on assumptions that certain factors would prevail during the budget implementation period. The company had assumed its funding requests would be approved and that the government would have advanced it KSh.1 billion for modernization of some critical areas in the factory. However, the government allocated less thus hindering the achievement of the set targets affecting production and consequently the sales as well as expenses due to use of machines with low efficiency.

526. In addition, the machines ordered were expected to be fully installed before the end of the financial year which was not the case thus the delay. The unavailability of high-quality installation accessories locally further delayed the process of installation.

Committee Observation

527. There was a short fall of KSh.86,202,964 (46.45%) occasioned by exchequer releases as explained by the management hence it could not achieve its targets

Expenditure

528. A review of company's budget and actual expenditure for the year ended 30th June 2015 revealed that the total budget for the year 2015/16 was KSh. 82,736,254 against which total

expenditure of KSh. 77,023,323 was incurred resulting to an under expenditure of KSh. 5,712,931 or approximately 6.90% of the budgeted expenditure. This was an indication of poor budgetary strategies and there was need for the management to re-engineer its budgeting processes to come up with realistic budgets to avoid the downward trend in financial performance.

Management Response

529. Going forward, the Rivatex East Africa ltd will adopt a more robust and flexible budgeting process in the next financial year to avoid under expenditure.

Committee Recommendations

530. **The Committee made the following recommendations:**

(i) The Management of Rivatex East Africa Ltd should budget well to avoid queries on budget control.

(ii) The National Treasury should release funds appropriated by Parliament to MDAs to avoid hampering budget performance.

Failure to Observe One Third Staff Establishment Rule

531. Audit review of the payroll for the month of June 2017 showed Rivatex East Africa Limited had a staff establishment of 475 out of whom 358 or 75% of staff are from the same ethnicity leaving only 117 or 25% from other ethnicities as analyzed here below:

STAFF STRUCTURE	NO	DOMINANT ETHNIC COMMUNITY	% OF DOMINANT ETHNIC COMMUNITY
Board of Directors	13	3	23
Senior Management	12	9	75

Other permanent and pensionable staff	450	346	77
Total	**475**	**358**	**75%**

532. This was contrary to section 7 (1) and (2) of the National Cohesion and Integration Act, 2008 which required that all public establishments shall seek to represent the diversity of the people of Kenya in employment of staff and that no public establishment shall have more than one third of its establishment from the same ethnic community. Consequently, the entity was in breach of the law.

Management Response

533. During the revival phase of Rivatex East Africa Limited, the Company recalled all the former skilled and experienced employees of the collapsed Rivatex and the response was majorly from those residing within Uasin Gishu County. The revival & recall was done in 2007 before the enactment of the National Cohesion and Integration Act, 2008. The Company is currently engaging employees from other ethnic communities and the trend has since improved with a view to comply with the Act.

Committee Observation

534. **The Management had not put in place measures to redress the ethnic imbalance in the staff establishment.**

Committee Recommendation

535. **The Committee recommends that the Board of Rivatex East Africa should put in place measures to address the ethnic imbalance in the staff establishment within the 2022/2023 financial year.**

INVENTORY FY 2017/18

536. The statement of financial position as at 30th June 2018 reflected inventory balance of KSh. 664,478,202 and as disclosed in note 18 to the financial statements. As explained in note 18 of the financial statements the company's inventories were valued at lower of cost and net realizable value as the accounting policy ensures that inventories were properly disclosed in the financial statements. However, available records revealed that included in the inventory

figure of KSh. 664,478,202 in the year ended 30 June 2018 was chemicals which had expired amounting to KSh. 15,484,685. Accordingly, had the company complied with the accounting policy, the figure for inventories would have been less than the figure reflected in the financial statements as at 30th June 2018. Management explained that these were chemicals which were waiting for approval for disposal. However, the same has not been disclosed in the financial statements.

537. Consequently, the accuracy, valuation and completeness of the inventory balance of KSh. 664,478,202 as at 30th June 2018 could not be confirmed.

Management Response

538. The Inventory balance of KSh. 664,478,202 as per note 18 of the financial statements was fully supported by stock take reports. Included in the raw materials of the store's ledger was chemicals (slow moving) figure of KSh. 15,484,685 not moving for the past 2 years. The Chemicals were reviewed in conjunction with the Supporting India Trade and Investment for Africa (SITA) and will be used for production of light shade products as their efficacy has not fully diminished as well as for research purposes as part of the company's mandate for research & product development for its undergraduate & postgraduate programs in Manufacturing, industrial & Textile.

Committee Observations

539. **The Committee made the following observations:**

(i) Management stocked chemicals worth KSh.15,484,685 which were slow moving indicating poor planning.

(ii) Contrary to the audit observation that the chemicals were expired, the correct position was that they had not expired

Committee Recommendation

540. **The Committee recommends that the Rivatex East Africa Ltd should always stock chemicals that can be able to move out.**

Human Resource Management – Failure to Observe One Third Basic Salary Rule

541. A review of the payroll records for the period 2017/2018, revealed that a number of staff earned less than a third of their basic salaries contrary to the provisions of section 19(3) of the Employment Act. In some cases, there were those who earned nil salaries. The management did not provide explanations for not complying with the provision of the Employment Act. Consequently, the management was in contravention of section 17(3) of the Employment Act.

Management Response

542. This matter related to Sacco deductions from employees' who access loans through the company Sacco which is independent of the company's operations, the Company had noted the recommendations according to Section 19(3) of the Employment Act and had since put in measures to ensure compliance with the same. It instituted measures to ensure the same did not occur in the payroll.

Committee Observation

543. **Management has written to the Sacco to ensure any new loans that will not violate Section 19(3) of the Employment Act 2007.**

Committee Recommendation

544. **The Committee recommends that the Management of Rivatex should comply with the provisions of Section 19(3) of the Employment Act 2007.**

2.9 GEOTHERMAL DEVELOPMENT COMPANY (FY 2016/2017))

EXAMINATION OF THE REPORTS OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF THE GEOTHERMAL DEVELOPMENT COMPANY FOR THE FINANCIAL YEAR 2016/2017

Eng. Jared Othieno, the Managing Director of Geothermal Development Corporation, accompanied by Mr. Stephen Buseney (General Manager, Finance), Ms. Jacklyne Wakhungu (Legal Officer), Mr. Cornel Ofwona (Finance) and Ms. Beatrice Kosgei (Finance) appeared before the Committee to adduce evidence on the audited accounts of Corporation for the financial year 2016/17.

NEGATIVE NET CURRENNT ASSETS FY 2016/17

545. The financial statements reflected a current asset of Ksh 7,532,217,000 against current liabilities of Ksh 7,715,570,000 resulting in a net liability position of Ksh 183,353,000 which could lead to difficulties in servicing short term obligations as and when they fall due.

Management Response

546. The company's current liabilities in the year comprised of the following:

(A) Short term Borrowings	**Ksh '000**
Bank overdraft	647,801
Post Import facility	1,959,710
(B) Trade Payables	2,698,201
(C) Current Income Tax	2,409,858
Total	**7,715,570**

547. The Corporation received National Treasury's approval to convert the post-import facility and bank overdraft to an 8-year term loan to ease pressure on short term liabilities (copy attached as Annex1). On the current income tax component of Ksh 2.409 billion, the response is as stated in query (5) below on Corporation tax and related penalties.

Committee Observations

548. **The Committee made the following observations:**

(i) The Corporation received National Treasury's approval to convert the post-import facility and bank overdraft to an 8-year term loan to ease pressure on short term liabilities.

(ii) The Corporation's liabilities of KSh. 7,715,570,000 include a current tax liability of KSh. 2,409,858,000 for the year ended 30 June 2015.

Committee recommendation

549. **The Committee recommends that the GDC management should source for additional funding to address the balance sheet imbalances and remain afloat .**

PROCUREMENT OF RIG MOVE SERVICES FY 2016/17

550. The contract for Rig Move services was awarded to M/s Bonfide Clearing and Forwarding in October 2012 at a cost of Ksh 42,746,000 per move estimated to constitute 100 loads. Further, as reported in 2016/2017 financial year the contract was investigated by the Ethics and Anti- Corruption Commission for possible irregularities.

551. Consequently, the Company stopped using the contracted services, and the contractor threatened to commence legal proceedings for breach of contract. On 13 September 2016, GDC issued a notice to terminate the contract, following which the contractor put in a claim for Ksh. 13,350,000 for works done and Ksh. 1,025,904,000 for loss of revenue on the remaining 24 rig moves. The matter was subsequently referred to arbitration, with the contractor claiming Ksh 3.334.125.195 for work done, loss of business and damages. The arbitrator according to management dismissed the claimant's claim save for a provable amount of Ksh 38,494,710. The legal suit has since been referred to the High Court by the claimant, who felt dissatisfied with the Award given by the Arbitrator. By the time of concluding the Audit report, the matter was pending hearing at the High Court.

Management Response

552. GDC entered a contract with Claimant on 2nd October 2012 for provision of rig move services for forty (40) rig moves for a period of two (2) years (whichever is earlier) at a contract price of KES. 1,710,560,000.

553. GDC terminated the contract on 13th September 2016 after giving due notice to the Contractor. The Claimant proceeded to file a claim for alleged breach of contract for a sum of Kenya shillings three billion three hundred and thirty-four million, one hundred and twenty-four thousand one hundred and ninety-four (KSh. 3,334,124,194).

554. The matter was referred to arbitration where GDC defended the matter. The Arbitral Tribunal issued its Interim Arbitral Award No. 1, on 22nd September 2017 dismissed the claimant's claim save for a residue of KSh.38.5 million which was adjudged to proceed for Formal proof by way of a hearing.

555. The claimant filed the appeal against the ruling in interim award No 1. Parties have responded and submissions on the matter finalized. The Arbitral case remains in abeyance from November 2017 after the Claimant elected to abandon the hearing of the residue of the claim for the appeal vide Misc. 431 of 2017.

556. The Court was to give its ruling on 24th March 2020, the ruling date lapsed without the ruling. GDC has been informed that the ruling is ready, and the learned Judge sought consent to deliver the ruling via email on 15th April 2020 as required by the new guidelines from the Chief Justice regarding conduct of matters during Covid-19 period. The lawyers for the claimants did not give their consent. The matter will now be revisited once the courts resume their normal work schedule.

<u>Committee Observations</u>

557. **The query was addressed in the 21st PIC Report where the House resolved that the Ethics and Anti-Corruption Commission expedites the investigation it had initiated on the matter. But the matter remains alive as it was in court contesting arbitral award and that there was no indication if whether the EACC had concluded the investigations.**

<u>Committee Recommendation</u>

558. **The Committee recommends that the Committee on Implementation should follow-up on implementation of the PIC recommendations in its 23rd Report.**

<u>UNPRODUCTIVE AND ABANDONED WELLS FY 2016/17</u>

559. The financial statements of the Company reflect Other Expenses amounting to KSh. 1,574,206,000, as disclosed in Note 9. Included in these is KSh. 991,359,000 (2016: KSh. 876,845,000), which relates to the cost of three unproductive and abandoned wells, written off during the year under review. Although, according to Management, success rates for geothermal wells all over the world increase as more wells are drilled to provide surface information, the upward trend in the cost of unproductive and abandoned wells as well as the cumulative costs written off by the Company, are significant and requires review of the Company's technical evaluation and drilling processes with the aim of minimizing drilling losses.

Management Response

560. The Company's mandate is to de-risk geothermal prospects in the country and this invariably has outcomes of unsuccessful wells. The unproductive and abandoned wells for the year comprised of the cost of three completed wells which turned out to have low permeability and low temperature.

561. Well siting in Menengai has been done by collaborative efforts of GDC experts, ELC consultant from Italy and recently by WestJEC, JICA Consultant from Japan. The main issue has been identified to be the complex geological formation inside the Menengai caldera that has been quite challenging in terms of identification of buried permeable structure where enhanced permeability can be intercepted. From these concerted studies, several recommendations that can aid in improving well targeting have been made but will require budgetary support to implement. The Company will seek to increase budgetary support for well siting and targeting activities and implement recommendations made by the consultants and also constitute an independent advisory board of experts to peer review the geo-scientific and drilling activities and provide second opinion.

Committee Observations

562. **The Committee made the following observations:**

(i) **The unproductive and abandoned wells for the year comprised of the cost of three completed wells.**

(ii) **ELC consultant from Italy provided consultancy services for GDC during the drilling of the three wells declared unproductive.**

<u>Committee Recommendations</u>

The Committee made the following recommendations:

(i) The Company's Board should review identification and digging wells mechanism to reduce losses on unproductive wells.

(ii) The Company's Board should ensure the wells dug to avoid losses from unproductive wells.

<u>COST OF NON-PRODUCTIVE TIME FY 2016/17</u>

563. The Operating Expenses of Ksh. 1,574,206,000 disclosed in Note 9 to the financial statements included Ksh. 125,390,000, relating to the cost of non-productive time (NPT) during drilling activities, which were written off during the year under review. According to Management, the causes of the NPT were mainly operational and part of the drilling program, as well as the long process of procuring a new cement supplier under the AfDB funding.

564. However, it is not clear why Management had not developed a formal policy on what should constitute acceptable levels of NPT associated with staff costs based on international standards, considering that the high NPT had significantly increased the cost of drilling wells, which may not be recoverable from future sales of steam.

<u>Management Response</u>

565. The company had put in place a policy to ensure that the non-productive time is effectively managed and recognized. The company will strive to reduce the time taken in procurement of essential materials, tools and services required to minimize the costs arising from lost time during drilling.

<u>Committee Observations</u>

566. **The delay that led to increased Non-productive time was occasioned by delay in budgetary provision by Treasury and lack of supplies such as fuel and cement.**

Committee Recommendations

The Committee recommends that:

(i) **The Company leadership develops a formal policy on what should constitute acceptable levels of NPT based on international standards to reduce loss from NPT.**

(ii) **The National Treasury should ensure timely release of exchequer on projects under implementation.**

CORPORATION TAX AND RELATED PENALTIES FY 2016/17

567. Being a state corporation, GDC is required to comply with tax laws and other related regulations, including remission of taxes to Kenya Revenue Authority (KRA), as per the prescribed due dates. The statement of financial position reflected a current tax liability of KSh. 2,409,858,000 (2016: 1,656,555,000), for the year ended 30 June 2015, 30 June 2016 and quarterly instalments due as at 30 June 2017. The financial statements further reflected Other Payables amounting to KSh. 1,435,486,000, as per Note 15, which include interest and penalties of KSh. 710,097,000 (2016: 405,572,000), arising from non-payment of income taxes.

568. The delayed payment of income taxes exposed the Company to penalties and interest, which continues to increase with the continued delay.

Management Response

569. The Company through the Ministry of Energy made a request to the National Treasury for consideration of abandonment of corporation tax liability which arose because of inadequate budgetary allocation, cash flow constraints and the company's mode of financing. The request was given due consideration by the National Treasury who advised that GDC applies for abandonment to the Kenya Revenue Authority (KRA). The application was submitted to KRA but was rejected on the basis that the request did not meet the threshold for abandonment.

570. To address this matter, the Company had taken the following steps:

a) Engaging KRA on the matter with the aim of forging a feasible way forward and repayment plan.

b) Made a proposal to KRA to pay the outstanding taxes in feasible instalments within its current available resources to reduce the tax burden. As at 30th June 2020, the Company had made instalment payments amounting to Ksh 330 million.

c) Made a request through the Ministry of Energy for a supplementary budget to bridge the deficit and help in cushioning the exposure arising from the tax liability.

d) Is engaging its shareholders and stakeholders (Ministry of Energy, The National Treasury & KRA) with a view of finding a lasting solution to the tax matter.

<u>Committee Observations</u>

571. **The Committee made the following observations:**

(i) The Corporation had not been paying Corporation Tax to Kenya Revenue Authority from financial year 2016/17. Failure to meet the tax liabilities was attributed to inadequate budgetary allocation and cash flow constraints.

(ii) Considering that the GDC's request to the National Treasury for tax exemption was denied, the National Treasury should allocate funds to the GDC to meet her tax obligations

(iii) As at 30th June 2020, the Company had made instalment payments amounting to Ksh 330 million after reaching an agreement with KRA on a repayment plan.

<u>Committee Recommendation</u>

572. **The Committee recommends that the National Treasury should allocate funds to the GDC to be used in meeting her tax obligations.**

<u>VESTING OF OLKARIA GEOTHERMAL WELLS FY 2016/17</u>

573. The Auditor General noted that the financial statements reflected exploration and evaluation assets of KSh. 29,610,870,000, as disclosed in Note 18. Included in the assets were costs totalling KSh. 8,377,275,157 in regard to the drilling of 26 wells out of a total of 59, sunk using funds from the Government of Kenya. During the year under review, GDC sold steam worth KSh. 2,901,862,000 (2016 KSh. 3,160,664,000) from the 59 wells at

Olkaria to Kenya Electricity Generating Company (KENGEN) and recognized it as revenue.

574. However, as at 30 June 2017, only the cost of 26 out of the 59 wells, have been recognized in these financial statements. The Government has authorized recognition of the 26 wells drilled in the Olkaria as assets in the GDC books of account pending completion of Government vesting procedures. According to Management, completion of the vesting procedures has delayed due to challenges relating to some of the wells which are located on land which has been used by KENGEN, to secure financing for their projects. Under the circumstances, it was not possible to confirm when the vesting of the wells will be completed.

Management Response

575. The vesting process was completed, and the Government gazetted the same in March 2019. The cost of the 59 wells was incorporated in the Company's books for the year ended 30th June 2019.

Committee Observations and Recommendation

576. **The audit query has been resolved.**

2.10 KENYA ELECTRICITY GENERATING COMPANY (FY 2014/2015 TO 2019/2020)

EXAMINATION OF THE REPORTS OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF THE KENYA ELECTRICITY GENERATING COMPANY FOR THE FINANCIAL YEARS 2014/2015 TO 2019/2020

Ms. Rebecca Miano, the Managing Director of Kenya Electricity Generating Company, accompanied by Ms. Mary Maalu (Director, Corporate & regulatory Services), Mr. Paul Ndungi (Director, Legal Affairs), Mr. John Mudany (Director, Finance & ICT), Mr. David Mwangi (Finance Manager) and Mr. Daniel Barkalia (Asst. Manager, Finance) appeared before the Committee to adduce evidence on the audited accounts of Corporation for the financial year 2014/15 to financial year 2020/2021.

577. The Committee heard that the Corporation received unqualified audit opinion from the Office of the Auditor General for the financial year 2014/15 to financial year 2019/2020.

<u>Committee Observations</u>

578. **The Committee made the following observations:**

(i) **The Company did not have an audit query for the years under consideration despite the matter of payments due to Tana and Athi Rivers Development Authority for use of Masinga Dam repeatedly appearing in TARDA's accounts.**

(ii) **It was in contempt of Parliament the Corporation to outsource audit despite previous House recommendations against outsourcing audits for Corporations in the energy sector.**

<u>Committee Recommendations</u>

The Committee made the following recommendations:

579. **The Previous PIC recommendations that the books of accounts for KENGEN be exclusively audited by the Office of the Audited General be implemented forthwith.**

<u>Amount due from Kenya Power and Lighting Company PLC (FY 2019/2020)</u>

580. The financial statements reflect gross amounts due from the Company's main customer, Kenya Power and Lighting Company PLC (KPLC) amounting to KSh.23,984,394,000 (2019:

581. KSh.19,356,993,000) as disclosed in Note 20 to the financial statements. This outstanding balance is billed as per respective Power Purchase Agreements (PPAs) between the two companies. However, KPLC confirmed KSh.24,029,164,019 as the amount owing indicating a difference on KSh.44,770,019. Further, the Company recorded Aggreko project receivables of KSh.224,386,541 which also differed by KSh.26,719,873 with the amount confirmed by KPLC of KSh.197,666,668. According to Management, the unconfirmed amount of total trade receivables of KSh.71,489,892 relates to interest on delayed payments, which KPLC had disputed.

582. In addition, the amounts due from KPLC were on average outstanding for periods of 195 days, which was way above the 90-day credit cycle provided for in the agreement between the two companies.

<u>Management Response</u>

583. The unreconciled variance of KSh 44,770,019 is as below**.**

Variance Analysis-KSh 44,770,019

	KSh	**KSh**
Balance as per KenGen		23,984,393,669
Add: Provision for Force Majeure adjustment. The notice was issued by Kenya Power due to COVID-19	395,999,836	
Less: Interest & other amounts recognised by KenGen but not recognized by Kenya Power	(351,229,486)	
Sub Total	44,770,350	44,770,350

Balance as per KPLC confirmation		24,029,164,019

584. KenGen made a provision of KSh 395,999,836 awaiting conclusion of the Force Majeure discussions with KPLC issued due to COVID-19.

a) Reconciliation of KSh 351,229,486

585. The reasons for the variance of KSh 351,229,486 relate to interest and other amounts charged and recognized by KenGen as per Power Purchase Agreement (PPA) but not recognized by Kenya Power.

Reconciliation of KSh 351,229,486

	USD	**KSH EQUIV**
Receipt of KDP I Payment from VIVO Energy		(6,951,789)
Late payment interest USD	282,271	30,067,507
Late payment interest KSH		328,113,768
Late payment interest not recognised by KPLC		**351,229,486**

b) Reconciliation of KSh 26,719,873

586. The interest relates to interest on the Aggreko invoices for Emergency Power Project.

Reconciliation of KSh 26,719,873

		KSH
Amount as per KenGen		(224,386,541)
Amount as per Kenya Power		197,666,668
Late payment interest not recognised by KPLC		**26,719,873**

587. KenGen was engaging KPLC to resolve the variances and settlement of the outstanding debt.

c) Payment status of amount due

588. KenGen and KPLC have put in place an agreed monthly payment plan**.** The payment plans have enabled KenGen to meet its working capital requirements as and when they fall due.

Committee Observation

589. **The matter was adequately addressed though impugned payments were still due.**

Committee Recommendation

590. **The accounting officers for both the KENGEN and the KPLC should ensure reconciliation of the figures and settlement of the amounts due.**

Long Outstanding Payables (FY 2019/2020)

591. The statement of financial position reflects trade and other payables amounting to KSh.7,642,929,000 as disclosed under Note 32 to the financial statements. Included in this balance is KSh.4,841,270, which relates to financial assets held by the Company in the form of long outstanding cheques, which had remained unclaimed for a period of more than two (2) years. Similarly, included in the payables is KSh.14,300,000, which relates to the Energy Power Project payables, which have been outstanding since 2009 with no movement in this balance over the years. Management has not explained why it has taken a significantly long period to clear the outstanding payments despite acknowledging to have information about the prevailing circumstances and the whereabouts of the payees.

592. Alternatively, the Company may not have remitted some qualifying assets to the Unclaimed Financial Assets Authority (UFAA), contrary to the Unclaimed Financial Assets Authority Act, 2011, which required such assets be surrendered to UFAA.

Management response

a) Stale Cheques KSh 4,841,270

593. This amount mainly comprised of cheques issued to suppliers and sponsored students through the KenGen Foundation but were not banked for various reasons including change

of bank accounts while others had been cancelled for various reasons. The issues have since been reviewed and appropriate action taken. As of 30 June 2021, the matter was resolved and closed.

b) Payables of KSh 14,300,000

594. The amounts relate to VAT paid to KRA by the company for emergency power project which it was managing on behalf of the Ministry of Energy and Petroleum. The amount was therefore reimbursable to the company from the Escrow Account upon payment of the respective invoices. It took long to reimburse the amount due to KenGen as KPLC was yet to settle the debt. This was paid on 15 May 2021 as per attached vouchers and the matter is closed.

595. Further, the Unclaimed Financial Assets Authority (UFAA) are currently undertaking audit to determine if there are any financial assets which may need to be surrendered to them. Once the exercise is concluded appropriate action will be taken as per letter attached**.**

Committee Observations and Recommendation

596. **The matter was adequately addressed and therefore resolved.**

Non-Valuation of Property, Plant and Equipment (FY /2020/2021)

597. The Company carried its fixed assets on the revaluation model based on its accounting policy and According to the Company's Assets Management Policy, the recommended frequency of revaluation was after every 3-5 years. However, no revaluation had been conducted since the year 2015.

Management Response

598. The company procurement process was started but faced challenges due to COVID-19 pandemic as follows: lockdowns, lack of flights, travel restrictions, lack of response by experts and this led to delay in the procurement process. With the ease of lockdowns and resumption to work formula, procurement of the lowest evaluated bidder AON of Australia was successful and the valuation exercise was ongoing and expected completion before the end of the financial year 2021/22.

Committee Observation

599. **Though management had initiated valuation claiming delay in procurement process and covid -19 pandemic, failure to value assets had an effect or misrepresentation on the financial statements.**

Committee Recommendation

600. **The Committee recommends that the accounting officer of the KENGEN should always ensure that the entity's assets are valued as per the set timelines.**

Capital Work in Progress (FY 2020/2021)

601. Included in this balance were projects totalling KSh.94,805,804,977 in respect of capital projects initiated several years back but had no movement over the last 2-10 years and which might have stalled.

602. The work in progress balance included KSh.4,481,056,467 in respect of transmission lines that were done in financial year 2008/2009 or earlier and which were not used in the furtherance of Company's business but were essentially used by another company for revenue generation. Although the Management indicated that there had been negotiation for transfer of the assets to the other company, Kenya Electricity Generating Company PLC continued to service a loan and accruing interest in respect of these assets, thereby increasing the operations costs of the Company and cash outflows without corresponding revenue being realized.

603. An amount of KSh.79,324,783,562 incurred on drilling of wells for geothermal power, financed by a loan from Export-Import Bank of China (EXIM). The wells were drilled between the year 2011 and 2015 and have never been connected to any plant for generation of power. The Company had in the meantime continued to pay the principal sum and interest while no corresponding revenue had been realized to date. Further, the Management had not given the details of when the wells are likely to be utilized in generation of power. As a result, there was no value for money obtained on the investment of KSh.79,324,783,562 on drilling wells.

604. An amount of KSh.645,975,453 incurred on feasibility studies for wind power projects. Out of this balance, KSh.592,918,565 and KSh.82,023,761 was incurred in respect of Meru Wind power project in financial year 2011/2012 and Karura Hydro Power Plant project in

financial year 2013/2014 respectively. Although expenditures are said to relate to the feasibility studies on the two projects no contract documents and feasibility studies reports were provided for audit verification in support of the projects. The Management has not provided reasons for the delay in conclusion of the feasibility studies for over eight years.

605. The work in progress balance further includes KSh.78,647,502 in respect of a building referred to as Hydro Plaza whose construction work commenced in 2010. The building was indicated to be under the defects liability period, implying that it had been handed over by the contactor. Management partially capitalised the building with a sum of KSh.293,529,602. However, certificates of completion for the capitalised were not provided for audit review. The Management did explain the cause of the significant increase in the cost of the building,

606. Further, a review of procurement records revealed the works were initially awarded at a cost of KSh.150,005,216 but the contract was terminated on non-performance and subsequently awarded to another contractor at a contract sum of KSh.261,264,205, an increase of KSh.111,258,989 or 74% of the earlier contract sum

<u>Management Response</u>

607. KenGen project implementation was in line with the Least Cost Power Development Plan (LCPDP). As a result, there was a significant capital outlay as reflected in the capital work-in-progress amounting to KSh 99,343,863,000 at the close of financial year ended 30 June 2021. This comprised of costs of geothermal wells, infrastructure development costs; 83.3MW Olkaria I Unit 6 which was expected to be completed in the 3rd quarter of 2021/2022, 140MW Olkaria VI, 140MW Olkaria VII, Substations and transmission lines for Olkaria 280MW, among others. These costs would be transferred from work in progress to specific plants once the listed power plants are completed.

608. KenGen project implementation was in line with the Least Cost Power Development Plan (LCPDP). As a result, there was a significant capital outlay as reflected in the capital work-in-progress amounting to KSh 99,343,863,000 at the close of financial year ended 30 June 2021. This comprised of costs of geothermal wells, infrastructure development costs; 83.3MW Olkaria I Unit 6 which was expected to be completed in the 3rd quarter of

2021/2022, 140MW Olkaria VI, 140MW Olkaria VII, Substations and transmission lines for Olkaria 280MW, among others. These costs will be transferred from work in progress to specific plants once the listed power plants are completed. Negotiations had been ongoing between KenGen, KETRACO and KPLC as and a copy of minutes to novate the transfer of Olkaria I AU & IV 280MW and Olkaria V 172MW substations and transmission lines to KET.

609. The Government initiated a plan to enhance national power generation and supply by identifying new generation and supply sources to ensure that the national electric power supply exceeds 5000MW+ in 40 months. KenGen's contribution was 844MW (Geothermal 700MW, Wind 120MW and Hydro 24MW). In 2012, the Government secured funding which was on-lent to KenGen from EXIM Bank of China amounting to USD 382.5m. The funds were intended to drill 80 wells but realized 89 wells due to cost savings. The 89 wells with estimated steam of 447 MWe was anchored on the project pipeline as per the LCPDP of the 89 wells available, already connected 31 wells to Olkaria V that was commissioned in 2019, it was expected that 16 wells would be connected to Olkaria I Unit 6 by end of 2022. The balance, including internally funded wells remains allocated to our project pipeline comprising Olkaria VI (34 wells); Modular Power Plant (10 wells); Wellhead Leasing (16 wells) and Olkaria VII (9 wells).

610. These costs were incurred to ensure there was sufficient steam supply to support the Geothermal project pipeline. All the wells drilled were allocated to planned power plant projects either as production or reinjection wells. On commissioning of the project, the cost of wells connected to the same will be recovered. All wells would be utilized as either production or reinjection and none will be lost.

611. The feasibility study for Meru Wind Project recommended its implementation which had delayed due to land acquisition challenges. The project had been progressed and financial commitment had been secured from AFD. Owing to the prolonged negotiations with the County Government and compensation to Project Affected Persons (PAPS) including land adjudication, the financier suspended financing commitment pending resolution of outstanding issues.

612. Regarding Karura Hydro project, the study concluded that it was feasible, and was prioritized for implementation in the Least Cost Power Development Plan. Implementation will be done upon approval by Ministry of Energy.

613. The project experienced delays attributable to non-performance by the initial contractor, leading to contractual dispute whose adjudication in court took a long time. Subsequently, the project was re-tendered and awarded with revised scope hence the differences in contract sum. The additional scope included a perimeter fence on stone wall complete with electric fence, rearrangement of the facilities on the ground and first floor in the office block to house training, exhibitions hall and kitchen facilities, modifications on floors to accommodate Lift shaft from ground to fourth floor, changes on ICT infrastructure to meet modern requirements, redesign on mechanical and electrical systems and Change in water systems amongst others.

614. During the project implementation the contractor cited cashflow challenges, thereby slowing down the project implementation. KenGen did phased takeover pending completion of snag items, from 7th August 2020, with final takeover on 22nd October 2021 upon completion of defects liability period. Attached is the completion certificate which was obtained after the audit had been finalized. The project has since been handed over, and fully operational.

Committee Observations

615. **The Committee made the following observations:**

(i) Explanation that there was no loss when some wells (50%) remained unconnected to the grid, government paying for the loans (USD 382.5million) and its attendant interest could not be sustained.

(ii) Further, the same government was purchasing power from Independent Power Producers when her own wells remained idle. Though management indicated that it had requested the Cabinet Secretary for Energy for authority to utilize the wells even after the matter was raised in KENGEN AGM of 6th January 2022, such approval has not been granted to date. It was not clear why the Cabinet Secretary had inordinately failed to grant the requested approval.

(iii)It was curious that KENGEN continued to incur costs that should have been born by the KETRACO.

(iv) Management failed to provide feasibility study documents on both Meru and Karura Hydro projects for audit review during the time of audit though they were provided when the management appeared before the Committee which was a violation of the Public Audit Act 2015 on timely submission of documents for audit. Management verbally indicated that the project delayed due to difficulties in land acquisition thus indicating poor project conceptualization and implementation by the KENGEN.

(v) Regarding construction of Hydro Plaza that had delayed and varied by 74% (increase by KSh 112.26 million) from the initial cost of KSh 150 million, management had failed to undertake proper due diligence on the contractor thereby leading to underperformance. Further, it was noted that the scope of the retendered tender was changed. It was further not clear how much the taxpayer lost in the process of litigation, delay and payment to the failed contractor.

<u>Committee Recommendations</u>

The Committee recommends that:

(i) The EACC should investigate the circumstances under which the KENGEN was denied approvals to connect ready wells to the national grid.

(ii) The accounting officer for KENGEN should ensure expeditious transfer of assets belonging to KETRACO and recovery of the attendant costs expended in running them.

(iii)The accounting officer for the KENGEN should provide the feasibility study reports for both Meru and Karura Hydro Projects for audit within the 2021/2022 financial year. Failure to which the sanctions imposed under the Public Audit Act 2015 should ensue.

(iv) The EACC should investigate the entire procurement and award of the construction tenders of the Hydro Plaza with a view to preferring charges persons found culpable.

<u>Amounts due to Kenya Power and Lighting Company PLC (FY 2019/2020)</u>

616. The financial statements reflected gross amounts due from the Company's main customer, The Kenya Power and Lighting Company PLC amounting to KSh.25,141,317,000 as disclosed in Note 19 to the financial statements. This outstanding balance was billed as per respective Power Purchase Agreements (PPAs) between the two companies. However, KPLC confirmed KSh.24,899,964,656 as the amount owing resulting in unreconciled variance of KSh.241,352,344. There were disputed charges with The Kenya Power and Lighting PLC over the years denominated in Kenya shillings amounting to KSh.506,183,865 and denominated in United States dollars amounting to USD 178,092.

617. Therefore, reconciliation of the differences with the customer and collection of the disputed amount was in doubt.

<u>Management Response</u>

618. There was a difference of KSh 241,352,344 in the debtors' confirmation by Kenya Power from the amount stated in our Financial Statements.

619. There was however ongoing engagement with Kenya Power aimed at resolving any differences. A rolling payment plan for settlement of outstanding debt was agreed monthly. From KENGEN various discussions, KPLC had indicated some of the above reconciling items required guidance from EPRA.

<u>Committee Observations</u>

620. **The Committee made the following observations:**

(i) Reconciliation differences arose due to lack of clear guidelines from EPRA or their misunderstanding between KPLC and KENGEN.

(ii) Further, it was not clear whether the invoicing and calculation of interest was matter in issue and how long it will take to resolve.

Committee Recommendation

621. **The Committee recommends that the accounting officers of EPRA, KENGEN and the KPLC should meet and reconcile the figures in issue. The first meeting of the same should be convened by the accounting officer of KENGEN.**

Non-Compliance with Capital Markets Authority Regulations (FY 2019/2020)

622. A review of the statement of profit or loss and other comprehensive income as at 30 June, 2021 revealed that the profits declined from KSh.18,377,093,000 in the previous year to KSh.1,188,407,000 in the year under review, a decline of KSh.17,188,686,000 representing 93.5%. However, the Management of the Company had not issued a notice to the shareholders in line with paragraph G.05(1)(f) of the fifth schedule of the Capital Markets (Securities) (Public Offers, Listing and Disclosures) Regulations, 2002.

Management Response

623. The government, in an effort to cushion corporates against the effects of COVID-19 pandemic, reduced corporate tax from 30% to 25% in the FY2020.This resulted into a tax credit of KSh 4,587 million and contributed to growth in profit after tax to KSh 18,377 million.

624. In FY2021, corporate tax rate was reinstated from 25% to 30% which led to increased tax charge by KSh 8,795 million thereby significantly contributing to the high tax expense of KSh 13,574 million. This led to a 93% decline in Profit after tax. Therefore, the decline was not attributable to business performance but mainly to the reversal of corporate tax rate.

625. Given that earnings before tax had grown by 7%, and the Company's business fundamentals remained stable and continued to give value to shareholders, issuing of a cautionary announcement was not considered necessary since it would have negated the strong underlying business performance.

626. This matter was discussed with the Capital Markets Authority and resolved.

Committee Observation and recommendation

627. **The explanation offered was satisfactory and therefore the matter resolved.**

2.11 ATHI WATER SERVICES BOARD (FY 2014/2015 TO 2017/2018)

EXAMINATION OF THE REPORTS OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF THE ATHI WATER SERVICES BOARD FOR THE FINANCIAL YEARS 2014/2015 TO 2018/2019

Eng. Michael Thuita, the Chief Executive Officer of the Athi Water Works Agency, accompanied by Mr. Mike Kimotho (Head of Finance) and Ms. Joyce Mukuri (Ag. Corporation Secretary) appeared before the Committee to adduce evidence on the audited accounts of the Athi Water Services Board for the financial year 2014/2015 to financial year 2017/18.

PROPERTY, PLANT & EQUIPMENT FY 2014/15 & FY 2015/16

628. As similarly reported in 2013/2014 and previous periods, the Board inherited non-current assets of undetermined value previously owned by the Ministry of Water and irrigation, the National Water Conservation and Pipeline Corporation in respect of water distribution infrastructure which had not been incorporated in these financial statements.

629. Note Two (2) to the Financial statement reflect a disposal of Work In Progress figure of KSh.4,614,230,989 said to have been transferred to other categories of Plant Property and Equipment. There is no corresponding addition in plant property and equipment reflected in these financial statements and no documentary evidence was availed to show where the Work-In-Progress was transferred.

630. Consequently, the carrying value of property, plant and equipment as at 30 June 2015 could not be confirmed.

Management Response

631. The Board undertook the valuation of all inherited assets and submitted the reports to the ministry and the Transitional Authority. The Board did not have the ownership documents and therefore could not incorporate the assets in the financial statements. The Agency was waiting for policy direction from the Ministry on this matter.

632. On July 6th 2020, the Cabinet Secretary Gazetted the National Public Water Works within our area of Jurisdiction through Gazette Notice no 4574 and vested the Management and

Maintenance of these Assets with Athi Water Works Development Agency. With the enactment of the Water Act 2016, the Ministry of Water Sanitation and Irrigation prepared a new Water Sector Transitional Plan for the period 2019-2021 which will fully resolve this issue.

633. The Asset Movement schedule was restated and updated and disclosed in the financial statements for Financial Year 2015-16 and the movement schedule provided to the auditors subsequently and the issue resolved.

Committee Observations

634. **The Committee made the following observations:**

- **(i) The inherited assets had not been incorporated into financial statements since 2002. The issue persists in the subsequent years.**
- **(ii) Management was negligent in its failure to recognize WIP in the FY 2014/2015 though this abnormally was corrected in the subsequent financial year.**
- **(iii) The response lacked the list of all the assets meant to revert to the Board and why it has taken too long.**
- **(iv) The Agency incurs expenditure in maintaining these assets and was not befitting economically from the impugned assets**
- **(v) The response does not address how the query on Work In Progress was resolved.**
- **(vi) The Cabinet Secretary took inordinately long time to gazette the area of jurisdiction despite the 21st PIC report recommending address of the matter urgently.**
- **(vii) The Agency was valuing the assets under its management.**

Committee Recommendations

The Committee recommends that:

- **(i) The Management of the Athi Water Services should conduct an audit of all its property and a search with the lands office to ascertain ownership of land under the Agency.**

(ii) **Management should always be guided by the Public Sector Accounting Standards when preparing financial statements especially on Work in Progress Recognition**

DEBTORS FY 2014/15 & FY 2015/16

635. The statement of financial position as at 30 June 2015 reflected debtors balances amounting to KSh.3,665,312,331 which included an amount of KSh.2,361,818,388 owing from Nairobi City Water & Sewerage Company, and an amount of KSh.2,631,312 owing from staff. These amounts were long outstanding and their recoverability was doubtful. Any provision that would have been necessary in relation to this uncertainty had not been incorporated in these financial statements.

Management Response

636. Management confirmed that NCWSC owed the board a total of KSh. 2,361,818,388. The Board entered in to deed of settlement with the company after the approval of the new tariff in which both parties committed themselves meaning that the company was fully aware and ready to pay the said amount. The amount of KSh.2,631,312 owing from staff was fully surrendered.

637. A future Cooperating Framework Agreement (CFA) between Athi Water Works Development Agency and Nairobi City Water and Sewerage Company Limited had been cleared by the Attorney General to secure future payments.

Committee Observations

638. **The Committee made the following observations:**

(i) **This matter was discussed in the PIC's 21st Report with a recommendation that the Agency's CEO aggressively follows on the debts from Nairobi Water City County.**

(ii) **The amounts owing from Nairobi Water and Sewerage Company, valued at over KSh. 5,000,000,000, are still outstanding to date.**

(iii) **The amounts owing from staff were cleared in the subsequent year.**

Committee Recommendations

The Committee recommends that:

(i) **The CEO of AWWDA should aggressively pursue the money owed to the entity.**

(ii) **The Committee on implementation should follow up on implementation of PIC recommendations.**

CREDITORS AND ACCRUALS FY 2014/15

639. The statement of financial position reflects an amount of KSh.900,018,083 under creditors and accruals, which excludes audit fees provision of KSh.754,000 being audit fees for the year ended 30 June 2014. Consequently, the accuracy of creditors and accruals balance of KSh.900,018,083 as at 30 June 2015 could not be confirmed.

Management Response

640. The provision for audit fees was not included in the financial statement however this was corrected and settled in the subsequent financial year.

Committee Observations

641. **It was negligent for management not to provide for audit fees in the financial year 2014/2015. This was however budgeted for in the subsequent financial years and paid accordingly.**

Committee Recommendations

The Committee recommends that:

(i) **Audit fees were provided in the subsequent years and the matter resolved.**

(ii) **Management should always be guided by the Public Sector Accounting Standards when preparing financial statements especially on Work in Progress Recognition**

OTHER MATTER FY 2014/15 & FY 2015/16

Non-Compliance with Legal Notice No. 101 of August 2005- Transfer Plan

642. According to the Transfer Plan under the Water Act, 2002, which was operationalised vide legal Notice No. 101 of August 2005, the water Services Boards ought to have taken over assets, staff and other water infrastructure inherited from the Ministry of Water and Irrigation, the National Water Conservation and Pipeline Corporation. Although Athi Water Services Board, Ministry of Water and Irrigation and the National Water Conservation and

Pipeline Corporation had finalised valuation of the assets, Athi Water Services Board had not taken over the assets as at 30 June 2015.

643. The Board was therefore in contravention of the Legal Notice No. 101 of August 2005 and the Water Act, 2002 on the Transfer Plan.

Management Response

644. With the enactment of the Water Act 2016, The Ministry of Water Sanitation and Irrigation has also prepared a new Water Sector Transitional Plan for the period 2019-2021 which will fully resolve this issue.

Committee Observations

645. **The Committee made the following observations:**

(i) The query was considered in the 21st PIC report with a recommendation that the Intergovernmental Relations Technical Committee to formulate a policy to guide, facilitate, and coordinate the transfer of assets and roles of the Ministry of Water and Irrigation.

(ii) The matter persists to date. To be reviewed in 2019/20 Audit in view of the latest changes in the Water Act.

(iii)The Agency absorbed the staff mentioned in the query.

Committee Recommendations

646. **The Committee recommends that the mother Ministry and the CEO should expeditiously secure ownership documents of the assets queried by the Auditors.**

Bank Charges

647. The statement of financial performance reflected an amount of KSh.103,778,278 under administrative expenses which included an amount of KSh.11,847,016 relating to bank charges. Information and records available indicated that the figure included an amount of KSh.10,174,831 related to withholding tax on interest income. Consequently, the administrative expenses were misstated with the figure of withholding tax, figure which had not been disclosed in these financial statements.

Management response

648. After the audit, the withholding tax on interest income was included in the schedule and disclosed separately. The same was shared with the auditors and the matter was cleared.

Committee Observation

649. **Proper disclosures were made in the subsequent years and verified by the auditors. This however ought to have been disclosed in the financial year at hand.**

Committee Recommendation

650. **The Committee recommends that the Agency should always adhere to the public sector accounting standards on disclosure to avoid raising such audit queries.**

PROPERTY, PLANT & EQUIPMENT FY 2015/16 TO 2017/2018

Fully Depreciated Assets

651. Included in the property, plant and Equipment were fully depreciated assets whose original costs is KSh. 191,771,207 but had not been revalued.

Management Response

652. AWWDA had prepared an asset management policy. The policy provided that the Asset revaluation will be undertaken every 5 years. AWWDA had commissioned an asset valuer and the revaluation of all its assets would be completed by October 2020

Committee Observations

653. **The Committee made the following observations:**

   (i) Assets should ordinarily be valued within a five-year period; which the agency did not do on justification of absence of a policy. After development of such a policy, assets were valued and completed in December 2020.

   (ii) The Asset Management Policy prepared by the Agency provides for revaluation after every 5 years.

Committee Recommendation

654. **The Committee recommends that Management should ensure expeditious valuation of its assets and adhere to the 5-year revaluation policy.**

OVER EXPENDITURE FY 2015/16

655. During the year under review, the Board spent KSh 27,699,028 on Board expenses against the approved budget of KSh 25,072,080 resulting to over expenditure of KSh 2,626,948. Further, operational expenditure of KSh 253,873,728 included unbudgeted expenditure of KSh 250,175,431 for pans and dams KSh 31,656,119, Asset renewal KSh 41,760, GOK counterpart expenses of KSh 198,302,130 and the project cost crop compensation of KSh 20,175,422. The expenditure was contrary to section 12 of the state corporations Act which required all expenses to be within the approved estimates.

656. In circumstances, the propriety of the expenditure of KSh 252,802,379 could not be ascertained.

Management Response

Board expenses

657. During the Year under review, the National Treasury approved several financing programs to be executed by AWSB and this necessitated increased activities by the Board of Directors. During the year there was also an increase in the Number of Board members from 10 to 12 members. The Institution also faced political turmoil in one of the flagship project that is the Northern collector project and a lot of board consultations were required. The Board was also given additional responsibilities in areas outside its jurisdiction which included the Kajiado rural project funded by Belgium Government and Oloitoktok water supply project funded by the Arab Bank (BADEA).

658. The Management reallocated within the recurrent expenditure votes which had savings and the ceiling for the recurrent expenditure was not exceeded.

Operational expenditure

659. These costs were budgeted for as GOK counterpart funds under the development vote but were wrongly reported in the financial statement. The Asset Management policy has been approved and has provided guidance on asset capitalization.

Committee Observations

660. **The Committee made the following observations:**

(i) The Agency was negligent in failing to seek and get approval in writing from the Cabinet Secretary for over-expenditure on recurrent budget.

(ii) On operational expenses, relevant documents were belatedly provided to the OAG in the subsequent year. Project expenditure items under GOK counterpart funds have been appropriately classified in the subsequent years.

Committee Recommendations

661. **The Committee made the following recommendations:**

(i) The Agency should always follow the law regarding implementation of the budget.

(ii) Management should always provide documents for audit as per the timelines provided by the PFM and Public Audit Act guidelines.

CREDITORS AND ACCRUALS FY 2015/16

662. The statement of financial position indicated the creditors and accrual balance of KSh 1,017,787,181 as a 30th June 2016 up from 900,018,083 as at 30th June 2015. Included in the balance was Ksh 821,706,680 that had been outstanding for 91 days and over. Management had not explained the huge and increasing long outstanding creditors which could impact on the operations of the entity.

Management Response

663. The creditor balance of Ksh 1,012,592,337 comprised of retention monies from contractors, Fund due to the Nairobi City Council and withholding taxes for payments made as at 30th June 2016. The Management offset the balance against the lease fees due from the Water Service Providers in the year 2016/2017 since the approval was given in November 2016. The retention monies were to be paid upon full project completion.

Committee Observations

664. **The Committee made the following observations:**

(i) Management had failed to provide documents to the OAG for audit.

(ii) Explanation and documentation were provided in the subsequent year.

Committee Recommendation

665. **The Committee recommends that the Agency should always provide documents for audit verification failure to which the provisions of Section 62 of the Public Audit 2015 should ensue.**

CASH AND BANK BALANCES FY 2015/16

666. The statement of financial position reflected a cash and bank balance of KSh 806,372,460 as at 30th June 2016. However, included in the is Ksh 33,016,160 held at chase bank which was put under receivership by the Central Bank. There was little or no access to the Funds. No provision or disclosure has been given in the financial statements to reflect this as required by the accounting standards.

667. Consequently, the recoverability of the Ksh 33,016,160 held at chase bank remained doubtful.

Management Response

668. Chase Bank was placed under receivership on 17th August 2018 and AWWDA has access to 75% while 25% is held by the Kenya Deposit Insurance Corporation (KDIC). AWWDA was able to access the KSh 1 million which was deemed accessible immediately.

The table below indicates the Balances as 30th June 2020

Funds held in SBM			
Total Amount		32,003,784.50	Status
Funds held in KDIC	25%	7,862,978.00	Provision for bad debts has been made in the Financial statements
Funds in current Account with Unrestricted usage	18.75%	6,449,106.00	Funds Received into AWWDA Account and Ksh 2,508,511 remitted to the

			National Treasury
Funds in Savings Account with Unrestricted usage at competitive interest rate	18.75%	5,897,233.50	Funds Received into AWWDA Account and current balance is Ksh 6,599,151.55
Funds held in a fixed deposit account with restricted access (Accessible in 3 phases)	37.50%	11,794,467.00	AWWDA received Ksh 3,931,489 and remitted to the National Treasury.

Committee Observations

669. **The Committee made the following observations:**

(i) **Provisions had since been made, in full, for the amount that was considered doubtful i.e KSh 7,862,978.**

(ii) **KSh 11,794,467 was held under fixed deposit under restricted access over 3 phases.**

(iii) **The balance of the funds including accrued interest representing 37% of the total funds was accessible to the department.**

Committee Recommendations

670. **The Committee made the following recommendations:**

(i) In future, the Agency should only deposit money in government-linked banks.

(ii) The agency should pursue recovery of the deposits from SBM and the KIDIC.

PROPERTY PLANT AND EQUIPMENT FY 2016/17 & FY 2017/18

Inherited Assets

671. The statement of financial position reflected property plant and Equipment balance of KSh. 26,522,346,511 as at 30th June 2017. However, non-current assets inherited by the Board of undetermined value previously held by the Ministry of Water and Irrigation and National Water Conservation and Pipeline Corporation in respect of water infrastructure had not been incorporated in these financial statements.

Management Response

672. The non-implementation of transfer plan was a sector wide issue. By the close of the financial year, the Board did not have the ownership documents and therefore could not incorporate the values of the assets in the financial statements. The matter was being addressed during the transition period of the Water Act 2016. The Board was waiting for the policy direction from the Ministry on this matter.

Fully Depreciated Assets

673. Further, included in the property, plant and Equipment balance of KSh. 26,522,346,511 as at 30th June 2017 were fully depreciated assets whose original costs was KSh. 213,150,059. These assets were still in good working conditions and were in use during the accounting period. Management had not revalued them contrary to IPSAS 17 Paragraph 44.

Management Response

674. The Board had put in place asset management teams, who are in the process of establishing the impairment of the assets and advise on revaluation of the fully depreciated ones.

Committee Observations

675. **The matter touching on property plant and equipment runs across all the financial years from 2014/15 through to 2017/18. The recommendations made while considering the 2014/15 therefor hold here i.e Management should ensure expeditious valuation of its assets and adhere to the 5-year revaluation policy.**

DEBTORS FY 2016/17

Long Outstanding Debtors

676. The Statement of financial position as at 30th June 2017 reflected debtors balance amounting to KSh 9,471,672,234 which included an amount of KSh. 2,976,806,935 owing from Nairobi Water and Sewerage Company as administrative fees which had been outstanding for a long period and whose recoverability is doubtful.

677. Further, the debtors balance of KSh. 9,471,672,234 as at 30th June 2017 included operating debtors amounting to KSh. 269,704.736 due from water service provider as administration fees which had been outstanding for long and whose recoverability was highly doubtful.

678. Also included in other debtors' balance of KSh. 13,292,390 was an amount of KSh. 7,092,497 and KSh. 510,746 owing from judiciary and Angela Kimani Respectively which had been outstanding for long.

679. In the circumstances it was not possible to confirm the accuracy, completeness and recoverability of debtors balance of KSh. 9,471,672,234 as at 30th June 2017.

Management Response

a) Management had written to Nairobi Water Company, County Government and the Ministry of water and Sanitation on the outstanding debt. The Water Company explained it was facing cash flow issues but committed to pay.

b) Management was exploring alternative means of debt collection should the water service providers not meet the obligation.

c) The Water Service Regulatory Board had advised them to meet their obligations.

d) The KSh. 510,746 advanced to Angela Kimani had been surrendered in the FY 2017/2018.

e) The KSh 7,092,497 owing from judiciary had been placed in a joint account between AWSB lawyers and plaintiff lawyer pending determination of a court case. The Case was determined in AWWDAs favour and the Management had requested the funds to be remitted to AWWDAs' Account.

Committee Observations and Recommendations

680. **The Committee recommends that:**

(i) **The CEO of AWWDA should aggressively pursue the money owed to the entity.**

(ii) **The Committee on implementation should follow up on implementation of PIC recommendations.**

CASH AND BANK BALANCE FY 2016/17

681. The cash and bank balance of KSh. 386,587,938 as at June 2017 included a balance of KSh. 33,009,340 held at Chase Bank which was under receivership. There was little or no access to these funds. No provision or disclosure had been given in the financial statements to reflect this risk as required by the accounting standards. Consequently, the recoverability of the KSh.33,009,340 held at Chase Bank remains doubtful.

Management Response

682. Management concurred with the audit observation but pointed out that AWSB had accessed KSh. 1 million. The receiver manager advised that the Board was able to access up to 75 % of the amount within a period of three years. Chase Bank was placed under receivership on 17th August 2018 but AWSB had access to 75% while 25% was held by the Kenya Deposit Insurance Corporation (KDIC).

The table below indicates the Balances as 30th June 2020

Funds held in SBM			
Total Amount		32,003,784.50	Status
Funds held in KDIC	25%	7,862,978.00	Provision for bad debts has been made in the Financial statements
Funds in current Account with Unrestricted usage	18.75%	6,449,106.00	Funds Received into AWWDA Account and Ksh 2,508,511 remitted to the National Treasury

Funds in Savings Account with Unrestricted usage at competitive interest rate	18.75%	5,897,233.50	Funds Received into AWWDA Account and current balance is Ksh 6,599,151.55
Funds held in a fixed deposit account with restricted access (Accessible in 3 phases)	37.50%	11,794,467.00	AWWDA received Ksh 3,931,489 and remitted to the National Treasury.

Committee Recommendations:

683. **The Committee recommended that:**

(i) In future, the Agency should only deposit money in government-linked banks.

(ii) The agency should pursue recovery of the deposits from SBM and the KIDIC.

RELOCATION OF WATER AND SEWERAGE FACILITIES AT THIKA ROAD FY 2016/17

Contract Variation

684. The Funan Construction Company Limited was contracted on 5th May 2009 to relocate the water and sewerage facilities along Thika Road during the construction of the superhighway at a contact sum of KSh.440,000,000 and a contract duration of 20 months ending 20th January 2011.

685. The Board approved the contact variation of KSh.194,977,200 or 45% of the contract sum contrary to the Public Procurement and Disposal Act, 2005. This increased the contract sum to Ksh.634,977,200. The contract was not completed within the contract duration of 20 Months. The Board approved an extension of three months after which the contractor did not make good the snag of work identified instead the contractor went to court demanding KSh.189,720,615; a claim which was later amended to KSh.1,314,245,166. The same was finally settled out of court at Ksh.73,772,240.

686. The Board did not get value for money from the contract on fair competition and due to non-completion of the project and did not seek liquidated damages for delays.

Voidable Legal Fees

687. The Board hired Kipkenda and Company Advocates (Law firm) to represent it in a court case (Funan Construction Company vs Athi Water Services Board. The legal services were single sourced contrary to Public Procurement and Disposal Act 2005. The Law firm was paid 28,805,812 based on KSh. 1,314,245,166 which the contactor was claiming. The claim was finally settled at KSh.73,772,240. Had the legal fees based on the final settlement, it could have been KSh. 2,282,153. The Board therefore overpaid the law firm by KSh.26,523,659.

Management Response

Contract Variation

688. Management concurred that AWSB entered a contract with Funan Construction on 5th May 2009 to undertake relocation of water and sewerage facilities along Nairobi Thika highway. The Contract was awarded at Ksh 538,556,901, however the signed contract was due to available budget was Ksh 440,000,000 leaving a deficit 98,556,901.00.

689. There was a variation order that was granted for Ksh 194,977,200 which was approximately 36%. The Final Valuation of work was 563,071594.30 giving a variation of KSh. 24,514,693.30 which translates to 4.6% and therefore within the allowable limit.

690. The contractor went to Court demanding 189,720,615, and later amended the claim to KSh 1,314,245,166.00. An evaluation committee comprising of a team from AWSB and NWSC was appointed to review and reconcile all certified works done and payments made. Total outstanding amount to the contractor was assessed to be Ksh 73,772,240.00. The court finally awarded the contractor the assessed amount of Ksh 73,772,240.00 which AWSB settled.

Committee Observations

691. **The Committee made the following observations:**

(i) **The signed initial contract showed that the contract sum was KSh 440M but the CEO indicated that the contract sum was KSh. 538.5m and that this figure was contained in the award letter. It is inconceivable that an award letter dated 27th March 2009 was at variance with the signed contract on 5th May 2009. The CEO supported this based on reduced scope of the works but there was no evidence/addenda to support his averment.**

(ii) **Contrary to the auditors' assertion that the Board approved a variation of KSh.194,977,200. The CEO confirmed that the Board did not discuss the matter and that the Board had no role in procurement.**

(iii) **The CEO for AWSB in May 2009 was Eng. Lawrence W. Mwangi**

(iv) **Hon. Zachary Thuku declared interest knowing the proprietor of the company that did the work.**

Committee Recommendation

692. **The Committee recommends that the EACC should investigate the entire procurement process and implementation of the project with a view to preferring charges against those that may have broken the law.**

Voidable Fees

693. The payment to the lawyer was based on advocate's remuneration schedule and some advice as given by the Office of the Attorney General.

Committee Observations

694. **The Committee made the following observations:**

(i) **It was illegal to award a law firm that was not prequalified and without going through any procurement process.**

(ii) **Payments to the firm were however done properly based on the Attorney General's advice using the Advocates Remuneration Order.**

Committee Recommendation

695. **The Committee recommends that the EACC should investigate the entire procurement process and implementation of the project with a view to preferring charges against those that may have broken the law.**

Representative Member from the Office of the Attorney General

696. The composition of the Board did not include a representative from the Office of the Attorney General as is the case with all other state corporations. The Board's Mandate of planning, development and expansion of Water and sewerage Infrastructure on behalf of the National Government required it to undertake huge capital projects. Such contracts required legal expertise which could be better provided by the Government Chief Legal Officer who is the Attorney General. The Absence of such legal expertise in the Board could therefore lead to serious legal challenges in drafting contract agreements.

Management Response

697. This is a policy issue implemented by the appointing authority that is, the Cabinet Secretary Ministry of Water and Sanitation. The State Corporations Act Cap 446 provides that the Boards of State corporations comprises of chairman, Permanent Secretary of the Parent Ministry, Permanent Secretary of The National Treasury and seven independent directors. Where legal advice is required, the AWSB seek advice of the Attorney General.

698. Water Act 2016 had since resolved this lacuna by defining the constitution of the membership of the Water Works development agency.

Committee Observation and Recommendation

699. **There was no policy to provide for inclusion of the Attorney General which has now been done through the water Act and therefore the matter resolved.**

UNAPPROVED BUDGET EXPENDITURE FY 2016/17

700. The statement of comparison of budget and actual amounts disclosed an amount of KSh.18,526,147, KSh.151,672,146 and KSh.345,063,591 all totalling KSh.515,261,884 for pans and dams, GOK Counterpart expenses and project costs respectively that had not been budgeted for in the year under review. This amounted to unapproved expenditure.

Management had not explained nor disclosed the circumstances that led to incurring expenditure without the prerequisite approvals.

Management Response

701. These were costs that were budgeted for under the development vote but were wrongly reported in the financial statement. The Asset Management policy had been approved and provided guidance on asset capitalization.

Committee Observation

702. **This was an accounting matter that was finally addressed.**

Committee Recommendation

703. **The Committee recommends that the accounting officer for the AWSB should ensure that the financial statements are reported based on the standard approved by the Public Sector Accounting Standards Board.**

UNSUPPORTED EXPENDITURE FY 2016/17

704. The Board incurred expenditure in respect of pans and dams-KSh.18,526,147. GOK Counterpart expenses- KSh.151,672,146 and Project costs- KSh.345,063,591 adding up to KSh.515,261,884. However, the supporting documents and details were not made available for audit review. Further, GOK Counterpart funds and project costs were not specific expense items nor budget lines casting doubt on the legality and validity of the payments. Consequently, it was not possible to confirm the accuracy, legality and validity of the expenditure of KSh.515,261,884 as at 30 June 2017.

Management Response

705. **All expenses had supporting documentation and they were availed for audit subsequently and the issue resolved.**

Committee Observation

706. **This was an accounting matter that was finally addressed.**

Committee Recommendations

707. **The Committee made the following recommendations:**

(i) **The accounting officer for the AWSB should ensure that the financial statements are reported based on the standard approved by the Public Sector Accounting Standards Board.**

(ii) **The accounting officer for the AWSB should always provide documents for audit within the timelines provided in the Public Audit Act 2015.**

NON-COMPLIANCE WITH LEGAL NOTICE NO. 101 OF AUGUST 2005- TRANSFER PLAN FY 2016/17

708. According to the Transfer Plan under the Water Act, 2002, which was operationalised vide legal Notice No. 101 of August 2005, the water Services Boards ought to have taken over assets, staff and other water infrastructure inherited from the Ministry of Water and Irrigation, the National Water Conservation and Pipeline Corporation. Although, Athi Water Services Board, Ministry of Water and Irrigation and the National Water Conservation and Pipeline Corporation had finalized valuation of the assets, Athi Water Services Board had not taken over the assets as at 30th June 2017. The Board was therefore in contravention of the Legal Notice No. 101 of August 2005 and the Water Act, 2002 on the Transfer Plan.

Management Response

709. With the enactment of the Water Act 2016, The Ministry of Water Sanitation and Irrigation prepared a new Water Sector Transitional Plan for the period 2019-2021 which will fully resolve this issue.

Committee Recommendation

710. **The Committee recommends that the Ministry and the CEO should expeditiously secure ownership documents of the assets queried by the Auditors.**

CASH AND BANK BALANCES FY 2017/18

711. The financial statements reflected cash and bank balances amounting to KSh.1,217,997,568, as disclosed in note 18. Included in this was a current account number 01136084618500 maintained by the Board in Co-operative Bank of Kenya, which was

mainly used for its recurrent activities. It was however observed that the Board did not maintain a separate bank account for its development activities, instead, government funds received by the Board for various capital projects, together with related transactions on the projects during the year under review, were transacted through the above recurrent account, as detailed in the table below:

Capital Project	**Transfers from the Ministry (Ksh)**
Nairobi Water Distribution Network	75,000,000
Nairobi Satellite Towns Water & Sanitation	130,000,000
Northern collector (extension of Nairobi water supply)	250,000,000
Ithanga Water supply	17,000,000
Water & Sanitation Services Improvement Project	186,000,000
Rehab Water Supply & Sewarage- Olotokitok Town	33,000,000
Kajiado Rural Water Supply	22,000,000
Kiserian Sewarage	116,000,000
Kenya Towns sustainable water supply and sanitation	12,000,000
Nairobi metro area bulk water sources Ruiru II dam	8,000,000
Nairobi city and sewerage support services interventions	106,000,000
Karimenu II dam	803,000,000
Nairobi metropolitan services improvement project	250,000,000

712. No separate cashbooks were therefore maintained for the recurrent activities and the various capital project fund. Similarly, there were no separate bank reconciliation statements to facilitate performance of the necessary bank reconciliation audit procedures. Under the circumstances, it was not possible to confirm the balance as per bank records and balance as per cashbook, for the various capital project funds which were included in the cash and bank balance.

Management Response:

713. Management concurred with the audit observation that the funds were managed from the operations account. However, Management maintained a fund account for each of the projects. To mitigate the risk, Management had since sought approval from the National Treasury through the Ministry of Water and Sanitation to open a development account for the counterpart funds received from the Ministry of Water and Sanitation.

714. The National Treasury gave approval for opening of the Development account on 17th June 2020 and AWWDA opened the development Account and transferred the development funds.

Committee Observations

715. **Information and documentation relating to the opening of the account had been provided to the Auditors and verified. As much as the AWSB had been using the same account, tracking of expenditure for various projects were monitored using in in-house system.**

Committee Recommendation

716. **The matter was adequately addressed and therefore the query resolved.**

PROPERTY, PLANT AND EQUIPMENT FY 2017/18

Un-serviced Loan

717. The financial statements of the Board reflected loans amounting to KSh. 29,160,609,808, as disclosed in note 27. Included in these was an AFD loan with a book balance of KSh. 2,931,382,826, (original amount: KSh. 3,850,000,000) on-lent to the Board by the National Treasury in two parts of KSh. 1,870,000,000 and KSh.1,980,000,000 in 2006 and 2009,

respectively, and repayable in 15 years at interest rate of 2.9 %, among other terms. According to the provisions of the subsidiary agreement between the Board and the National Treasury, the former was required to make semi-annual payments to the latter, comprising both the principal and interest on the loan, as they fall due.

718. However, during the year under review, the Board did not make the due payments amounting to KSh. 77,081,224, in relation to the 2017/2018 financial year. Further, the above outstanding payable was not included in the payables figure of KSh. 1,043,490,578, reflected under note 23. Under the circumstances, it was not possible to confirm that the Board met its obligations as and when they fell due.

Management Response

719. The AWSB management concurred with the audit observation that Board was unable to repay the AFD loan and interest for the year 2017/2018. This was because of failure by the Nairobi Water and Sewerage Company to remit amounts meant for Loan repayment as stipulated in the tariff approved by the Water Services Regulatory Board. The issue had been escalated to the Ministry of Water and Sanitation and the Water Regulatory Board to compel the water company to remit the lease fees. The Ministry had since written to the County Government of Nairobi requesting for their intervention in collecting the outstanding administrative fees to the Board and Loan amounts

Committee Observations

720. **The Committee made the following observations:**

(i) The department had since made the relevant disclosures in the financial statements and verified by the OAG.

(ii) The loan remained un-serviced despite AWSB's constant follow- up. The National Treasury has taken up the matter and will take over the loan repayment.

(iii) The National Treasury confirmed to the AWSB that there had not been a default in loan repayment as it undertakes mediation on repayment.

Committee Recommendations

721. **The Committee recommends to the ASWB to continue following the County Government of Nairobi to ensure the amount due is repaid.**

LONG OUTSTANDING RECEIVABLES FY 2017/18

722. The Board's financial statements reflected receivables from exchange transactions amounting to KSh. 4, 491,863,884, as disclosed in note 19. Included in these was KSh. 3,246,511,671 owed by Nairobi County Water and Sewerage Company, which had been outstanding for periods beyond the financial year under review. The financial statements further reflect receivables from non-exchange transactions amounting to KSh. 7,402,772,343, as disclosed in note 20.

723. These included other receivables of KSh. 680,114,599, which further included KSh. 7,092,497 due from a High Court of Kenya, which arose in 2014/2015. Consequently, it was not possible to confirm the recoverability of the receivables from exchange and non-exchange transactions, which have been long outstanding.

Management Response

724. Management concurred that some debtors had been outstanding for a long time. This was especially amounts due from the Water Service Providers notably Nairobi Water and Sewerage Company. Management had made several efforts to recover the outstanding debts. The Board signed a deed of settlement with the water companies who did not honor the agreement. The Board sought authority from the office of the Attorney General to engage a debt collector but the Attorney General advised the board to engage the company through the parent ministry and the National Treasury since both parties are public institutions.

725. The KSh. 7,402,772,343 deposited with the courts will be available to AWWDA after the court awarded only Ksh 44,720 in its judgement of 10th December 2019.

Committee Observations

The Committee made the following observations:

(i) **The amounts owing from Nairobi Water and Sewerage Company were still outstanding to date.**

(ii) **The status of the amounts due from the Judiciary, which served as security for a legal case, will be reviewed as part of the FY 2019/2020 Audit.**

Committee Recommendation

726. The Chief executive Officer of the AWSB should reflect the amount awarded by the courts in the AWSB's books in 2019/202 FY

REPRESENTATIVE OF THE ATTORNEY-GENERAL IN THE BOARD OF DIRECTORS FY 2017/18

727. As reported in prior year audit report, the Board of Directors as then constituted did not include a representative from the Office of the Attorney-General as it was the case with all other State Corporations. The Board's mandate of planning, development and expansion of water and sewerage infrastructure on behalf of National Government, require it to undertake huge capital projects. Such contracts require legal expertise which can be better provided by the Government Chief Legal Officer who was the Attorney-General. The absence of such legal expertise in the Board could therefore lead to serious legal challenges in drafting contract agreements.

Management Response

728. This is a policy issue. The water Act 2016 has resolved this issue under section 66. (1) Each water works development agency shall consist of— (a) a chairperson, who shall be appointed by the Cabinet Secretary from a county within the basin area; (b) four other members who shall be appointed by the Cabinet Secretary from counties within the basin area. This came to effect on 3rd May 2019. See Annex 2.1.1

Committee Observation

729. **The Committee observed that the Water Act 2016 had since defined the board membership / composition thereby resolving the matter.**

VOIDABLE LEGAL FEES FY 2017/18

730. As reported in previous year's audit report, the Board hired a law firm to represent it in a court case between itself and a construction company. These legal services were procured through single sourcing, contrary to provisions of Public Procurement and Disposal Act 2005. The law firm was paid KSh.28,805,812 based on a claim of KSh.1,314,245,166 made by the contractor. The claim was finally settled at a modest amount of KSh.73,772,240. Had the legal fees been based on the final settlement, it could have costed the Board KSh.2,282,153. The Board therefore overpaid the law firm by KSh.26,523,659**.** Although, according to management, the payment was based on advocate's remuneration schedule and some advice as given by the office of the Attorney General, no documentary evidence was provided in support of the explanation given.

Management Response

731. The Management objected to the fee note submitted by Kipkenda & Co Advocates for Ksh 34,684,598.85 on 11th April 2016. The Chief Executive Officer requested for an independent legal opinion from the Office of the Attorney General vide letter AWSB/CS/No.541/2013 (Lek). Office of the Attorney General responded and indicated that the legal fees payable based on advocate's remuneration schedule was Ksh 28,805,812.36 inclusive of Taxes.

Committee Recommendation

732. **The Committee recommends that the EACC should investigate the entire procurement process of the law firm and payments made for legal services with a view to recommending appropriate charges on anybody that may have broken the law.**

2.12 KENYA WILDLIFE SERVICE (FY 2017/18 and 2018/2019)

EXAMINATION OF THE REPORTS OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF THE KENYA WILDLIFE SERVICE FOR THE FINANCIAL YEARS 2017/2018 AND 2018/2019

Brig. (Rtd) J. M. Waweru, EBS ,Director General of the Kenya Wildlife Servuice, accompanied by Mr. Mathenge (Head of Finance) appeared before the Committee to adduce evidence on the audited accounts of the Kenya Wikldlife Service for the financial years 2017/18 and 2018/2019.

Property Plant and Equipment (FY 2017/2018 and 2018/2019)

733. The Committee heard that as previously reported, Property Plant and Equipment balance of KSh.6,835,375,000 as at 30th June 2018 excluded the undetermined value of 222 parcels of land across the country with or without title documents but on which the Service had put up various developments including buildings. These comprised of 23 national parks, 29 national reserves, 6 marine national reserves, 6 sanctuaries and one hundred and fifty-two (152) other parcels of land. Further, the Service had 46 title deeds issued while 176 are still in progress of acquiring ownership documents. In addition, the Service had not updated its fixed assets register and the Service had not yet carried out valuation of its wildlife.

734. In view of the foregoing, it was not possible to ascertain the accuracy, completeness, valuation and ownership of the property plant and equipment balance of KSh.6,835,375,000 as at 30 June 2018.

Management Response

735. Management concurred that as at 30th June 2018, the assets register had assets totalling KSh.7,873,357,680 while the general ledger balance was KSh.6,835,375,000. The main variance was because the Assets Register was established in the year 2008 after a valuation exercise spearheaded by PWC. The current Assets register figure incorporates acquisitions done during the last ten (10) years but excludes annual depreciation figure, additions due to

road networks maintenance, work in progress (WIP) for buildings and construction cost of fences.

736. The general ledger figure which forms part of the financial statements is reflected at book value after incorporating the additions and depreciation write down. The revised financial statements have the property, plant and equipment and general ledger figures reconciled (tied).

737. KWS had not included Land as part of the Property, Plant and Equipment item. This was due to the fact that owing to the huge cost of valuation, the Service had not been able to fund the activity. KWS had a total of 222 parcels of land spread the entire country out of which 45 had titles at the time. This improved to a total of **50 parcels** of land that had titles and the rest of 131 parcels were at different stages of titling as indicated below.

Summary of the Status of Acquisition of Land Documents

Category	No. of Properties	Status of Acquisition of Land Documents				
		Boundary Plan prepared but not surveyed	PDP Prepared (Planned)	Surveyed	Title Registered	Cannot be registered*
National Parks	24	2	N/A	22	12	0
National Reserves	29	1	N/A	4	1	28
Marine National Reserves/ Parks	12	2	N/A	10	1	0
Sanctuaries	5	0	N/A	5	1	0
Station Plots	152	N/A	51	78	35	13

TOTALS	**222**	**5**	**51**	**119**	**50**	**41**

738. Land parcels for which title documents cannot be obtained since they are either National Reserves on community land; falling within Sub- County, County or National Government Administration headquarters (e.g. Mwingi Office plot, Muranga Station and Machakos Station) within forest reserves (e.g Meru station) or on land that is not yet adjudicated.

Committee Observations

739. **The Committee made the following observations:**

(i) This matter was addressed in the PIC's 23rd Report recommending that the KWS expedites acquisition of titles to its property. Though Management indicated that it has so far secured 5 titles, this is way short of the expectations and therefore most of the KWS properties (131 parcels of land) remain at risk of grabbing.

(ii) The asset valuation of KWS properties remained unvalued and therefore whatever figure was presented in the books of accounts did not represent the fair value of the KWS assets and therefore misleading.

Committee Recommendations

The Committee made the following recommendations:

(i) The KWS management should fast track the process of getting ownership documents of its properties.

(ii) The Management of KWS should ensure that the assets register is updated.

COMPENSATION FOR LAND HIVED OFF (FYS 2017/18 AND 2018/2019)

Standard Gauge Railway (SGR)

740. As reported in the prior year, compensation for land hived-off from the national park for the construction of Standard Gauge Railway (SGR) phase 1 as per the agreement amounted to KSh.1,475,000,000. The amount was for restoration of environment and movement of

structures at KSh.1,197,000,000 and KSh.278,000,000 respectively. However, as at 30 June 2018, only KSh.1,469,000,000 had been paid leaving a balance of KSh.6,000,000. It was noted that the Service irregularly financed the deficit from its recurrent budget.

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

Management Response

742. There was an outstanding balance arising from SGR phase 1(Tsavo area) KSh.6,000,000 and SGR phase 2(Nairobipark) KSh.500,000,000. The KWS management, through the parent ministry, followed up with the National Treasury to ensure the obligations as envisaged in the contract was settled. Kenya Railways settled in full the outstanding amount in April 2021.

Committee Observations

743. **Despite the management of KWS alleging that it has written severally (evidence of correspondences not provided) requesting payment of the Khs 6 million, the said monies had not been paid. Further, it was noted that the endowment Fund is operational and that KWS is utilizing its interest.**

Committee Recommendation

744. **The Committee recommends that the management of Kenya Wildlife Service should aggressively follow settlements of the Khs 6 million**

Southern Bypass (FYs 2017/2018 and 2018/2019)

745. The Kenya Wildlife Service signed an easement with the Government of Kenya for land hived-off Nairobi National Park for the construction of southern bypass road for KSh.3,740,713,840. The money was to be deposited in the Wildlife Endowment account from the State Department for Infrastructure. As at 30 June 2018 only KSh.1,266,003,840 had been received leading to unexplained balance KSh.2,474,710,000.

Management Response

746. Management concurred with the audit finding that there was an outstanding balance arising from Southern Bypass contract agreement between KWS and KENHA of KSh.2,474,710,000. The management, through parent ministry, was following up with the Kenya National Highways Authority and the National Treasury to ensure the obligations as envisaged in the contract was settled.

Committee Observations

747. **Despite the responses given, there were no supporting documents and as such the committee was unable to verify their accuracy. Further, the easement contract should have been attached for perusal.**

Committee Recommendations

748. **The Committee recommends that the management of the KWS should aggressively follow up on payment of the balances of KSh 2,474,710,000 from the Kenya National Highways Authority and the National Treasury.**

REVENUE FY 2018/2019

Unaccounted for Revenue receipts (FY 2018/2019)

749. The statement of comprehensive income reflects a total sales turnover of KSh. 3,895,058,000 in the year under review. The balance includes park entry fees totalling KSh.3,857,483,000 as disclosed in Note 5 to the financial statements. However, examination of Point-of-Issue and Point-of-Sales (POIPOS) data indicated that an undetermined amount of revenue attributed to 1,225,525 used revenue receipts was not included in the sales balance reflected in the financial statements. Further, records on revenue collected from six regional revenue stations, namely, Lake Nakuru (POIPOS 9), Mombasa (POIPOS 15), Mombasa (POIPOS 16), Tsavo West (POIPOS 18), Nairobi (POIPOS 34) and Nairobi (POIPOS 35) were not provided for audit review.

750. In the circumstance, the accuracy and completeness of the park entry fees balance totalling KSh.3,857,483,000 included in the sales turnover balance totalling KSh. 3,895,058,000 reflected in the statement of comprehensive income could not be confirmed.

Management Response

751. The Service collects its revenue through a smartcard-based system known as Safaricard. The Service deployed the system in major Parks from the year 2008, replacing the Smartcard system which was in operation since the year 2000. It's important to note that Safaricard Revenue System is **NOT** integrated with Financial Accounting System, the Sunsystem thus data transfer was done manually. At the various gates, the customer presents the payment reference and after verification with bank statement an equivalent value was loaded in the respective visitor's card. At the end of the day, Safaricard System produced summary sales report called Z-Report which showed the total amount. The amount was compared with the cash at the bank to confirm all sales for the day were fully accounted for. Since the Safaricard System and the financial System are not integrated, revenue accounting does not involve internal receipting system of the Safaricard. The internal receipting was meant to facilitate audit trail to confirm who did transaction in the system but not a means to acknowledge cash receipt.

752. The system consisted of front office and back-office functions supported by different applications/modules. The front office function handled revenue collection and was supported by POIPOS (**Point of Issue Point of Sale**) and POA (**Point of Access**) applications.

753. POIPOS workstations consisted of a computer, a Card reader, a receipt printer and a card printer. The Card reader device was used to login to the system. A Card reader incorporated a security feature hardwired on two microchip cards (SAM cards) with which it must have to function. For every transaction performed by a Card reader, the system generates a reference referred to as, a receipt.

754. A POIPOS (e.g. POIPOS 1) can be assigned one or many Card readers at different times in case a card reader malfunctions and a spare one is available to replace the faulty one. It is important to note that, a POIPOS could not function without a Card reader; as such, a POIPOS will not be in use if a card reader malfunctions without a replacement.

755. During the time of the audit exercise, the IT audit team was inducted on the Safaricard revenue management system after which they requested data on two items which were (a) Value loading on the card (top up) and (b) POIPOS List only.

756. The Safaricard system was structured in such a way that with certain operations, the system would automatically generate a unique reference number referred to as, a receipt. This was for the purpose of audit trail. These operations include:

a) Value top up/Loading

b) Value Transfer

c) Card issuance (temporary and permanent cards)

d) Card Sales

e) Card renewals

f) Card Epurse unblocking

g) Card upgrade

h) Pin Change/Reset

i) Special services e.g. guide fees

757. During the year under review, all the above functions had transactions with receipts that were not included in the analysis done by the external auditors, given that they only concentrated on the specific data which they had requested, consequently leading to the variance. Upon discussion and clarification at the exit meeting a copy of the entire data base was provided for verification to the audit team.

758. Below is a summary of all transaction types for the period under review

2018/2019 FY POIPOS TRANSACTIONS SUMMARY					
#	**TRANSACTION TYPE**	**DESCRIPTION**	**MONEY INVOLVED**	**NO MONEY INVOLVED**	**TOTAL NO OF TRANSACTIONS**
1	Card issue	Temporary cards recycling		143,212	**143,212**

2018/2019 FY POIPOS TRANSACTIONS SUMMARY					
#	TRANSACTION TYPE	DESCRIPTION	MONEY INVOLVED	NO MONEY INVOLVED	TOTAL NO OF TRANSACTIONS
2	Card Issue Fees	Fees charged on Personalized Cards	18		**18**
3	Card renewal	Renewal of Resident Cards done for free based on valid documents		309	**309**
4	Card replacement fees	Fees Charged on replaced cards	90		**90**
5	Card Upgrade	Upgrading cards from single currency to double currency		2,028	**2,028**
6	Cash Register received payment - Bank	Represent receipt on money via Debit/Credit card	57,095		**57,095**
7	Cash Register received payment - Cash	Represent receipt on money via Cash	19		**19**
8	Cash Register received	Represent receipt on money via	121,992		**121,992**

2018/2019 FY POIPOS TRANSACTIONS SUMMARY					
#	**TRANSACTION TYPE**	**DESCRIPTION**	**MONEY INVOLVED**	**NO MONEY INVOLVED**	**TOTAL NO OF TRANSACTIONS**
	payment - Cheque	Cheque			
9	Epurse credit for tariff overpayment	Overpayment settlement/refund	27		**27**
10	Epurse top up	Actual Value loading/Top up to a card	180,044		**180,044**
11	Overstay/Under payment in cash	Payment of overstay/underpayment	2		**2**
12	Pinblocked Card	Resetting a customer card PIN		117	**117**
13	Special Services Fees	Special services	1		**1**
14	Unblock Epurse	Unblocking a card to make it functional		2,493	**2,493**

2018/2019 FY POIPOS TRANSACTIONS SUMMARY					
#	**TRANSACTION TYPE**	**DESCRIPTION**	**MONEY INVOLVED**	**NO MONEY INVOLVED**	**TOTAL NO OF TRANSACTIONS**
15	Epurse transfer to another card	A debit transaction to another card with no actual receipt of money. Transfer of already loaded value in electronic form	575		**575**
16	Epurse Topup from another card	A Credit transaction from another card with no actual receipt of money. Receiving value from another card already loaded in electronic form	575		**575**
17	Epurse Transfer from same card	A Credit transaction with no actual receipt of money. Receiving value within the same card already loaded	15		**15**

2018/2019 FY POIPOS TRANSACTIONS SUMMARY					
#	**TRANSACTION TYPE**	**DESCRIPTION**	**MONEY INVOLVED**	**NO MONEY INVOLVED**	**TOTAL NO OF TRANSACTIONS**
18	Epurse Transfer to same card	A debit transaction with no actual receipt of money. Transfer of already loaded value within the same card	15		**15**
	Grand Total		**360,468**	**148,159**	**508,627**

759. The total transactions generated by the POIPOS during financial year 2018/2019 was 508,627 out of which 360,468 were money transactions while the balance is noncash transactions

2018/2019 FY POA & VTT TRANSACTIONS SUMMARY (POA -Point of Access; VTT - Value Transfer Terminal)					
#	**TRANSACTION TYPE**	**DESCRIPTION**	**MONEY INVOLVED**	**NO MONEY INVOLVED**	**TOTAL NUMBER OF TRANSACTIONS**
1	Audit total debit	Debit amount/			

2018/2019 FY POA & VTT TRANSACTIONS SUMMARY (POA -Point of Access; VTT - Value Transfer Terminal)					
#	**TRANSACTION TYPE**	**DESCRIPTION**	**MONEY INVOLVED**	**NO MONEY INVOLVED**	**TOTAL NUMBER OF TRANSACTIONS**
	transaction	amount deducted per entry transaction	211,554		211,554
2	Concession card debit	Debit amount / amount deducted per concession/organized group	16,308		16,308
3	Epurse debit for overstay/under payment	Overstay/underpayment payment using the primary card	616		616
4	Overstay detection - Failure to exit	Overstay detection		45	45
5	Overstay detection - Health and security	Overstay detection		1	1
6	Overstay detection - Vehicle Breakdown	Overstay detection		170	170
7	Overstay detection - Voluntarily	Overstay detection	608		608

2018/2019 FY POA & VTT TRANSACTIONS SUMMARY (POA -Point of Access; VTT - Value Transfer Terminal)					
#	**TRANSACTION TYPE**	**DESCRIPTION**	**MONEY INVOLVED**	**NO MONEY INVOLVED**	**TOTAL NUMBER OF TRANSACTIONS**
8	Park Exit	Park Exit/Check out		231,899	231,899
9	Park Late Entry	Gate pass settlement		21,759	21,759
10	Park Late Exit - Failure to exit	Late Exit / Check out		2,062	2,062
11	Park Late Exit - Health and security	Late Exit / Check out		189	189
12	Park Late Exit - Vehicle Breakdown	Late Exit / Check out		1,077	1,077
13	Park Late Exit - Voluntarily	Late Exit / Check out	235		235
14	Received payment from third party	Overstay/underpayment payment from a 3rd party card	335		335
15	Self-access payment Epurse Debit	Applicable for individual entry	168,499		168,499

2018/2019 FY POA & VTT TRANSACTIONS SUMMARY (POA -Point of Access; VTT - Value Transfer Terminal)					
#	**TRANSACTION TYPE**	**DESCRIPTION**	**MONEY INVOLVED**	**NO MONEY INVOLVED**	**TOTAL NUMBER OF TRANSACTIONS**
16	Third party access payment epurse debit	Applicable for an individual accompanied by visitors	171,355		171,355
17	Vehicle fee payment epurse debit	Applicable where a vehicle is used for entry	169,649		169,649
18	VTT Cancellation of Epurse Topup from another card	Value transfer cancellation due to e.g. faulty card, overstay, unexited card	162		162
19	VTT Epurse Transfer - Crediting Destination Card	Receiving value from another card	16,528		16,528
20	VTT Epurse Transfer - Debiting Initial Card	Transferring value to another card	16,528		16,528
	Grand Total		**772,377**	**257,202**	**1,029,579**

760. The total transactions generated by the POA (point of access) and VTT (value transfer terminal) during financial year 2018/2019 was **1,029,579** out of which **772,377** were transactions involving money while the balance is noncash transactions.

POIPOS LISTINGS

761. The audit team had requested for the POIPOS List that supports the Safaricard System of revenue collection. The POIPOS data that was extracted reflected only the POS's that were operational consequently leaving POS Nos, 9, 15,16,18,34 & 35. These POS were faulty and were not in use during the year under review and thus didn't have transactions. Most of them are because of malfunctioning of the card readers. An extract of each of the POS has been reported as indicated clearly showing that there were no transactions during the period under review. It's good to note that the Safaricard system was old fashioned with outdated technology and whenever it break down, it was not repairable. Below is a summary of the issues:

a) POIPOS no. 15 & 16

The two (2) POIPOS were assigned to Mombasa POIPOS office.

- The Mombasa POIPOS server was in un-usable state during the period due to corrosion associated with coastal climatic conditions and needed urgent replacement, but the organization did not have a spare server. However, The Diani POIPOS server was not in use hence it was agreed that the server be relocated to Mombasa mainland office since the organization had earlier made the decision to close the Diani office. The POIPOS transactions reflected as Diani were indeed processed at the Mombasa office. The server had to be used without change of name, as this would have affected the earlier transactions done on the server while in Diani office.

b) POIPOS no. 18

POIPOS 18 was assigned to Tsavo West National Park POIPOS office and was not in use during the Audit Period due to card reader hardware related challenges. POIPOS 18 was assigned a card reader number **9000750.** Tsavo West National Park was operating with one POIPOS workstation (**POIPOS 17**) assigned card reader number 3120.

c) POIPOS no. 34

POIPOS 34 was assigned to Nairobi National Park POIPOS office and assigned card reader number **119000752** that was active from 30-12-2011 to 11-01-2012 but malfunctioned. As such, the device undertook no transaction within the audit period; it is for this reason that there are no transactions for POIPOS 34 during the audit period.

d) POIPOS 35

POIPOS 35 was created on **28-12-2011** for Nairobi National Park and has never been assigned a card reader to date; hence, no transactions during the audit period. That means POIPOS 35 has not been in use from the date of creation. The POIPOS was created in anticipation of high visitation but it was later noted that the ones in use were sufficient for the period.

e) POIPOS 9

POIPOS 9 was created on **27-12-2010** for Lake Nakuru National Park but has never been assigned a card reader to date hence no transactions during the audit period. This means POIPOS 9 has not been in use from the date of creation. The POIPOS was created in anticipation of high visitation, but it was later noted that the ones in use were sufficient for the period.

<u>Committee Observations</u>

762. **The Committee made the following observations:**

(i) Much of the response given in this audit query relates to how the system works and the whereabouts of the documents the audit team did not see during audit which information was availed to the Committee.

(ii) **The safaricard system that was put in place in the year 2000 is obsolete and therefore management was working on replacing it to avoid pilferage. However, management had taken inordinately too long to put in place a system that works due failure to get a suitable service provider after two procurement processes (unresponsiveness).**

Committee Recommendation

763. **The Committee recommends that the management should expedite procurement of a system that is integrated and accountable to avoid pilferage within the 2022/2023 financial year.**

Understatement of Revenue FY 2018/2019

764. Review of banking statements for the year under review indicated that Park entry fees banked in the year totalled KSh. 4,104,332,501 and not KSh. 3,857,483,000 reported as income in the year under review. The difference amounting to KSh. 246,849,501 was not accounted for. Further, review of a sample of mobile money transfer (Mpesa) statements revealed unexplained variances totalling KSh.807, 107 between the amounts captured in the customer receipts and those reflected in the respective Mpesa account codes.

765. In the absence of reconciliation statements for the variances, the accuracy of the park entry fees balance totalling KSh. 3,857,483,000 included in the sales turnover balance totalling KSh.3, 895,058,000 reflected in the statement of comprehensive income could not be confirmed. As a result, the accuracy completeness and validity of the sales turnover balance could not be confirmed.

Management Response

766. In June 2016, KWS transitioned to cashless system of revenue collection where all monies are credited directly to the collection bank accounts by way of bank deposits, sweeps from PDQ transactions, EFT and transfers from Mobile money transactions.

767. In undertaking this analysis, the auditor requested for the bank statements of the collections accounts as well as the statements of PDQ transactions of which he extracted the credits entries (Receipts) reflected in these

statements. These entries totalled to KSh. 4,104,332,501 as highlighted in the report. It is important to note that the PDQ machines were integrated with the respective bank collection accounts such that the card transactions (funds received through the PDQ machine) for the day sweeps (credits) into the respective collections bank account by close of the same day. The tallying of credit entries in collections accounts and PDQ transaction amounted to double counting of the transactions carried out in the PDQ machines. It was thus verified that the difference in amount of Ksh.246,849,501 between the analysed banking and reported revenue as reported by the auditor was an error of double counting. Extract copies of the bank statement and the PDQ transactions are enclosed for ease of reference.

768. To enable the cashless payment modes, to operate in Safaricad system the cash payment module was disabled and cashless modes processed through Cheque payment module which provides for user input fields e.g. Cheque number. To distinguish among the different cashless payment modes, the following prefixes were introduced:

- MP – MPESA
- EFT – Electronic Funds Transfer
- RTGS – Real Time Gross Settlement
- DD – Direct Deposit (Deposit slip)

769. The variances noted by the audit were occasioned by the fact that some MPESA transactions were merged into one card top up while others were split into more than one card top ups and, in some instances, wrong MPESA references keyed in. The system provides for one payment mode reference at a time for each Epurse (e-wallet) since a card has two epurses i.e. Kenya shillings and Foreign currencies. However, two top ups for different cashless payment modes (e.g. MPESA for KES Epurse and Deposit slip for USD foreign currency Epurse) could be transacted at once and each transaction identified uniquely.

Committee Observation

770. **The query raised was not addressed as the information sought was not provided during audit and reconciliation has not been done.**

Committee Recommendation

771. **The Committee recommends that management should reconcile and provide information for audit review in the next audit cycle.**

Inaccuracies in Cash and Cash Equivalents FY 2019/2020

772. The statement of financial position reflected bank and cash balances totalling KSh. 6,446,416**,**000 as at 30 June 2019. The balance was comprised of KSh.1,433,631,000 for KWS operations, KSh. 5,000,533,000 for projects and KSh. 12,252,000 cash in hand. However, review of records on the balance revealed the following anomalies:

Cash-in-Hand

773. The cash in hand balance totalling KSh.12,252,252 as at 30 June 2019 had the following discrepancies:

(i) The balance included unbanked cash totalling KSh.9,551,071 and KSh.89,480,213 under two accounts namely, Code 211300 and code 214300 respectively.

(ii) Unreceipted cash totalling KSh.33,559,903 under accounts Codes 212600 and KSh.119,956,748 under accounts codes 214200

(iii) The cash on hand balance included unallocated bank deposits amounting to KSh.1,078,675 under account Code 212601 and excluded unallocated banking to KSh.4,141,788 under account code 214201.

(iv) No board of survey reports was presented to support the cash in hand balance totalling KSh.12,252,252 as at 30 June 2019.1

Management Response

774. In 2016, KWS introduced cashless system of payments and receipts. However, the categorization in ledger (accounts codes) were erroneously not reviewed hence the use of Cash in Hand remained as a class of items in the financial statements despite the Service being cashless.

Unbanked cash/ unbanked cash POS

775. These were cheques (not cash) being held by the cashiers awaiting banking the following day. The daily gate collections used to be banked the following working day after a reconciliation on the sales between the accountant and the respective supervisor.

Unreceipted gate cash /unreceipted cash POS

776. These were cheques (not cash) collected at the gate by the customer care staff awaiting to be receipted by the respective supervisor.

Unallocated bank deposits (212601 and 214201)

777. These are bank deposits slips being held by the customer care staff awaiting allocation by the accountant.

Board of Survey

778. There was no board of survey done during year because KWS was operating cashless system thus no cash to count.

Committee Observation

779. **There were no documents placed before the Committee to support the narrations under this audit query and therefore the Committee could not ascertain their correctness.**

Committee Recommendation

780. **The Committee recommends that the Management of the KWS should present supporting documents (cheques and how they were banked) to the Office of the Auditor General for audit verification in the 2022/2023 audit cycle.**

Short Term Deposits FY 2018/2019

781. The bank and cash balance totalling KSh.6,446,416,000 reflected in the statement of financial position included short term deposits totalling KSh.92,622,211 whose supporting records, including information on the interest earned during the year under review, were not provided for audit review.

Management Response

782. During the time of audit, the information relating short term deposit was not provided. However, the same was available to the Committee for review.

Committee Observations

783. **The Committee made the following observations:**

(i) The management had failedto provide information for audit verification within the statutory timelines thus in breach of the Public Audit Act 2015.

(ii) Further, it was not clear why the management failed to submit this information for audit.

Committee Recommendations

784. **The Committee made the following recommendations:**

(i) The accounting officer for the KWS should be reprimanded on his failure to submit the requested documents for audit.

(ii) The accounting officer of the KWS should submit the requested documents to the office of the Auditor General for audit during the 2022/2023 audit cycle.

Variance in Endowment Fund Account FY 2018/2019

785. The Endowment Fund cash book and bank reconciliation statement for the month of June 2019 reflected a bank balance totalling KSh.3,923,111,000 whereas the certificate of bank balance for the month reflected KSh.3,913,111,000.00 resulting to unexplained difference of KSh.10,000,000.

786. In view of these issues, it was not possible to confirm whether the bank and cash balances totalling KSh.6,446,416,000 as at 30 June 2019 was fairly stated.

Management Response

787. The reconciliation of the variance has been done and evidence provided.

Committee observation and recommendation

788. **This was a reconciliation issue that had since been done and therefore resolving the query**

Unconfirmed Trade and Other Receivables FY 2018/2019

789. The statement of financial position reflects trade and other receivables totalling KSh.685,126,000 as further disclosed in Note 12 to the financial statements. However, the balance contains the following anomalies:

Long Outstanding Imprest

790. Note 12 to the financial statements reflected a net staff receivables balance totalling KSh.95,621,000 which included outstanding temporary imprests totalling KSh.36,261,000. Records on the balance indicated that KSh.30,030,977 was subsequently surrendered leaving a balance of KSh.6,230,023 outstanding, more than one year after the end of the year under review. The balance included KSh.813,526 owed by staff members who had left the Service. No explanations were provided for failure to recover the long outstanding imprests from the defaulters.

791. Consequently, the recoverability of the long outstanding imprest totalling KSh. 6,230,023 could not be confirmed.

Management Response

792. As at 30th June 2019, the outstanding imprest balance was KSh.36,261,266.94, however it was confirmed that these imprests were surrendered during the FY 2019/2020 upon completion of the assigned activities. As a result, the outstanding imprest balance as at 30th June 2020 was KSh.6,230,023.00 being imprest applied and advanced during the FY 2019/2020 and not relating to prior year 2018/2019.

793. The amount of Ksh 813,526 related to staff who left the KWS and were yet to formally clear from the Service mostly due to death and pending court cases. The Service had already sent demand letters through the last known address of the staff who were yet to clear.

<u>Committee Observations</u>

794. **The Committee made the following observations:**

(i) It is the responsibility of the accounting officer to ensure surrender of imprest after seven days of completion of an activity for which the imprest was issued for as per the Public Finance Management Act 2012.

(ii) Continued accumulations of unsurrenderd imprests indicates that the accounting officer had failed to perform his duties as per the law.

<u>Committee recommendations</u>

795. **The Committee made the following recommendations:**

(i) The Accounting officer for the KWS should recover the unsurrendered imprest within the 2022/2023 financial year.

(ii) The accounting officer for the KWS should always adhere to the provisions of the Public Finance Management Act 2012 relating surrender of imprests.

<u>Net staff Receivables-Staff Advances</u>

796. The net staff receivables balance totalling KSh.95,621,000 reflected under Note 12 to the financial statements included staff advances totalling KSh.79,061,769. Examination of the respective records revealed the following anomalies:

- The staff advances balance includes KSh.49,767,910 and KSh.707,959 owed by permanent and temporary Staff respectively and KSh.8,793,012 owed by former Staff.
- A sum of KSh.246,017 included in the balance related to old medical cases and KSh.7,481,371 to employees who had passed away.
- A sum of KSh.3,249,871 was reflected as outstanding ex-staff salary advances. However, no explanation was provided on the identities of the staff and why they were allowed to leave the Service while indebted.

797. In view of these issues, the trade and other receivables totalling KSh.685,126,000 as at 30 June, 2019 could not be confirmed.

Management Response.

798. As at 30th June 2019, KWS had outstanding medical balances totaling KSh. 49,767,910 for permanent staff and KSh.707,959.00 for temporary staff. Further KSh.8,793,012.00 for ex-staff. Prior to the financial year 2015/2016, KWS implemented an in-house medical scheme where employees were allocated balances according to their respective grades. However, in case of exhaustion, KWS used to clear the hospital bill and the excess amount loaded to pay slip where monthly recoveries were being done. However, in June 2016, the board stopped this practice and the organization only catered to the extent of the annual employee allocation.

799. The KSh.8,793,012.00 included KSh. 7,481,371.00 relating to employees who had passed on in service but who had medical balances. The board gave approval for write off but were waiting for the final approval from the National Treasury to adjust our records. Copies of the board minutes discontinuing the in house excess medical funding and the request to the National Treasury through our parent Ministry on the write off were available to the Committee for review.

800. The ex-staff advances account as at 30th June 2019 had a balance of KSh.3,249,871.00. This was with regards to staff who left the service but had not yet cleared with KWS as per policy guidelines. Some of the ex-staff have court cases ongoing which were yet to be concluded thus the clearance was yet to be concluded. A list of the respective staff was available to the Committee for review. The owing amounts would be recovered from the final dues immediately the staff finalized clearance from the Service.

Committee Observations

801. **The Committee made the following observations:**

(i) **KWS Board had correctly stopped the former policy on staff medical cover that was responsible for the queries dating way back to 2016.**

(ii) **It has however taken inordinately long to recover monies from the employees that had left the Service and the process of writing of monies due from deceased staff was slow.**

Committee Recommendation

802. **The Committee recommends that the KWS accounting officer should ensure that all the outstanding issues on receivables are addressed within the 2022/2023 Financial Year**

Incomplete Deployment of Electronic Revenue Collection System FY 2018/2019

803. The Service has deployed an electronic revenue collection system, Safaricard, in eight (8) out of twenty –three (23) National Parks and in six (6) Marine parks. The eight parks comprise Nairobi National Park, Tsavo East, Tsavo West, Amboseli National Park, Aberdares, Malindi Marine Parks, Mombasa Marine Park and Lake Nakuru National Park. However, in the remainder twenty-three (23) National Parks and six (6) Marine National

Parks, the system was not in use and therefore, revenue in the locations is collected manually.

804. Further the system was not integrated with the electronic financial accounting system and as a result, revenue data was input into the system through manual means. In view of these shortcomings collection and accounting for revenue was not efficient and may be prone to error and misstatement.

805. Management did not explain why an efficient revenue management system had not been established to provide timely, reliable, accurate and exhaustive revenue data for accountability and decision- making purposes.

Management Response

806. The management took note of the above challenges and had been in the process of trying to acquire a new revenue management solution that will replace the existing system and in so doing address the above stated challenges. This process started in 2016 and had been unsuccessful on two occasions most recently in 2019. However, the Service managed to finalize the procurement process and has identified a provider of the RMS. KWS was at the initial stages of implementation and anticipated to be fully operational by 30th June 2022.

Committee Observations

807. **This is a repeat paragraph. Observations and recommendations made previously obtain here. The committee should pronounce itself and reiterate the observations???**

Failure to Deploy E-Procurement System FY 2018/2019

808. The Service was yet to implement the Government's e-procurement system even though fifteen (15) officers were in 2015 trained by The National Treasury. Failure to undertake the migration contravened Executive Order No.6 of 2015 which had instructed managements of public entities to migrate their procurement systems to the e-procurement

platform developed by The National Treasury. Executive Order No.2 of 2018 further required all entities to undertake all their procurement processes through e-procurement not later than 01 January, 2018.

Management Response

809. KWS did have electronic procurement system in place. KWS Procurement department used a supplementary manual system which conformed to the requirements of public procurement and disposal Act 2015. However, procurement department had already developed workflow detailing the process in readiness to acquisition of a procurement system.

810. KWS abides by the presidential directive by posting the details of all awarded tenders and contracts on KWS website kws.go.ke monthly openly for public scrutiny. The same information was uploaded to the Public Procurement information Portal (PPIP) portal that is tenders.go.ke.

811. Further the Service had engaged the services of the National Treasury through the IFMIS Directorate. There was a formal meeting held on 9th October 2019 that confirmed that the current KWS Infrastructure could handle the requirements of IFMIS setup and roll-out. An agreement was made that a report shall be prepared by Implementation Team from the National Treasury to the Director IFMIS briefing him on the meeting for direction on the way forward. There has been no communication on the same since then.

812. The Service had so far done a follow up on the same to the National Treasury vide a memo dated 18th February 2020 for the implementation of the IFMIS System.

Committee Observations and Recommendation

813. **Though KWS does not utilize IFMIS system currently, the system it uses is also efficient for e-procurement.**

Committee Recommendations

814. **The Committee recommends that the KWS board should adopt the e-procurement and implement the IFMIS system in all her financial transactions**

2.13 NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY (FY 2011/2012 TO 2017/2018)

EXAMINATION OF THE REPORT OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF THE NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY FOR THE FINANCIAL YEARS 2011/2012 TO 2017/2018

Mr. Mamo M. mamo, Director General of the National Environment Management Authority (NEMA), accompanied by Mr. Kennedy Ochuka (Director of Finance and Adminstration), Michael Omusula (Chief Accountant), appeared before the Committee to adduce evidence on the audited accounts of the National Environment Management Authority for the financial year 2017/18.

Financial Year 2011/2012

Paragraph 1: Property, Plant & Equipment – also appears up to the FYs 2016/2017

815. The Committee heard that as previously reported, Property, Plant and Equipment balance of KSh 139,564,020 included nine (9) motor vehicles whose logbooks were not availed for audit review, apparently because the ownership documents had not been transferred to the Authority by the respective Government Ministries and Departments as at 30 June 2012. In absence of the logbooks, it was not possible to ascertain that the Property, Plant and Equipment balance of KSh 139,564,020 as at 30th June 2012 was fairly stated.

Management Response

816. Management informed the Committee that the vehicles were donated to the Authority by the government and by one donor. Management carried out a search at the Kenya Revenue Authority and established that the parent Ministries donated five of the nine fleet as below and are still the registered owners:

- GK A957B - Toyota station wagon belongs to Ministry of Environment Water and Natural Resources (MEWNR)
- GK X919 -Isuzu Trooper belongs to the Office of the president
- GK W352 - Isuzu Bus belongs to MEWNR

- GK Y825 - Toyota van belongs to MEWNR
- GK A176 - Motor cycle belongs to MEWNR.

817. The other vehicles as listed were purchased using Danida (NRM) funds. Their logbooks have not been transferred to the Authority: KBC 596M, KBF 614N, KBF 615N, KBG 765E.

<u>Committee Observations</u>

818. **The Committee made the following observations:**

(i) **It was erroneous to include assets in the Authority's Asset Register without ownership documents. Donations should ordinarily be accompanied with logbooks. These cars are grounded and old. They need to be disposed but cannot due to the absence of logbooks.**

(ii) **NEMA has been requesting the mother ministry to approve disposal of old and grounded vehicles without success;**

(iii) **It would not be economical to dispose the DANIDA vehicles (4) due to the amount of taxes they owed KRA as compared to their true value.**

<u>Recommendation</u>

819. **The Committee recommends that the NEMA management should request the mother Ministry and or the NTSA to register the vehicles so as to facilitate disposal. For those vehicles from DANIDA, they should be sold as spare parts. All these should be done as a matter of urgency.**

<u>Trade and Other Receivables</u>

820. The trade and other receivables balance of KSh 41,583,121 as at 30 June 2012 included outstanding imprests of KSh 23,538,476 out of which KSh 3,490,118 related to staff who had since left the Authority and KSh 675,100 was supposedly accounted for but no evidence was availed for audit verification. Under the circumstances, it was not possible to confirm the trade and other receivables balance of KSh 41,583,121 as at 30 June 2012.

<u>Management Response</u>

821. That KSh 3,490,118 related staff, Mr. Samwel Kamau Mwangi, who was issued with impress for an activity of the authority. Mr. Mwangi attended the activity and paid a few of the staff. He then later disappeared with the remaining cash together with the approved memo and the payment schedule.

822. The matter was reported to the police for investigation and apprehension. Mr. Mwangi was later summarily dismissed for absconding duty. Further investigations showed that the imprest had been taken by one staff Lucy Thuku, who subsequently requested Mr. Mwangi to assist her in paying out the staff. Since Mr. Mwangi did not sign any document when he received the money, Ms. Thuku was arrested and charged with the offence of loss of public property but was acquitted by the courts. Management has attached the Court ruling acquitting Lucy Thuku.

823. He was summarily dismissed for absconding duty. Further investigations showed that the imprest had been taken by one staff Lucy Thuku, who subsequently requested Mr. Mwangi to assist her in paying out the staff. Since Mr. Mwangi did not sign any document when he received the money, Ms. Thuku was arrested and charged with the offence of loss of public property but was acquitted by the courts. Management has attached the Court ruling acquitting Lucy Thuku.

824. The probability of getting this money back was quite slim. The management therefore requested the Board for approval in order to institute write off procedures since there was no evidence of imprest advance to Mr. Mwangi and Mr. Mwangi could also not be traced.

825. The amount of KSh 675,100 was an imprest issued to staff, Daniel Nyamora when he was working for the Public Complains Committee (PCC). The amount has been recovered in full from his salary.

Committee Observations

826. **The Committee made the following observations:**

(i) **Though this matter went to court and dealt with, there was no recovery done leading to loss of public money.**

(ii) **Further, it was irregular for management to process imprest in the name of Ms. Thuku when it was supposed to have been prepared under the name of Mr. Mwangi who later disappeared with public money.**

(iii) **Though a warrant of arrest had been issued against Mr. Thuku, it was inconceivable that he could not be reached and that he could be convicted given that there was no evidence to show that he took the money. As such, Management should have recovered the money from Ms. Thuku, which it negligently failed.**

FUNANCIAL YEAR 2012/2013

Cash and Cash Equivalents

827. The Committee heard that cash and cash equivalents balance of KSh 371,856,509 as at 30 June 2013 includes six (6) bank account balances amounting to KSh 22,662,101 which had not been supported by updated cashbooks, bank certificates and bank reconciliation statements as at 30June 2013 as tabulated below**:**

Name of Account	**Amount in KSh**
• Pension	5,348,827
• SCBK Kenya Coastal Development Project	8,548,022
• Co-operative Bank	1,545,800
• Public Complaints Committee	1,563,414
• National Environmental Tribunal	5,567,643
• National Environment Trust Fund	88,395
Total	**22,662,101**

828. Consequently, the completeness and accuracy of the cash and cash equivalents balance of KSh **371,856,509** as at 30 June 2013 could not be ascertained.

Management Response

829. These documents were provided and are hereby attached for ease of reference

Committee Observations

830. **The Committee made the following observations:**

(i) It is against the Public Audit Act and the PFM Act for management to fail to provide documents for audit within the required timelines.

(ii) Therefore, without supporting documents, the Committee could not make out whether these monies had been accounted for.

<u>Committee Recommendation</u>

831. **The Committee recommends that in the absence of supporting documents, the query remains answered and therefore the EACC should investigate whether the said amounts were fully accounted for.**

<u>Board Expenses</u>

832. The Committee heard that the statement of comprehensive income reflected a balance of KSh 123,310,900 in respect of board expenses for the year ended 30 June 2013. According to the financial statements, the amounts included committee expenses under NEMA, PCC, NET and NETFUND. The amounts reflected were however in disagreement with expenditure figures of the respective agency's financial statements as at 30 June 2013 as indicated below:

Agency	**NEMA's Financial Statements (KSh)**	**Agency's Financial statements (KSh)**	**Difference (KSh)**
PCC Account	28,621,561	13,071,430	15,550,131
NET Account	14,304,357	14,583,159	-278,802
NETFUND Account	66,927,522	1,401,917	65,525,705
Total	**109,853,440**	**29,056,406**	**80,797,034**

833. In the absence of any explanation for the above differences, the accuracy of the board expenses balances of KSh 123,310,900 could not be ascertained.

<u>Management Response</u>

834. Management informed the Committee that the Agencies expenses were consolidated under board expenses classification within the Authority's consolidated financial statements and represented total Agencies' payments and accruals at end of 2012/2013 while the agency's board expenses were reported as specific line items board expenses in their individual financial statements. These institutions were under NEMA in the Environment Management and Coordination Act (1999) which has since been revised. The Authority had adopted the practice of calling the expenses from these agencies board expenses. Therefore, whereas both the Authority's Agencies financials reflected the expenses under board expenses classifications, they were indeed not board expenses per se.

835. This anomaly in naming has since been corrected and the three institutions have been given the rights to report on their expenses directly to the relevant government agencies.

Committee Observation and Recommendation

836. **This was a matter had been resolved**

FINANCIAL YEARS 2014/15 AND 2015/2016

Unqualified

FINANCILA YEAR 2016/2017

Accuracy of the Financial Statements

837. The Committee heard that the Statement in net Assets reflected a negative balance of KSh. 56,237,000 as at 30 June 2017. However, in arriving at the balance a prior year adjustment of KSh. 19,153,000 had been added back without supporting details /analysis. Further, Note 25 on prior year adjustments only indicated that amount is in respect of previous adjustment provisions and transfer of buildings to capital work in progress (CWIP) previously expensed. In the absence of the prior year adjustment, the accumulated revenue reserve would have increased to negative KSh. 75,390,000 as at 30 June 2017. Consequently, it was not possible to confirm the accuracy and completeness of the financial statements for the year ended 30 June 2017.

Management Response

838. The prior adjustment of KSh 19.1 million was attributable to previous year's commitments which had been expensed but were not serviced. These commitments had to be reversed. In addition, there were expenditures relating to Elgeyo Marakwet green point and a software (Knowledge Management System) which had been previously expensed but were posted to capital work in progress in FY 2016/2017. The green point has been now completed and fully capitalized in the Authority's financial statements.

Committee Observations and recommendation

839. **This is a case where the management expensed resources at the tail end of the financial year. This matter was adequately addressed.**

Financial Performance

840. The Committee heard that during the period under audit, the Authority made a deficit of KSh. 174,554,000 (2016: KSh 162,360,000). This reduced the revenue reserve to (KSh. 56,237,000) (2016: KSh. 99,164,000). Further, the Authority's current liabilities of KSh. 748,480,000 as at 30 June 2017 exceeded the current assets of KSh. 728,894,000 as at the same date leading to a negative working capital of KSh. 19,586,000. In the circumstance, the Authority's service sustainability capability was threatened

Management Response

841. Management informed the Committee this situation was attributable to huge budget cuts implemented by the National Treasury in this particular year. From the Financial statements the Authority was allocated a recurrent grant of KSh 822 million but due to budget cuts it ended up receiving KSh 615million. Management was improving the deficit by enhancing the collections of internal revenues from Effluent Discharge Licenses.

Committee Observation

842. **The Committee made the following observations:**

(i) NEMA's budget as approved by Parliament was not provided by the mother Ministry.

(ii) NEMA has improvedthe revenue collection by about KSh. 300 million.

Committee Recommendation

843. **The Committee recommends that the mother Ministry and the National Treasury should inform the MDAs whenever adjustments are made in the budget.**

Depreciation on Revalued Assets

844. The Committee heard that depreciation charge of KSh. 47,135,000 charged to the statement of financial performance include depreciation of revalued assets contrary to IPSAS 17 paragraph 54 which requires depreciation on revalued assets to be charged to the revaluation reserve. This treatment left the revaluation reserve of Ksh. 137,640,000 without adequate supporting assets contrary to the provisions of IPSAS 17.

Management Response

845. The paragraph 57 of IPSAS 17 gives two methods of accounting for the revaluation reserve included in net assets/equity in respect of property, plant, and equipment:

a. may be transferred directly to accumulated surpluses or deficits when the assets are derecognized. This may involve transferring some or the whole of the surplus when the assets within the class of property, plant, and equipment to which the surplus relates are retired or disposed or;

b. some of the surplus may be transferred as the assets are used by the entity.

846. The Authority had adopted the first option (a) for accounting for the revaluation reserve but upon the recommendation of the Office of the Auditor General that the second option was a more realistic accounting treatment. The management adopted the auditor's recommendation in the subsequent financial years.

Committee Observation and Recommendation

847. **The explanation offered was satisfactory and therefore resolving the matter.**

Emphasis of Matter

Under Funding

848. The Committee heard that NEMA had an approved grant of KSh. 855.337,000 (KSh. 822,000,000 recurrent and KSh. 33,337,000 for development). During this period, it

received KSh. 633,328,000 or 74%. There was underfunding of KSh. 222,009,000 or 26%. Further, it budgeted to receive KSh. 572,100,000 as donor grants of which it received KSh. 195,426,000 or 34%. With such huge revenue shortfall, the Authority may not be able to discharge it mandate as described in the Environment Coordination Act 1999.

Management Response

849. Management informed the Committee that it was seriously underfunded. The underfunding undermines the ability of the Authority to discharge its mandate. The challenge is compounded when the allocation in the year is reduced through budget cuts. The underfunding was exacerbated by the cabinet memo stopping the authority from charging EIA fees.

850. To address this challenge, management is in the process of increasing internally generated revenues by enhancing the compliance and enforcement on the payment of Effluent Discharge Licenses (EDL). Further, the Authority is undertaking cost management and control measures to reduce the overall operating costs. The Authority was also engaging the Ministry and Cabinet for the reinstatement of Environment impact assessment (EIA) licence fee.

Committee Observation

851. **Though the Environmental Impact Assessment is done by separate agencies, NEMA is ultitimately responsible in authentication of quality.**

Committee Recommendation.

852. **The matter was resolved**

Slow Implementation of the Adaptation Fund

853. The Committee heard that NEMA had a brought forward cash balance of KSh.441,155,000 for implementation of the Adaptation Fund Project. However, only KSh 216,000,000 was utilized during the year under review. The absorption rate of 49% is low considering the Authority had the funds available from the beginning of the year. At this rate, the Authority may not absorb the project within the agreed project duration.

Management Response

854. Management informed the Committee that Adaptation Fund Programme implementation had indeed been slow due to the challenge in procurement at the Sub Executing Entities which are Non- Governmental Organizations. The NGOs had been having a challenge adopting the Government procurement procedures. The slow absorption had not only affected the year under consideration but the subsequent periods as well.

855. To mitigate this issue, the Board in the Financial year 2019-2020 decided to centralize the procurement at NEMA. This had seen the award of tenders for water infrastructure completed which takes the bulk of the funds. The contractors were on site and the works were ongoing for completion within the project period. The sites were in Homabay, Kisumu, Kajiado, Machakos, Laikipia Wajir and Garissa. The sites in the coastal region under Coast Development Authority are in implementation stages. Further, Adaptation Fund Board had given a no cost extension to 31st December 2021. Given these efforts undertaken, the Authority would absorb the project funding within the agreed project duration.

Committee Observations

856. **The Committee made the following observations:**

(i) **This project started in 2016 with a completion date of September 2021.**

(ii) **This project was implemented though other agencies i.e TARDA funded by International Agencies on Climate Change. Counties also get funding from World Bank; monies that come through the National Treasury. There was a National Steering Committee that coordinates Adaptation Fund.**

Committee Recommendation

857. **This matter was adequately addressed**

Going concern (FY 2017/2018)

858. During the year under review, the Authority recorded a loss of KSh. 138,191,000 (2017 Loss: KSh. 174,554,000) thereby increasing the cumulative losses to KSh. 32,419,000 as at 30 June 2018. Further, the statement of financial position reflects current liabilities balance

of KSh. 651,931,000 which exceeds current assets balance of KSh. 531,751,000 resulting to a negative working capital of KSh. 120,180,000 as at 30 June 2018 (2017-KSh. 19,586,000) The Corporation was therefore technically insolvent and its continued existence as a going concern was dependent upon the financial support of the government and its creditors.

Management Response

859. Management agreed that the Authority was in a negative working capital position. This was attributable to the Government's decision to scrap the collection of Environmental Impact Assessment (EIA) fees coupled with serious underfunding from the National Treasury. In addition, the corporation had been allocated almost the same amount of funds for the last financial years, irrespective of the inflation.

860. The Authority was however optimistic of a better financial performance in the financial years ahead with additional allocation of recurrent grants from the National Treasury. In addition, management was in the process of increasing internally generated revenues by enhancing the compliance and enforcement on the payment of Effluent Discharge Licenses (EDL). It was NEMA's strong belief that the government will reinstate the EIA fees and increase allocations to reverse this negative working capital. Further, the Authority was undertaking cost management and control measures to reduce the overall operating costs.

Committee Observations

861. **The Committee made the following observations:**

(i) The scrapping of the collection of Environmental Impact Assessment (EIA) fees led to reduction of revenues (deficit of KSh 800 million).

(ii) Though cabinet was deliberating on reversal, it was not clear why cabinet stopped this fee without degazetting the legal instrument allowing levying.

Committee Recommendation

862. **The Committee recommends that the Cabinet should reverse the decision on scrapping of the environmental fees charged on construction of buildings.**

PROPERTY, PLANT AND EQUIPMENT (FY 2017/2018

Lack of Ownership Documents

863. Note 20 to the financial statements reflects the net book value of property, plant and equipment of KSh. 294,626,000 as at 30 June, 2018. The property, plant and equipment balance of KSh. 294,626,000 did not include the value of nine county Green Points (9) pieces of land which are not registered in the name of the Authority even after the building constructed being capitalized. The areas include Kilifi, Lamu, Taita Taveta, Homa Bay, Isiolo, Embu, Kajiado, Elgeyo Marakwet, and Samburu. In addition, ownership documents for the said pieces of land were not availed for audit. In the circumstances, it was not possible to ascertain the ownership status and the value of the nine (9) properties and whether they were included in the value of land and buildings and valued at KSh 138,500,000.

864. In absence of ownership documents, the financial statements may be inaccurate and it was difficult to determine the completeness and accuracy and the balance of property, plant and Equipment of KSh 294,629,000 as at 30 June 2018 may not have fairly been stated.

Management Response

865. The management notes the observation but would like to clarify that the property, plant and equipment balance in the financial Statements are accurate and complete. The Management has capitalized the cost of building since the Authority's funds are used in constructing the buildings. Some of the land were owned by the ***National Government*** and are under various County Commissioners, while others are owned by the county governments. The land was allocated to NEMA to construct its offices under the ***one-government principle***. Many government entities that have benefited under this arrangement do not get individual title deeds for each parcel of land allocated to them. The land parcels were under the county commissioners and the county governments who are the custodians of the title deed.

866. This therefore shows the figures of Property, Plant and Equipment indicated in the Financial Statements are fairly stated. We have attempted to acquire title deeds for these parcels with mixed progress. While the county commissioners are not willing to alienate the titles under them, some county governments have allowed us to begin processing of the title deeds and part development plans have been prepared.

<u>Committee Observations and recommendations</u>

867. **Though management had been following in the acquisition of ownership documents, this had taken inordinately long.**

<u>Committee Recommendation</u>

868. **The Committee recommends that the accounting officer for the NEMA should aggressively pursue the relevant offices and secure the Authority's land.**

<u>Assets valuation policy (FY 2017/2018)</u>

869. Although it was indicated that the Authority revalued its assets, the note does not clarify how regularly this should be carried out. The Financial Management Manual for the Authority did not have clear policy guidelines to guide the management in the valuation of its assets. In addition, International Public Sector Accounting Standard 17(Property, Plant and Equipment) Section 42, requires an entity to choose either the cost model in paragraph 43 or the revaluation model in paragraph 44 as its accounting policy and shall apply that policy to the entire class of property, plant and equipment. IPSA 17 further required that revaluation should be carried out regularly, so that the carrying amount of an asset did not differ materially from its fair value at the balance sheet date.

<u>Management Response</u>

870. The management will include the policy recommendation when revising the financial manual. The Authority will also continue to adhere to the policy guidelines in place on asset management. In addition, a budget allocation has been provided in the FY 2021/2022 to cater for the revaluation of the Authority's assets.

<u>Committee Observation</u>

871. **Though the explanation offered was satisfactory, the authority did not have the resources to conduct the revaluation.**

<u>Committee Recommendation</u>

872. **The Committee recommends that the National Treasury should allocate the NEMA finances within the 2022/2023 financial year for the purposes of conducting a revaluation of its assets.**

<u>Under Funding (FY 2017/2018)</u>

873. The Authority had an approved grant of KSh. 1,200,000,000 recurrent and KSh. 55,000,000 for development. During the period, it received KSh. 875,078,000 or (73%) for recurrent and nil amount for development of the budgeted amount. There was underfunding of KSh. 324,922,000 and KSh. 55,000,000 (27% and 100%) respectively. Further, it budgeted to receive KSh. 509,000,000 as donor grants of which it received KSh. 205,607,000 or 40%. With such huge revenue shortfalls, the Authority may not be able to discharge it mandate as described in Environment Coordination Act 1999.

<u>Management Response</u>

874. Authority was seriously underfunded. The underfunding compromises the ability of the Authority to discharge its mandate. The challenge was compounded when the allocation in the year is reduced through budget cuts or non-remittance of the budgeted amounts.

875. To address this challenge, management was in the process of increasing internally generated revenues by enhancing the compliance and enforcement on the payment of Effluent Discharge Licenses (EDL). Further, the Authority was undertaking cost management and control measures to reduce the overall operating costs.

<u>Committee Observation</u>

876. **Though the explanation offered was satisfactory, the authority did not have the resources required to run.**

<u>Committee Recommendation</u>

877. **The Committee recommends that the National Treasury should allocate the NEMA finances to operate.**

<u>Environment Impact Analysis (EIA) Fees Abolishment (FY 2017/2018)</u>

878. During the year under review, the Authority incurred a loss of revenue of KSh. 250,974,000 which emanated from the abolishment of EIA fees. The abolishment was approved through a Cabinet decision and was communicated through a letter ref. OP/CAB/58/4A dated 22/11/16 by the Chief of Staff and Head of Public Service. A legal notice amending the existing law on abolishment of fees was not however availed for audit and the management was not able to explain the way forward.

879. The charging of the fees was initially approved and mandated through an Act of parliament thus poses a legal challenge as the intended purpose of the fees may no longer have a backing of Environmental Management and Co-ordination Act No. 8 of 1999 and the Authority may not be able to accomplish its mandate as stipulated in the Environmental Management and Co-ordination Act No. 8 of 1999.

Management Response

880. The Authority confirmed that there was a cabinet directive abolishing the collection of Environmental Impact Assessment fee (E.I.A). The E.I.A fee were suspended by the cabinet to facilitate ease of doing business. The National Treasury was required to compensate NEMA for the equivalent loss in Appropriation in Aid from the consolidated fund. The Authority has adopted the following strategies:

- Continuous engagement with both The Ministry and the National Treasury.
- Increased the efforts in the collection of fees from Effluent discharge Licenses (EDL).
- Undertaken Cost Management and control measures in all the processes.

Committee Observation

881. **Though the explanation offered was satisfactory, the authority did not have the resources required to run.**

Committee Recommendation

882. **The Committee recommends that the National Treasury should allocate the NEMA finances to operate.**

Irregular Board Expense (FY 2019/2020)

883. Examination of records on Board expenses indicated that the expenses rose from KSh. 21,676,000 in 2017/2018 financial year, to KSh. 43,048,000 in the year under review, denoting an increase of 98% in one year. The Board's Work Plan indicated that a total of four (4) meetings for the full Board and the four (4) Standing Committees had been planned for the year. However, Board expenses incurred and attendance registers indicated that a total of 84 ordinary and special meetings were held by the Board and the Standing Committees in the year under review as tabulated in the following table:

Description		Ordinary Meetings	Special Meetings	Total Meetings	Average Meetings Per Month
1.	Board of Management	8	18	26	2.1
2.	Finance and Human Resource Committee	6	19	25	2.1
3.	Audit, Governance and Risk Management Committee	6	3	9	1
4.	Environmental Management and Conservation Technical Committee	5	5	10	1
5.	Strategy, Legal	9	5	14	1

	and Resource Mobilization Committee				
Total		34	50	84	7

884. The records indicated that payments for sitting allowance totalling KSh. 609,542 were attributed to meetings held by one person, being the only one who signed the attendance register. The minutes of the meetings were not provided for audit review and as a result, the validity of the payments could not be confirmed.

Management Response

885. Management took note of this observation and would like to inform that the Authority had a new Board which required to be inducted in all the NEMA operations and projects. This involved having several meetings to inform the Board and its Committees of the issues affecting NEMA. The meetings by the Board were justified on this basis.

886. The payments to one Board member refer to instances when the Board Chairman was called by the Director General for several consultations. These were one-on-one meetings hence the signing of the board register by only one member.

887. The government however noted the many board meetings in state corporations as of big financial drain to the institutions and issued the Office of the President Circular No. OP/CAB.9/1A dated 11 March, 2020 which had given clear guidance on the management of board operations. Going forward the Authority will fully comply with this circular.

Committee Observations

888. **The Committee made the following observations:**

(i) The number of meetings indicated that were held appears to be very many??.

(ii) Though management indicated that treasury had issued a circular capping board expenses to KSh 30 million annually, this circular came in the year 2020 and therefore was no applicable during the audit (2019).

Committee Recommendation

889. **The Committee recommends that accounting officers of state corporations should adhere to National Treasury Regulations and Salaries and Remuneration guidelines on board expenses.**

Uncertainty on Sustainability of Services (FY 2019/2020)

890. The statement of financial performance indicates that during the year under review, the Authority recorded an operating loss totalling KSh. 63,402,000, compared to a loss of Ksh. 138,191,000 in 2017/18, which increased its cumulative deficit to Ksh. 78,326,000 as at 30 June, 2019. Further, the statement of financial position as at 30 June, 2019 which indicates the Authority is technically insolvent.

891. In the circumstance, sustainability of the Authority's operations was dependent upon the financial support of the Government and creditors.

892. Management had not indicated the measures it had taken, or intended to take to reverse the unsatisfactory financial performance.

Management Response

893. The Management agreed that the Authority was in a negative working capital position. This is attributable to the Government's decision to scrap the collection of Environmental Impact Assessment (EIA) fees coupled with serious underfunding from the National Treasury.

894. The Authority was however optimistic of a better financial performance in the financial years ahead after getting additional allocation of recurrent grants from the National Treasury. In addition, management was in the process of increasing internally generated revenues by enhancing the compliance and enforcement on the payment of Effluent Discharge Licenses (EDL). Further, the Authority was undertaking cost management and control measures to reduce the overall operating costs.

Committee Observation

895. **Though the explanation offered was satisfactory, the authority lacked adequate the resources.**

Committee Recommendation

896. **The Committee recommends that the National Treasury should allocate the NEMA finances to operate.**

Receivables (FY 2019/2020)

897. The statement of financial position as at 30 June, 2019 reflected receivables totalling KSh 169,641,000 as further disclosed in Note 17 to the financial statements. The balance included imprests and advances totalling KSh. 29,896,000 which had not been surrendered by the close of the year under review on 30 June, 2019. Included in the balance were salary advances totalling KSh 46,333 and imprests totaling KSh. 7,100,580 which had been outstanding for more than (4) four years.

898. No plausible explanation was provided by management for the failure to recover the old outstanding balances.

899. Further, the Authority Owed Adaptation Fund KSh. 126,802,000 as at 30 June, 2019 being grant monies transferred to implementing entities as tabulated below:

	Transferee Entity	Amount Transferred KSh.
1.	Kenya Forestry Research Institute (KEFRI)	39,252,368
2.	Tana and Athi River Development Authority (TARDA)	76,968,982
3.	Coast Development Authority (CDA)	10,580,367
	Total	126,802,000

900. The payees were expected to have accounted for the transfers to the accounting officer in accordance with the requirements of Section 71(1-2) of the Public Finance Management

Act, 2012. The provision requires public officers to whom cash advances are made to account for the advance within a reasonable period.

901. In view of these issues, it has not been possible to confirm the recoverability of the receivables balance totalling KSh. 169,641,000 as at 30 June, 2019

Management Response

902. The Authority adhered to imprest management regulation and had always ensured that staff surrendered the outstanding imprest within 7 days when back from the field. However, outstanding imprest of KSh. 7,100,580 had taken long to resolve because of some being court cases, some staff being deceased and some balances requiring the approval of board of management to clear.

903. On adaptation fund, the management clarified that it issued advances to the executing entities namely Kenya Forestry Research institute (KEFRI), Tana & Athi Rivers Development Authority (TARDA) and Coast Development Authority (CDA). The executing entities in turn remitted funds to the sub executing entities under them for the implementation of the program activities as per their approved work plan and budget. The executing entities oversaw the implementation of the program in the respective sub entities.

904. The project had experienced delayed absorption mostly due to long procurement challenges at the Sub Executing Entities which made the outstanding balances to be high. However, management had since centralized the procurement processes and most of the tenders had been awarded and the contractors completed most of the works. The amount outstanding from implementing entities had significantly reduced to KSh.29.9 million.

Committee Observations

905. **The Committee made the following observations:**

(i) Management was in breach of Section 71of the Public Finance Management Act, 2012 by ensuring surrender of imprests within seven days upon conclusion of the assignment for which the said imprest was issued.

(ii) The explanation relating to adaptation fund was found to be satisfactory.

Committee Recommendation

906. **The Committee recommends that the accounting officer for the NEMA should ensure that issued imprests are accounted for within the statutory timelines.**

2.14 NORTH WATER SERVICES BOARD (FY 2011/2012 TO 2017/2018)

EXAMINATION OF THE REPORT OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF THE NORTH WATER SERVICES BOARD FOR THE FINANCIAL YEARS 2011/2012 TO 2017/2018

Mr. Abdikadir Osman, the Chief Executive officer of the North Water Services Board accompanied by Mr. Andrew Rage (Head, Finance), Shem Nderi (Technical Services Manager) appeared before the Committee to adduce evidence on the audited accounts of North Water Services Board for the financial year 2011/12 to financial year 2017/18.

Non-Current Assets: FY 2011/2012, 2012/13, 2013/14, 2014/15

907. As reported in the previous year, the property, plant and equipment balance of KSh.173,105,944 as at 30th June 2012 included an amount of KSh 6,509,000 in respect of motor vehicles procured by the Ministry of Water and Irrigation on behalf of the Board. However, the transfer of ownership of these vehicles to the Board had not been effected as at the date of this report.

908. In the circumstances, the accuracy and ownership of the property, plant and equipment balance of KSh. 173,105,944 as at 30 June 2012 could not be confirmed.

Management Response

909. The amount of KSh. 6,509,000 relates to two motor vehicles Reg. No. GK A 741L and GK A999J purchased by the Ministry of water and irrigation for use by the board as part of the capacity building process during the formation of water sector institutions.

910. The Board had written to the ministry to approve the change of ownership to the Board as per recommendation of the Controller and Auditor General's Audit reports. However, the transfer of the motor vehicles was yet to be fully effected.

Committee Observation

911. **This matter remains unresolved as transfer has not happened though letters had been done to that effect.**

Committee Recommendation

912. **The Committee recommends that the Parent Ministry should transfer these assets to the North Water and Services Board.**

Financial Performance FY 2011/12, 2012/13

913. During the year under review, the board recorded a loss of KSh.56,396,426 (2011-loss of KSh.161,136,135), thereby reducing the revenue reserves to KSh.88,802,580 as at 30 June 2012 from KSh145,199,006 in the previous year. Although the Board reflected a net asset position of KSh.600,076,742 as at 30 June 2012, its financial position was precarious and future operations may have to rely upon continued support of the Government and creditors.

Management Response

914. The deficit in the financial statements was because of the non-monetary expenditure incurred on depreciation of Property, plant and equipment some of which were purchased through donor funding. Since the Board relied mostly on government donor funding to finance most of her operations, the expenditure on these funds were linked to the Performance Contract (PC) whose deliverables were expected at the end of the financial year. This required the Board to utilize 100% of its grants to achieve the targets of each contract year, thus leaving a shortage for financing the non-monetary expenditure on depreciation of PPE.

Committee Observation

915. **This was an accounting issue that has since been rectified.**

Committee Recommendation

916. **The Committee recommends that the North Water Services Board should develop an elaborate policy on how assets received through donation will be charged in books of account.**

Trade and other Receivables FY 2011/12 to 2017/2018

917. The statement of financial position as at 30th June, 2013 reflected trade and other receivables balance of KSh. 12,967,401. The figure includes KSh. 10,190,500 due from various water companies, being 4.5% levy on the respective companies' total revenue

collection as at that date. This was however, contrary to the service provision agreement between the water companies and the Board which stated that the licensees (water companies) to pay the lessor (the Board) 4.5% of the collected revenue on a calendar quarterly basis and the provision of Section 6.5.4 of Government Financial Regulations and Procedures on the collection of revenue. Although the management of the Northern Water Services Board explained that they had engaged the water companies in debt settlement arrangements, this position was not evident on the ground since amounts due from the companies had increased from KSh. 6,026,256 as at 30 June, 2012 to KSh. 10,190,500 as at 30 June, 2013.

918. Consequently, recoverability of the trade and other receivables balance could not be confirmed as at 30th June, 2013.

Management Response

919. The Board attributed the arrears to major government institutions not honouring their monthly bills and the challenges of transition period and the confusion that was with the county government and interference with their operations, but that notwithstanding, the Board was talking to them and obtained a promise to pay the arrears.

Committee Observations

920. **The Committee made the following observations:**

(i) Noncompliance with Service Provision Agreement between the Water Companies and the Board and Government Financial Regulations and Procedures on collection of revenue

(ii) Demand letters written to water companies were availed for review.

(iii) Non recovered debts from levies charged to water companies increased from KSh. 10,190,500 in the financial year 2012/2013 to KSh. 23,880,969 in the financial year 2017/2018.

(iv) The role of the Board currently is infrastructural development.

(v) Water is a devolved function by dint of Part 2 of the 5th Schedule to the Constitution.

Committee Recommendation

921. **The Committee recommends that County Governments/ water bodies should pay for all the arrears due to the North Water Services Board as a matter of urgency and considering that these arrears form first charge whenever a new financial year commences.**

Expenditure on Projects FY 2013/14

922. The Northern Water Services Board (NWSB) during the financial year under review awarded contracts worth KSh. 128,743,245 to various firms for various jobs relating to drilling of boreholes, civil works and consultancy services. Although monthly progress reports/site meetings were made available for audit review, inspection and acceptance committee minutes were not produced for audit review, contrary to section 17 of the Public Procurement and Disposal Regulations, 2006 which requires inspection and acceptance committee to inspect and review works or services to confirm compliance with the terms, conditions and specifications of the contract.

923. Consequently, it was not possible to confirm that the projects costing KSh. 128,743,245 were satisfactorily completed.

Management Response

924. Most of the projects undertaken in the financial year were contracted and supervised by a consultant and a project manager. Inspection committees for works were formed as and when the project was complete and was based on the nature of the project, all the projects were inspected by different committees and provided a report on the project. In this case therefore monthly progress/site meetings were held at the various project sites and progress reports attached.

Committee Observations

925. **The Committee made the following observations:**

(i) Inspection and acceptance Committee Minutes were not provided for audit review.

(ii) These documents were availed to the Committee.

Committee Recommendation

926. **The Committee recommends that the North Water Services Board should comply with the procurement laws and the Public Audit Act 2015 on submission of documents for audit review within the statutory timelines.**

Irregular Charge on JICA Project Funds (FY 2012/2013)

927. The Northern Water Services Board made payments totalling KSh. 87,219,899 during 2012/2013 to three (3) firms in respect of Nyahururu and Isiolo water and sanitation projects and construction of Garissa Sewerage Project. The expenditure was charged to JICA project account instead of Government of Kenya (GOK). However, no prior authority from the parent ministry and lending institution was made available for audit confirmation.

Management Response

928. This was an inter-account borrowing. The board borrowed JICA funds to finance other completed projects which was later refunded back. This was a case where projects progressed much faster than envisaged and counterpart funding received had been exhausted. As the Board waited for additional funding, it utilized projects funds whose progress were a bit slow, thus saving the government from paying interest on delayed payments, which could have been in millions of shillings.

Committee Observations

929. **The Committee made the following observations:**

- **(i) The accounting officer approved utilization of KSh. 99514,70 JICA funds for payment of projects without informing the donor and the Board. This action, though irregular, saved the corporation on payment of interest.**
- **(ii) JICA cash book showing refund on the same was provided and reviewed by the OAG.**
- **(iii)Prior authority from the Ministry of Water and Irrigation of for utilization of JICA funds was not availed to the OAG for review hence the audit query.**

Committee Recommendation

930. **The Management should always obtain the requisite approvals from the board and the donors whenever there is need to utilize excess funds from the donation vote.**

REPORT OF THE AUDITOR GENERAL ON ADF LOAN NO. 2100150015546 AND GRANT NO. 5800155000101 WATER SERVICES BOARD SUPPORT PROJECT (P-KE-E00-005) FOR THE FINANCIAL YEAR 2012/2013

Payment for services not rendered –Nyahururu Water and sanitation project contract

931. Contracts for Nyahururu Water and Sanitation Projects No. NWSB/ICB/CW/007/2011-2012 were separately bided for the water supply LOT 1 and sewerage LOT 2 Components respectively. The two contracts were won and awarded to same company on 5 March 2012 and 5 April 2012 for Water Supply Lot 1 and sewerage Lot 2 component respectively.

932. The Bill of quantities reflected provisional sums amounting to KSh.60, 800,080.35 for housing facilities to the Resident Engineer and other staff involved in the project. Although a total payment of KSh.54, 527,100.25 had been made to the contractors as at 30th June, 2013 out of provisional sum, another payment for KSh 6,272,970.11 for work certified but not paid was indicated outstanding. However, audit verification revealed that the Resident Engineer and the other staff were not provided with housing facilities. It was, therefore, not clear why the contractor claimed and was paid a total of KSh.54, 527,100.25 for services not rendered, while a further sum of KSh.6, 272,970.11 had been certified awaiting payment.

Management Response

933. During the start of the discussion on modalities of managing the accommodation of the supervision team on site, it was found out that providing housing which included procurement of furniture and utensils was very difficult to maintain. It was then agreed that the Resident engineer and other supervision staff be provided with site and accommodation allowances so that they can arrange for their own accommodation. The Contractor provided the allowances which were later reimbursed through the certificates.

Committee Observations

934. **The Committee made the following observations:**

(i) **The agreement between the Board and the contractor on alternative means of accommodating resident engineer and other staff involved in the project, though not availed for audit, addressed the difficulties that the management faced in construction of accommodation for staff and the Resident Engineer.**

(ii) **This Agreement should have been provided for audit as per the Public Audit Act of 2015.**

Committee Recommendation

935. **The Committee recommends that the management should always provide documents for audit review within the specified timelines to avoid unnecessary queries.**

Financial Performance (FY 2013/14)

936. During the year under review, the board recorded a surplus of KSh. 1,974,480 (2013: loss of KSh.11,035,590) resulting to increased revenue reserves of KSh. 79,741,470 as at 30 June 2014. Although the Board reported a positive working capital as at 30 June 2014. The future existence and operations of the company were in doubt as it heavily relied on confirmed support of the government and donor funds.

Management Response

937. During the year, the board recorded a surplus of KSh. 1,974,480, however the previous year, the board reported accumulated losses of KSh. 11,035,590 which was because of non-cash items like depreciation and amortization. The Board relied heavily on support of the government and donor funds because of its restricted mandate, it is not a commercial entity, it implements national government projects and then handover to water service providers.

Committee Observation and Recommendation

938. **This is an accounting matter which should have been addressed at the point of audit.**

REPORT OF THE AUDITOR GENERAL ON ADF LOAN NO. 2100150015546 AND GRANT NO. 5800155000101 WATER SERVICES BOARD SUPPORT PROJECT (P-KE-E00-005) FOR THE FINANCIAL YEAR 2013/2014

Disclosure and presentation of financial statements

939. The financial statements did not include the statement of assets and liabilities contrary to the requirements of Treasury Circular Ref No.AG.3/088 Vol.6/(78) of July 2014. Further, the format for the statement of receipts and payment and the statement of comparative budget and actual amounts did not conform to the reporting template as provided in the treasury Circular.

940. In the circumstances, the financial statement for the year ended 30 June 2014 did not comply with the disclosure and presentation requirement of IPSAS (Cash basis).

Management Response

941. New accounting framework and reporting templates was introduced in July 2014 and majority of the accountants were not trained on how to adopt the new reporting framework. In addition, the board was preparing financial statements in conformity with government financial regulations and donor framework agreement, so the management needed some time to explain the format to donor. There was also a comment of clearance from the auditors on the clearance report.

Committee Observation

942. **This is management failure to adhere to the reporting standard which has since been rectified and verified.**

Committee Recommendation

943. **The query was adequately addressed and matter resolved.**

Unvouched Expenditure

944. Statement of receipts and payment reflected total receipts of KSh.1,232,600,516.08 which included receipts totalling KSh.988,012,349.20 indicated as direct payments (loan) direct payment (Grants) for which payment vouchers and other related documentation were not provided for audit review to confirm that the expenditure was substantiated by sufficient and acceptable documentation. Consequently, the propriety of the expenditure of KSh.988,012,349.20 could not be ascertained.

Management Response

945. After the audit report, the donor requested clearance of the issues raised through the office of the Auditor General. Another special audit on the issues raised was done by the office of the Auditor General and clearance report was issued.

946. Payment vouchers with their supporting documents totalling to KSh.988,012,349.20 were availed to the auditors and a clearance report issued.

<u>Committee Observation</u>

947. **The Committee made the following observations:**

(i) This matter arose due to failure to submit documents for audit which have now been provided and verified by the OAG. Direct payments were done directly from the National Treasury hence could not be obtained in time.

(ii) This was an ADP funded project with a counterpart funding from the GOK at 15%.

<u>Committee Recommendation</u>

948. **The Committee recommends that Management should always avail documents for audit within the timelines provided under the Public Audit Act, 2015.**

<u>Unaccounted for funds</u>

949. The statement of special Designated Account Reconciliation for the year ended 30 June 2014 (Accounts Reconciliation Statement) reflected a total advance to special account of Euros 1,197,352.78 while the grant justification and Disbursement schedule (amount withdrawn) obtained from Northern Water Service Board reflected Euros 1,154,000 as an amount of disbursement received. Hence a total of Euro 43,332.36 being the difference remained unaccounted for. No explanation was provided, why the two figures had not been reconciled.

<u>Management Response</u>

950. The following documents were availed for audit purposes relating to the unaccounted-for funds of Euros. 1,197,352.78: -

- Account reconciliation statements
- Special accounts statements

- Summary of revolving funds by loan
- Central Bank of Kenya- Reconciliation

951. All these documents were verified by the Auditors and a clearance report to that effect was issued.

Committee Observation

952. **This arose due to failure to provide documents for audit review.**

Committee Recommendation

953. **The Committee recommends that the Management should adhere to the provisions of the public Audit Act of 2015 on submission of audit reports within the statutory timelines.**

Cash and Cash Equivalents FY 2015/16

954. The statement of financial position reflected cash and cash equivalents balance of KSh. 40,268,119 as at 30th June 2016. However, examination of Bank reconciliation statements of various cash books maintained by the Board reflected payments amounting to KSh.951, 131.80 in cash book not recorded in the bank statement as at 30th June, 2016. The cheques were drawn between April, 2014 and November, 2015 and therefore all gone stale but had not been reversed or replaced. Consequently, the accuracy and completeness of the cash and cash equivalents balance as at 30th June 2016 could not be confirmed.

955. No reason had been given for failure to update the cash books. Consequently, the accuracy and completeness of the cash and cash equivalents balance as at 30th June 2016 could not be confirmed.

Management Response

956. The Board was aware that these cheques had been stale for some time, but this has now been resolved since the Board had acted upon the recommendation of the Auditor General and all the stale cheques had been reversed and replaced.

Committee Observation and Recommendation

957. **Cheques were reversed and new ones issued and therefore query resolved.**

Trade and other Receivables FY 2015/16

958. The statement of financial position as at 30th June, 2016 reflects trade and other receivables balance of KSh. 18,206,118 being accrued 4.5% levy on the respective water companies' revenues. Delay by the companies to pay the levy to the Board is contrary to the service provision agreement between the water companies and the Board. The agreement requires each water company to pay the Board 4.5% of the revenue it collects each year and adhere to the provision of section 6.5.4 of Government Financial Regulations and Procedures on the collection of revenue. Further, debt settlement arrangements with water companies did not yield much during the year under review as the total amount due from water companies had increased from KSh. 15,247,199 as at 30th June 2015 to KSh. 18,206,188 as at 30th June 2016, an increase of KSh. 2,958,919 or 19.4% over the budget.

959. Consequently, the recoverability of the trade and other receivables balance of KSh.18,206,118 as at 30th June, 2016 was doubtful.

Management Response

960. The companies had attributed the arrears to major government institutions not honouring their monthly bills hence affecting the cash flow management by the Water Service Providers (WSP). Some had already cleared their debts like Isiolo Water Service Provider (KSh.325, 336) and the Board received KSh.1, 500,000 from Nyahururu WSP towards settlement of their debt. The Board was in talks with other WSPs to settle their debts.

Committee Recommendation

961. **The Committee recommends that County Governments/ water bodies should pay for all the arrears due to the North Water Services Board as a matter of urgency and considering that these arrears form first charge whenever a new financial year commences.**

Statement of Comparison of Budget and Actual Amounts FY 2015/16

962. The statement of comparison of budget and actual amount indicated that the final income budget for the year ended 30th June, 2016 amounts to KSh. 764,168,027. The final

expenditure budget for the same period according to the statement is KSh. 814,067,924 resulting to unbudgeted expenses amounting to KSh. 49,899,897.

963. Further, the statement of financial performance reflected total revenue of KSh.773, 271,452 and total expenditure of KSh. 808,847, 297.the deficit of KSh. 35,575,845 resulted to a decrease in the revenue reserves from KSh. 79,825,740 reported in the financial year 2014/2015 to KSh. 44,249,895 as at 30th June, 2016. The erosion of the Boards revenue reserves by operating losses was bound to have an adverse effect on the sustainability of the Board activities.

Management Response

964. This was as a result of delay in disbursement of exchequer releases which came just after the close of financial year. Amount of KSh. 385,000,000 was received on 1st of July, 2016. This amount was for the financial year 2015/2016 which the Board were expecting to receive before the end of 30th June 2016. If this amount was received in June as expected, then we could not be talking of deficits but surplus.

Committee Observations and Recommendation

(i) This query arose due to the timing of the receipt of funds at the end and start of a financial year.

(ii) The matter was adequately addressed.

REPORT OF THE AUDITOR GENERAL ON ADF LOAN NO. 2100150015546 AND GRANT NO. 5800155000101 WATER SERVICES BOARD SUPPORT PROJECT (P-KE-E00-005) FOR THE FINANCIAL YEAR 2015/2016

Account Reconciliation Statement.

965. The statement of special Designated account reconciliation for the year ended 30th June 2016. (Account reconciliation statement) for loan A/C No.2100150015546 reflected a total advance to special account of US Dollar 3,275.71 (KSh.272,866.60) while the grant justification and disbursement balance schedule obtained from Northern water service Board reflects USD 3,240.21 (KSh. 269,992.80). However, this was not supported with the Bank statement or the Bank balance certificate for period ending 30 June 2016.

966. Consequently, the authenticity of balance of KSh 272,866.60 could not be ascertained as at 30th June 2016.

Management Response

967. This was a variance of USD 35.50 (KSh. 2,873.80) which was relating to transaction fees and the matter was resolved

Committee Observation and Recommendation

968. **This was an accounting issue that had since been rectified and the matter resolved.**

Award of contracts for capital projects amounting to KSh. 73,790,106 to various contractors for construction and rehabilitation of various water works FY 2016/17

969. During the year ended 30 June 2017, the Northern Water Services Board awarded contracts amounting to KSh. 73,790,106 to various contractors for construction and rehabilitation of various water works. However, examination of payment vouchers, tenders' documents and minutes revealed the contracts were not awarded in accordance with the laid down procurement procedures. Forms of tenders, Confidential Business Questionnaires and other tender documents were not properly filled as required by the respective tender requirement. Some of the payment vouchers were not supported with interim or practical certificate of completion. It was also noted that variation or amendment of projects made during the projects execution were not supported with bills of quantities hence it was not known how the cost of the variations were derived.

970. Under the circumstance, it was not possible to ascertain the propriety of the expenditure of KSh. 73,790,106 as at 30th June, 2017.

Management Response

971. Forms of tenders, Confidential Business Questionnaires and other tender documents were supported with company profile and all other relevant documents. Practical certificate of Completion and final inspection report was provided to the Committee.

972. Concerning variations, items of costs were agreed on during site meeting and a snag list of items highlighted for inclusion in the project. The same was communicated to the management and approval obtained for the same.

Committee Observations

973. **The Committee made the following observations:**

(i) **This is an issue of documents not provided during audit. They have since been provided and verified by the OAG.**

(ii) **Tender documents such as (Forms of tender, confidential business questionnaire, tender securing declaration, BQs and company profile for the contract worth KSh. 61,113,300 for Libahle Water Pan were also verified.**

(iii) **Practical completion certificates of payments worth Ksh 12,676,712.60 for Saka Water Supply verified.**

(iv) **BQ for Variation or amendment made to project amounting KSh. 2,408,575 verified.**

Committee Recommendation

974. **The Committee recommends that the Management should always provide documents for audit within the statutory timelines as per the Public Audit Act of 2015.**

Unaccounted for fuel amounting to KSh.1, 667,510 (FY 2016/17)

975. During the year under review, examination of payment vouchers, supporting documents and fuel records at the Northern Water Services Board, revealed that fuel worth KSh.1,667,510 was purchased but was not properly accounted for. Some of the fuel was not taken on charge in the bulk fuel register. Some of the fuel drawn by the vehicles was not entered in the work ticket.

976. In Consequence, the propriety of the expenditure of KSh.1, 667,510 could not be confirmed as a proper charge to public funds.

Management Response

977. This fuel had been accounted for and fuel taken on charge in the bulk fuel register and entered in the work tickets.

Committee Observation

978. **This is a case on failure to submit documents for audit which had since been provided, verified by the OAG and therefore the query resolved.**

Committee Recommendation

979. **The Committee recommends that the Management should always provide documents for audit within the statutory timelines as per the Public Audit Act of 2015**

Budget and Budgetary Performance FY 2016/2017

980. The budget proposal for Northern Water Services Board for the financial year 2016/2017 was drawn from the Medium-Term Expenditure Framework (MTEF) 2016/2017-2018/2019. The budget proposal was deliberated among other agenda in the Board of Directors' meeting held on 30 October, 2015.

981. The statement of comparison of budget and actual amounts for project costs revealed that the final budget for the same item was KSh. 825,672,149 while the actual amount spent during the financial year was KSh. 578,752,080 resulting in a performance variance of KSh. 246,920,069.

982. Further, unexpended project grants amounting to KSh. 252,067,849 was reported in the statement of financial position under Note No.22. It was not clear why projects of this magnitude were not implemented as budgeted. Further, the list of the projects intended to be financed by the unspent fund and their status was not provided for audit review. Under the circumstance, the budget was not applied for the intended purposes to benefit the community.

Management Response

983. The performance variance reported in the budgeted income and budgeted expenditure was due to delay of exchequer funds release towards the end of the Financial Year. This led to the delay in projects implementation and hence delays in payments.

Committee Observation

984. **Treasury failed to release money in time hence the query.**

Committee Recommendation

985. **The Committee recommends that the National Treasury should always endeavour to release funds meant to implement projects in time.**

Human Resource FY 2016/2017

986. The organization had not approved the human resource policies manuals for use in the administration of the staff. The manuals are important as they guide the board on human resource issues including performance management, annual leave management, job descriptions, payroll management and staff discipline among others. In the circumstance, audit could not establish if the funds allocated for Human Resource were used properly.

Management Response

987. Human Resource manual was revised and approved.

Committee Observations and recommendation

988. **The matter was adequately and therefore resolved.**

FAST PAY PAYROLL SYSTEM

Inadequate segregation of duties FY 2016/17

989. A review of the Fast pay payroll management system functions revealed that IT user was performing users' functions i.e. System administrator handling payroll functions. IT users should only be involved in the support and maintenance of the System.

Management Response.

990. This had since been resolved because it’s the HR personnel who handle the payroll functions now.

Inadequate user setup FY 2016/2017

991. Review of the fast pay payroll management system further revealed that there was the system admin account that was being used that is not linked to any user, thereby making accountability difficult and could lead to an authorized payment.

Management Response

992. This has been rectified by creating different user accounts for different functions as per the attached screenshot.

Committee Observation and recommendation

993. **Matter resolved – system is now working.**

Non- Maintenance of Audit/Event/Activity logs.

994. Walkthrough tests revealed that Fast pay payroll management system does not maintain automatic logs for the activities undertaken in the system. This could lead to incorrect data entered manually.

Management Response

995. The Fast pay Payroll Management system that the Board did not have audit trail functionality, but this was strengthened by producing and keeping physical documents for verification purposes. The Board was also installing an ERP system that would incorporate a payroll system with all the standard functionalities

Information Communication Technology

996. An inspection of the server room revealed that the Air Conditioner at the server room was not working and there was no access register at the IT Server Room. This posed the threat of unauthorized and undetected access to the server room.

Management Response

997. The Air Conditioner has been repaired and the physical security of the servers are catered for by ensuring that only the ICT staffs has a key to the Server Room and the spare key is kept by HR personnel.

Committee Observations and Recommendations

998. **The matter in issue was adequately answered and resolved.**

Committee Recommendation

999. **The Committee recommends that the Management should always provide documents for audit within the statutory timelines as per the Public Audit Act of 2015.**

Receivables from Non-Exchange Transactions (FY 2017/18)

1000. The receivables from non-exchange transactions balance of KSh. 23,880,969 as at 30th June, 2018 related to revenue receivables from the Water Service Providers which remained outstanding for more than two years. Consequently, it was not possible to confirm that the receivables from non-exchange transactions balance of KSh23,880,969 as at 30th June, 2018 was fairly stated.

Management Response

1001. Since the enactment of water Act 2016 which placed water companies under County Governments, management had faced challenges collecting debts from water companies. This Act also stopped NWSB from collecting water levies from water companies with effect from May 2017. However, the management had been demanding its debts from them, this it did in writing severally to them demanding payment of the debts they owed NWSB.

Committee Observations

1002. **The matter appeared in the previous financial years. Non recovered debts increased from KSh. 10,190,500 in the financial year 2012/2013 to KSh 23,880,969 in the financial year 2017/2018.**

1003. **The Committee recommends that County Governments/ water bodies should pay for all the arrears due to the North Water Services Board as a matter of urgency and considering that these arrears form first charge whenever a new financial year commences.**

Outstanding Temporary Imprest 2017/18

1004. Included in the Cash and Cash Equivalent balance of KSh. 733,797,520 under note 15 to the financial statement was KSh. 4,234,308 in respect of cash in hand out of which KSh.1,200,000 related to unsurrendered temporary imprest which ought to have been surrendered on or before 30th June, 2018. This was contrary to section 152 of the PFM Act, 2012 which required temporary imprest to be accounted within a week after the return to duty stations. Further, there was no schedule indicating the names of the imprest holders, date issued and date being surrendered. No proper explanation was given why the imprest remained outstanding and had not been surrendered within the statutory deadline.

1005. Consequently, the authenticity of unaccounted for temporary imprest of KSh. 1,200,000 as at 30th June 2018 could not be confirmed.

Management Response

1006. This imprest was issued on 27th June 2018. This was an activity which was to take 30 days and return date from the work ticket was 22/07/2018, hence this imprest was to be surrendered within 7 working days from the date of return. This was not due for surrender as at the closure of financial year 2017/18 because the officer and his team were in the field at that time.

Committee Observation and recommendation

1007. **Explanation offered was satisfactory and therefore the matter stands resolved.**

Bank Reconciliation Statement (FY 2017/2018)

1008. A review of the bank reconciliation statement for recurrent and development accounts for the month of June 2018 revealed the following:

Recurrent Account

Unpresented cheques FY 2017/18

1009. Included in the balance of KSh. 1,512,451 in respect of payments in cash book not yet recorded in bank statement (unpresented cheques) were stale cheques amounting to KSh. 10,775. The cheques were paid to National Council for people with disabilities and Telkom Kenya limited. However, the cheques dated back to 2017 and continued reflecting as unpresented cheques, they had not been reversed to the cash book. In view of the foregoing, the amount of stale cheques of KSh. 10,775 as at 30 June 2018 could not be accounted for.

Management Response

1010. The cheques were reversed the cheques and updated the cash book.

Committee Observation and Recommendation

1011. **This matter was satisfactorily addressed and stands resolved.**

The payments in bank statement not in cash book (FY 2017/18)

1012. Included in the payments in bank statement note in cash book was an amount of Ksh. 40,282 paid to KRA as VAT collections which was debited twice in the bank. The transactions dated back to 2017 and continued reflecting in bank reconciliation statement. No reason was given why the transactions had not been reversed and cleared.

Management Response

1013. Management had severally written to the bank to correct the errors of payments debited twice, but they had not yet acted upon it. However, was pursuing the matter.

Committee Observation

1014. **The KCB had taken inordinately long to correct an error of double payment of VAT in recurrent account amounting to KSh 40,281 despite several requests from the North Water Services Board.**

Committee Recommendation

1015. **The Board should continue pursuing correction of the said error**

DEVELOPMENT ACCOUNT FY 2017/18

Unpresented cheques FY 2017/18

1016. Included in the balance of KSh. 587,505 in respect of payments in cash book not yet recorded in the bank statement (unpresented cheques) were stale cheques amounting to KSh. 202,503. The said cheques were paid to commissioner of VAT dated back to 2015, but continued reflecting as unpresented cheques. No proper explanation was given why the cheques were not cleared and cash book updated.

Management Response

1017. Management had since reversed the cheques and updated the cash book and evidence of the same presented.

Committee Observations and Recommendations

1018. **This is a case where cheques had been written but not presented for payment. The explanation offered was satisfactory and therefore the matter is resolved.**

The payments in bank statement not in cash book (FY 2017/18)

1019. Included in the payments in bank statement not in cash book was an amount of Ksh 118,394.70 paid to commissioner of VAT. The transactions dated back to 2015 and continued reflecting in bank reconciliation statement. No reason was given why the transactions had not been reversed and cash book not updated

1020. Consequently, it has not been possible to confirm the accuracy of the cash and cash equivalents balance of KSh. 733,797,530 as at 30 June 2018.

Management Response

1021. Management had severally written to the bank to correct the errors of payments debited twice, but they had not yet acted upon it (evidence provided).

Committee Observations and Recommendations

1022. **The error of double VAT in development account amounting to KSh. 118,394 remained unresolved. The NWASB should pursue the bank to resolve the matter.**

2.15 PHARMACY AND POISONS BOARD (FY 2011/2012 TO 2017/2018)

EXAMINATION OF THE REPORT OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF THE PHARMACY AND POISONS BOARD FOR THE FINANCIAL YEARS 2013/2014 TO 2017/2018

Mr. Fred Siyoi, the Chief Executive Officer of Pharmacy and Poisons Board accompanied by Ms. Jacinta Wasike (Director, Corporate Services), Mr. Ronald Muguni (Manager, Finance), Mr. Henry Wachira (Finance Officer) appeared before the Committee to adduce evidence on the audited financial statements of Pharmacy and Poisons Board for financial year 2013/14 to financial 2017/18.

PROPERTY, PLANT & EQUIPMENT

1023. As previously reported, the Property, Plant and Equipment balance of KSh. 378,021,081 as at 30 June 2014 included a figure of KSh. 75,000,000 representing the value of land LR No. 209/365/5 on which the headquarters Board stood. However, no title documents for the land were produced for audit review.

1024. In the circumstances, it was not possible to confirm the ownership status of the land and that of the Property, Plant and Equipment balance of KSh. 378,021,081 as at 30 June 2014 was fairly stated.

Management Response

1025. On the on-ownership documents for the land belonging to Pharmacy and Poisons Board, the Board had a conveyance as a document of ownership of land LR. NO. 209/362/5. It had also sought clarification from the Ministry of Lands vide letter Ref. No. PPB/PRO/46/11-12 dated 21st February 2012 to convert the conveyance to a Title Deed. The Board had also engaged the services of a lawyer to fast track the process.

Committee Observations

1026. **The Committee made the following observations:**

(i) The process of acquiring the title had taken an inordinately long period.

(ii) **The Board had purchased the said property from Kibo Holdings using a Conveyance and not a title deed.**

<u>Committee Recommendation</u>

1027. **The Committee recommends that the Management of the Pharmacy and Poisons Board (Board) should approach the National Land Commission for expeditious processing of ownership documents to the land belonging to the Board.**

<u>RECEIVABLES FROM EXCHANGE TRANSACTION (FY 2012/2013)</u>

1028. The receivables from exchange transactions balance of KSh. 35,169,251 as at 30th June 2014 included rent deposits, prepayments and returned cheques of KSh. 342,432, KSh. 177,300 and KSh. 17,422,341 respectively all totalling KSh. 17,942,073 which had been outstanding for a long period of time. Further, the schedule supporting the balance of returned cheques totalling KSh. 17,422,341 has not been availed for audit review.

1029. In addition, although a specific provision for bad and doubtful debt of KSh. 1,505,056 had been provided in the accounts, the provision was not adequate as the debts had been outstanding for a considerably long period of time. Also, no reason had been provided for failure to recover these outstanding debts.

1030. Consequently, it was not possible to confirm the validity, accuracy and recoverability of the receivables from exchange transactions balance of KSh.35,169,251 as at June 2014.

<u>Management Response</u>

- **Rent Deposit:**

1031. Rent deposit of KSh. 393,398 had not been refunded back to the Board. This was because the lessor of Josem Trust Building had since ceased existence and the process of recovering had been slow. A provision for bad and doubtful debts had been provided in the accounts as at 30 June 2013.

- **Prepayment of insurance property KSh. 177,300:**

1032. Please was a prepayment of insurance of Pharmacy and Poisons Board properties.

- **Prepayment of medical insurance KSh, 18,687,357:**

1033. The above amount was a prepayment of medical insurance

- **Returned Cheques:**

1034. The above is the total amount of cheques returned (Bounced), whose list was provided.

Committee Observations

1035. **The Committee made the following observations:**

(i) **Recovery of the amount has not been possible to date indicating management was negligent to follow up but instead resort to provision for debt.**

(ii) **It was against the Public Management Law for management's failure to submit a Schedule of returned cheques for audit though they had since been availed and verified.**

Committee Recommendation

1036. **The Committee recommends that the management should always submit documents for audit review within the statutory timelines provided for in the Public Audit Act of 2015.**

TRADE AND OTHER PAYABLES

1037. Included in the trade and other payables balance of KSh. 26,501,439 as at 30 June 2014 are Pay-As-You-Are-Earn (PAYE) deductions totalling to KSh. 6,616,379 made from employee's earnings. However, and according to records available, the deductions had been outstanding for ten (10) years contrary to the requirements of the Income Tax Cap 470. In addition, the likely interest and penalties for the late payments in accordance with the same Act have been accrued and included in the trade and other payables of KSh. 34,520,671 as at 30 June 2015.

1038. Consequently, it has not been possible to confirm the validity and accuracy of trade and other payables balance of KSh. 34,520,671 as at 30 June 2015.

Management Response

1039. On the above issue raised, the Pharmacy and Poisons Board had reflected the above figure of KSh. 6,616,379 as amount owing to Kenya Revenue Authority (KRA) as Pay As

You Earn (PAYE). However, KRA did an audit but did not avail supporting documents to support the bill hence the expenditure had not been factored in the budget.

Committee Observations

1040. **The Committee made the following observations:**

(i) Kenya Revenue Authority (KRA) raised the amount of KSh. 6,616,379 as Pay As You Earn (PAYE) but did not avail supporting documents to support the bill hence the expenditure had not been factored in the budget.

(ii) The matter did not come up in subsequent financial years and the CEO considered it resolved.

Committee Recommendation

The Committee recommends that Management submits communication with KRA to the Auditor for confirmation of resolution of the matter.

CASH AND CASH EQUIVALENTS FY 2017/18

1041. As disclosed at note 11 to the financial statements, Cash and Cash Equivalent balance of KSh. 1,212,550,005 as at 30 June 2018 included Co-operative bank balance of KSh. 165,005,097 whose reconciliation statement reflected uncredited cheque totalling to KSh. 950,648 for which the clearance status as at 28 February 2019 had not been disclosed. Further, the cash and cash equivalent balance included Co-operative bank call deposit balance of KSh. 135,618,150 for which the bank confirmation certificate reflected a balance of KSh. 136,711,207 resulting in unreconciled difference of KSh. 1,093,057.

1042. In the circumstances, the validity and accuracy of cash and cash equivalent balance of KSh, 1,212,550,005 as at 30 June 2018 could not be confirmed.

Management Response

1043. As per the Auditor's observation on the above, copies of reconciliations and schedules were provided.

Committee Observations

1044. **The matter arose due to management's failure to provide documents for audit within the stated timelines which have now been provided and verified and therefore matter resolved.**

<u>Committee Recommendations</u>

The Committee made the following recommendations:

(i) **Management should consider stopping the use of cheques to avoid the recurrence of bouncing cheques.**

(ii) **Management to always submit documents for audit within the statutory timelines.**

<u>LEGAL FEES FY 2017/18</u>

1045. Note 8 to the financial statements reflects legal fees of KSh. 18,732,676 for the year ended 30 June 2018. Included in the legal fee expenditure of KSh, 18,732,676 is an amount of KSh, 18,626,976 paid to four (4) law firms. However, the evidence that the Board south approval and issuance of no objection from the Attorney General's office on engagement of AG/CON/6/D/144/VOL.II dated 16th April 2014 was not availed for audit review.

1046. In the circumstances, the propriety of legal fee expenditure totalling to KSh, 18,626,976 paid to the four (4) firms could not be confirmed for the year ended 30 June 2018.

<u>Management Response</u>

1047. An approval was sought from the Office of the Attorney General Pursuant to the circular Ref. AG/CON/6/D/144/VOL.II this was done through PPB letter dated 5th July, 2019. The Legal Fee expenditure of KSh. 18,732,676 paid to the four (4) firms representing the Board arose from the fact that the matter in question were inter-related and progressed to the Court of Appeal thus representation from the firms who handled the cases at the High Court.

<u>Committee Observation and Recommendation</u>

1048. **The audit query was satisfactorily responded to and therefore stands resolved.**

2.16 KENYA RURAL ROADS AUTHORITY (KERRA - FY 2014/2015 TO 2019/2020)

EXAMINATION OF THE REPORT OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF THE KENYA RURAL ROADS AUTHORITY FOR THE FINANCIAL YEARS 2014/2015 TO 2019/2020

Eng. Philemon Kandie, the Ag. Director General of Kenya Rural Roads Authority accompanied by Eng. Jackson Magondu (Director, Development) and Mr. Dan Manyasi (Director, Corporate Services) Eng. Peter Gichohi (Director, Development) appeared before the Committee to adduce evidence on the audited accounts of Kenya Rural Roads Authority for the financial year 2014/15 to financial year 2014/2015 to 2019/2020.

Nugatory Expenditure FY 2014/2015 to 2019/2020

1049. The Authority incurred a total of KSh. 145,664, 042.99 to pay interest on delayed payments which were occasioned by delayed exchequer releases thus incurring a nugatory expenditure that creates unnecessary budgetary burden on the Authority's programme.

Management Response

1050. Management concurred with the auditor's remarks. The nugatory expenses as reported by the Auditor was occasioned by late payments to contractors which was caused by the inadequate budgetary allocation for projects and delayed exchequer releases.

1051. Budgetary Allocation to projects is often less than the contractor capacity to generate payment certificates, thus leading to an accumulation of pending bills and hence the interest charges. In the month of June 2020, the National Treasury gave the Authority a sum of Ksh 25 billion which was used to clear all pending bills as at 29th February 2020. This has helped lower the charges of interest on pending bills.

Committee Observations

1052. **The Committee made the following observations:**

(i) The delay in exchequer release caused delayed payment and hence interest on delayed payments is costing taxpayers dearly.

(ii) It was not clear how the amount sought by the contractor was arrived at.

(iii) Though it is against the law for government to procure for services without budget, in this case there was a budgetary allocation in books of KERRA accounts which was not released in time by the National Treasury hence the KeRRA management could not be faulted.

(iv) The National Treasury has not provided funds to pay claims arising from interest on delayed payments and has not undertaken to pay. It has however provided funds to pay the rest of the delayed payments. In the contract, accrual of interest is provided. Pending bills would have ordinarily included interest payable; this was confirmed by the National Treasury.

Committee Recommendations

1053. **The Committee made the following recommendations:**

(i) The National Treasury should release funds as and when they fall due.

(ii) Future budgetary allocations to the Authority shall be improved to provide sufficient project funding.

Rehabilitation and Repairs of Kasoiyo-Saos- Society (D350) Road (FY 2014/15 to 2019/2020)

Slow Progress

1054. The progress report for 31st July 2015 showed the overall progress achieved was 30.37% against elapsed time of 76.19%. The project was behind schedule and therefore unlikely to be completed by the contract completion date of 10 April 2016 which may lead to escalation of project costs.

Management Response

1055. Management concurred with the auditors' findings. In order to address the risk, management was managing cost escalation through VOP capping and ensuring timely delivery of project contractors request for assignment was granted by the employer. The project was completed and taken over on 15th April 2019 and a defects liability certificate issued.

<u>Committee Observations</u>

1056. **The Committee made the following observations:**

(i) **The delay in completion of the project did not occasion extra payments.**

(ii) **M/s Bridgeston construction company ltd that delayed completing the contract in time is still doing business with the KeRRA.**

<u>Environment Impact Assessment</u>

1057. The project commenced without approved environment impact assessment which led to stoppage of works by Nema on 30 May 2014 for one and a half months. However, the situation was later corrected when the Authority was able to finalise the Environment lmpact Assessment

<u>Management Response</u>

1058. Management concurred with the auditor's findings but indicated that the Authority had taken appropriate measures to remedy the situation.

<u>Committee Observations</u>

1059. **The Committee made the following observations:**

(i) **This is a case where employers give out contracts before doing environmental impact assessment.**

(ii) **Though this was repair works, there should be an environmental impact assessment report.**

<u>Committee Recommendation</u>

1060. **The Committee recommends that KeRRA should ensure that it does environmental impact assessment and secure NEMA certificate before awarding contracts.**

<u>Assignment of Works (FY 2014/2015 to 2019/2020)</u>

1061. On 28th January 2015 works valued at KSh.504,824,286.00 were assigned to Guangxi Hydroelectric Construction Bureau due to slow performance by the previous contractor. It was noted that the assignment of contract is guided by the general conditions of contract, clause 3.1. The assignment resulted in improved work delivery, though a lot of time had already been lost. The Authority should ensure that non-performing contractors are not awarded new projects in future to reduce cases of having to re-assign works.

Management Response

1062. The main contractor was having challenges in delivery. That is why management undertook the remedial measure of approving an assignee as per contract terms. The project was completed and taken over on 19th April 2019 and the substantial completion certificate was issued.

Committee Observations

1063. **The Committee made the following observations:**

(i) The awarded contract was reassigned due to non-performance way long after time had elapsed. This brings into sharp focus of the due diligence that was done on contractor.

(ii) The assigned contractor was brought by M/S Bridgeston Construction Company ltd. The concept of assignment is being misused where brief case companies secure contracts only to be assignment to different company

Committee Recommendation

1064. The Committee recommends that the concept of assignment of works should be highly discouraged and used on exceptional instances to avoid abuse.

Construction of Konyu-Kairo, Nyamari- Kahuriria-ni- Mugaa-lni, GichicheJcn - Kiganjo Tbc, Witima- Timbayas Kariki – D430 Jcn (E549) & Gatugi D430 Jcn (FY 2014/2015 and 2015/2016)

(E552) Road

Assignment of Works

1065. On 10th day of July 2012, part of the works, comprising 114 KM section of Konyu Mucharage Road identified as Km 7+ 800 to Km 19 + 200, was assigned to M/S China Overseas Engineering Group Co. Ltd (Covec Ltd) for Ksh.605,082,355.20 because of slow progress by Put Sarajevo General Engineering. Although this was done pursuant to clause 3.1 of the general conditions of the contract, it was not clear how the first contractor was evaluated and awarded the contract.

Management Response

1066. To ensure timely delivery of the project to the users, management decided to assign the works to another contractor after the initial contractor experienced challenges.

1067. This project was awarded by the Ministry of Roads on the 16th July 2009 vested to the authority at its inception by the Ministry of Roads. The works were substantially complete and the road opened to traffic on 4th June 2016.

Committee Observations

1068. **The Committee made the following observations:**

(i) The procurement was done by the Ministry way back in 2009 when KeRRA had not been established. Following the formation of Roads authorities, this project was handed to KeRRA for implementation.

(ii) The contractor failed to perform and the works were assigned to a different company. It took seven years to complete. Put Sarajevo General Engineering are no longer doing business with KeRRA.

(iii)KeRRA varied the Scope of works by increasing it by 5 km. The variation in cost was within the 15% allowed under the 2005 procurement law.

Interest on Delayed Payments

1069. The contractor had charged a total of KSh.5,211,178.13 as interest on late payment. Although the Authority explained that delayed payments were occasioned by delays in Exchequer release, payment on interest amounting to Ksh 5,211,178.13 was a nugatory expenditure that reduced the ability of the Authority to implement planned works. The Exchequer releases should be timely to mitigate cost of interest in delayed payment by the Authority

Management Response

1070. Management concurred with the auditors' findings. The interest charge of Ksh. 5,211,178 was a result of delayed payment to the Contractor for work done. There has been a general improvement in disbursements by the National treasury. In the month of June 2020, the National Treasury gave the Authority a sum of ksh 25 billion which was used to clear all pending bills as at 29th February 2020. This helped to alleviate the pending bills situation and hence lower incidences of late payments on interest.

Committee Observation

1071. **This arose due to delayed exchequer releases.**

Committee recommendation

1072. **The Committee recommends that the National Treasury should ensure timely release of funds meant for contractors to avoid accrual of interest.**

CONSTRUCTION OF MURANGA GITUGI (D427) AND NJUMBI – MIORO (E546) FY 2014/2015 TO 2019/2020)

Delayed Project Deliver

1073. Overall progress as at 08 August 2015 was 16% against an elapsed contract period of 106.24%. This shows that the contractor had delayed the project delivery. There was evidence however that the contractor applied for extra time which was under evaluation by the employer who invoked liquidated damages recovery as provided for under section 47 1 of the contract.

Management Response

1074. Management concurred with the audit findings.

Committee Observation

1075. **The Committee made the following observations:**

(i) The project was complete and the contractor had applied for substantial completion.

(ii) The contractor had been surcharged ksh 15,000,000 for delayed project delivery.

Committee Recommendation

1076. **The matter was resolved.**

Interest on Late Payments

1077. The Committee heard that latest payment certificate No.7 indicated that interest on delayed payments totalling KSh.7,001,678.28 had been incurred which was a nugatory expenditure causing pressure on the full delivery of project

Management Response

1078. Management concurred with the audit findings. Interest on late payments amounting to **KSh.7, 001,678** arose from delayed exchequer releases from the National Treasury. In the month of June 2020 the National Treasury gave the Authority a sum of ksh 25 billion which was used to clear all pending bills as at 29th February 2020. This had helped to alleviate the pending bills situation and hence lower incidences of late payments on interest.

Committee Observation

1079. **Delayed exchequer releases were the cause.**

Committee Recommendation

1080. **The Committee recommends that the National Treasury should always ensure timely release of exchequer.**

CONSTRUCTION OF SOTIK – CHEBORGE – RORET KEBENET SIGOWET ROAD (D226) (FY 2014/2015 AND 2015/2016)

Interest on Delayed Payments

1081. The Committee heard that Interest on delayed payments as at 31st July 2015 amounted to **KSh.29,930,244.05** which was a nugatory expenditure that reduced amount of budget available to carry out actual works.

Management Response

1082. Management concurred with the audit observation. In the month of June 2020, the National Treasury gave the Authority a sum of ksh 25 billion which was used to clear all pending bills as at 29th February 2020. This had helped to alleviate the pending bills situation and hence lower incidences of late payments on interest.

Committee Observations

1083. **Late disbursement occasioned the pending bills. There was an accumulation of KSh. 1.5 billion of interest because of delayed payments**

Committee Recommendation

1084. **The Committee made the following recommendations:**

(i) The Authority should budget for projects based on the allocated funds.

(ii) The National Treasury should always release funds budgeted for implementation of projects to avoid huge interests on delayed payments.

Delayed Project Delivery

1085. The Committee heard that as at 31st July 2015, only 8.7 km of 45 6 km or 19.12% of the road had been completed against an elapsed time of 47 months out of 30 months or 156.7%. This shows that the contractor seriously delayed project completion. Although it was explained that the contractor was experiencing internal financial constraints that impacted on their performance, it was not clear whether the main contract would still deliver their portion given their insolvent situation

Management Response

1086. Management concurred with the Auditor findings. The project was initially scheduled for completion on 1st January, 2014. The Main Contractor was unable to proceed with the works and applied to assign the works to China WuYi Co. Ltd pursuant to Sub Clause 3.1. The Assignee completed the works on 16th September, 2016.

1087. Management had written to PriceWaterHouseCoopers Ltd, the Administrators of Spencon (K) Ltd, claiming for all outstanding contractual obligations including liquidated damages and the balance of the Advance Payment payable by the Contractor to the Employer.

Committee Observations

1088. **The Committee made the following observations:**

(i) The company had become insolvent hence need for liquidation. The PWC has not paid the KSh. 86 million and KSh 165 million (a total of KSh 253 million) KERRA was requesting.

(ii) KERRA should have recalled the performance bond before its expiry.

<u>Committee Recommendation</u>

1089. **The management of the KERRA should always adhere to procurement law whenever procuring for goods and services.**

<u>Assignment of works</u>

1090. The Committee heard that the Contractor assigned works valued at Ksh**.** 2,220,926,590.46 (66.64%) to China Wu Yi Company Limited pursuant to clause 3.1 of the conditions of contract to hasten progress. However, it was not clear how the Assignee was identified.

<u>Management Response</u>

1091. Management informed the Committee that in accordance with the standard conditions of contract an Assignee is appointed by the contractor, then evaluated and confirmed by the employer as being fit to implement the project.

1092. The Contract completed length is **45.83Kms**. This comprised of **8.7Kms** completed by the main Contractor and **37.12Kms** completed by the Assignee Contractor M/s China Wu YI Co. Ltd.on 15th September 2016.

<u>Committee Observation</u>

1093. **There was no need to demand money from Price WaterHouse Coopers given that the contract had been assigned to the M/s China Wu Yi Co. ltd who took the liabilities.**

<u>Delayed project Delivery by Spencon Kenya Ltd</u>

1094. By newspaper notice appearing in the daily nation of 10th April 2015, Spencon was due to be wound up. It was not clear what the implications of the winding up of the company would be on the contract. However, the Authority explained that the matter was resolved by the company before assignment of part of the works pursuant to clause 3.1 of the conditions of contract.

Management Response

1095. The Project was assigned to China WuYi Co. Ltd pursuant to Sub Clause 3.1 of the contract who completed the works on 16th September, 2016. Management had written to PriceWaterHouseCoopers Ltd the Administrators of Spencon (K) Ltd claiming for all outstanding contractual obligations including liquidated damages and the balance of the Advance Payment payable by the Contractor to the Employer.

Committee Observations

1096. **Though there was a prior newspaper advert from Spencon (K) ltd on winding-up of the insolvent company, KERRA did not renew its performance bond.**

Expiry of Advance Payment Guarantee

1097. The contractor was paid as advance payment vide certificate No. 1 dated 16th June 2011 on the strength of advance payment guarantee. This guarantee expired on January 2014. As at the time of assignment of the contract (14th May 2015) the employer had recovered KSh. 118,504,727.11 leaving a balance of KSh 196,410,489.7878. Although it was explained that the outstanding advance payment would be recovered as contained in the Assignment agreement between the main contractor and the Assignee, no recoveries had been made by the time of the audit. The main contractor was eventually provided an advance payment guarantee on 28th October 2015 amounting to KSh 196,410,498

Management Response

1098. KERRA was awaiting the conclusion of the winding up process by the Receiver Manager PWC and eventual payment of our dues.

Committee Recommendation

1099. **The Committee recommends that the management of KERRA should always adhere to the procurement laws whenever procuring and implementing projects.**

CONSTRUCTION OF KAPTAMA – KAPSOKWONY SIRISIA (275) ROAD CONTRACT NO. RWC 023 (FY 2014/205 TO 2019/2020)

Delayed Project Delivery

1100. The Committee heard that the contract commenced on 22 June 2007 for a contract period of 34.72 months. The contract was to end by 13 May 2010 but by 30 June 2015 the contractor had not completed the works under the project. A design review was however carried out that resulted in scaling down the project length in lieu of the available contract budget. The contractor was unable to complete the project due to financial distress

Management Response

1101. From the revised scope of works, the following is the current status;

i) Kamukukuyua-Kaptama-Kapsokwony-

ii) The entire **23.3 Km** is complete and taken over.

iii) Kapsokwony-Kimilili

iv) **60%** of the works are complete to subbase/processed base

Financial Distress of the Contractor

1102. The contractor (KSL International Ltd) was put under receivership. This information was contained in the Daily Nation on 23rd February 2015 page 37. Th contractor's yard including the site offices at Kamkuywa, was also placed under a Receiver Manager and all site operations brought to halt. The contractor was unable to settle rent arrears owed to the Authority amounting to Ksh 3,028,125 for the Mwatunge Camp in Taita Taveta which was used in a previous contract.

Management Response

1103. To mitigate against possible loss, the Authority was holding ksh 62,207,691.06 retention money as security. The Contractor remained under receivership thus making it difficult to conclude the payment issue regarding the rent owed to the Authority. The Contractor would deduct all monies owed to the Authority from the withheld Retention money amounting to **KSh. 62,207,691.06.**

Request for Mutual Winding up of the Contract

1104. The receivership manager vide letter ref HG/JKM/RBH/JGM/62 dated 9th July requested for mutually winding up of the contract citing balance of funds to the contract sum is insufficient to complete the outstanding works based on design specifications. Apart from letter ref KeRRA/05/INCLM/RWC23/2536 dated 16th July 2015 from General Manager (Design and Construction) to Resident Engineer requesting the Resident Engineer to comment on the mutually winding up of the contract and undertake project appraisal and submit report with recommendations before 27th July 2015 for further action, there is need for comprehensive value-for-money analysis by the Authority in what was actually done vis-à-vis the total expenditure

Management Response

1105. The original scope comprised of the following sections

(i) Kamukuyua-Kaptama-1**4Km**

(ii) Kaptama-Kapsokwony-Namwele-**40.32 Km**

(iii) Kapsokwny-Kimilili-**8.37Km**

(iv) Namwela-Chwele-5.1 Km.

1106. The revised scope consisted of:

(i) Kamukuyua-Kaptama-Kapsokwony-**23.3 Km**

(ii) Kapsokwony-Kimilili-**8.35 Km**

1107. From the revised scope of works, the following is the current status:

(i) Kamukukuyua-Kaptama-Kapsokwony- The entire 23.3 Km is complete and taken over.

(ii) Kapsokwony-Kimilili 60% of the works are complete to subbase/processed base. Completed sections were tested and approved for specifications requirements in order to ascertain value for money for the completed works. The outstanding sections have since been re-tendered and works are on-going under contract No. RWC 264.

Committee Observation and Recommendation

1108. **The query was resolved**

CONSTRUCTION TO BITUMEN STANDARD OF NAROMORU – MUNYU KARISHENI ROAD (FY 2014/2015 TO 2019/2020)

Delayed Project Delivery

1109. The Committee heard that the contract period elapsed on 30th September, 2014 and there has been no approved extension of time. The latest progress report indicated that only 19% progress had been achieved so far. It was not explained why the contract has not been terminated despite the contractor's failure to carry out their obligation under the contract.

Management Response

1110. Management concurred with the audit observation. Termination was usually the last option in contract management. That is why the Authority approved the assignment of the contract to another contractor.

1111. The entire length of 45.9Km was substantially complete. The main contractor had completed the 6Km.

1112. The Employer will deduct liquidated damages from the main Contractor to cover the delayed completion of the works.

Assignment of Works Management Response

1113. The Committee heard that on 21April the contractor entered into agreement with East African Development Engineering Trading Co. Ltd to assign part of the works valued at KSh.2,064,537,960.73 pursuant to clause 3.1 of the conditions of contract after approval from Director General through letter Ref. KeRRA/D&C/3679 dated 9th March, 2015. Although following assignments, reasonable progress was achieved, there is undue projected delay in the project completion

Management Response

1114. The Main contractor has been surcharged ksh 32,850,000.00 as liquidated damages. The Total Length awarded to M/s Kirinyaga Construction was **45.9Km.** However, due to delayed delivery of the Project, a total of **39.9Km** of the contracted length was assigned to

M/s East Africa Development Engineering Trading Ltd in view of expediting on the execution of works which are currently at 100% completion.

Committee Observations

1115. **The Committee made the following observations:**

(i) **It was a common trend in KERRA to award contractors only to go under after a short time. This may indicate poor due diligence done on contractors by KERRA before award.**

(ii) **It is not clear whether these assignees were part to the companies that bid for the tender.**

Committee Recommendation

1116. **The Committee recommends that the management of KERRA should always adhere to procurement laws whenever it procures and implements projects.**

REHABILITATION AND REPAIR OF ELDORET-ZIWA-KACHIBORA-ELDORET-KABENES ROAD CONTRACT NO. RWC (FY 2014/2015 TO 2019/2020)

Delayed Project Delivery

1117. The latest progress report for 30 June 2015 shows that amount certified was KSh. 816,513,847.63 against an initial contract sum of KSh. 1,435,212,465. This represents a progress of about 57% of the initial contract sum achieved despite the lapse of contract period. The contractor therefore delayed in project delivery hence the need for the Authority to invoke clause 47.1 of conditions of contract on liquidated damages recovery against the contractor.

Management Response

1118. As correctly noted by the auditor, the contractor delayed on the project and was subject to surcharge on liquidated damages. However, at that time the contractor had pending EOT’s under evaluation and therefore liquidated damages could not be contractually recovered at the time.

1119. The contract was terminated via our letter ref: KeRRA/06/1A/RWC /007/9255 dated 4th September 2019 and the outstanding works re-scoped and retendered.

Scaling down of Works

1119. Evidence available indicated that the works were repackaged as follows:

(i) Eldoret - Kabenes 24KM- KSh. 974,301,651.34

(ii) Kabenes-Kachibora 31 KM- KSh. 1,313,914,382

(iii) Moi's Bridge - Kachibora 20 KM - KSh. 536,046,915

1120. The first section was to be completed under the current contract. This was repackaged as addendum No. 2 which was approved by CTC on 12th September 201 4. The second portion was subjected to open tender and awarded to MIS China International Cooperation on 19 June 2015 at a contract sum of KSh. 1,313,914,382.5. The third section is to be implemented through the low volume seal programme later. Repackaging of the initial scope of works into 3 sections above may result into increase of the expenditure. It was however noted that the first two sections had their pavement structures reviewed to incorporate a Dense Bitumen Macadam (DBM) base layer instead of the earlier specified cement stabilized gravellayer due to the observed increase in axle load arising from logging trucks.

Management Response

1121. As per procedure for maintenance projects, the Authority procured the works as Holding Maintenance to slow down the rate at which the road was deteriorating. However due to time lapse, the Authority engaged the Chief Engineer Material to carry out a pavement evaluation to inform on the optimum intervention to be undertaken. Based on the Pavement evaluation report, the scope of works was repackaged and appraised as observed by the Auditor into three sections:

(i) Eldoret - Kabenes 24KM- KSh. 974,301,651

(ii) Kabenes-Kachibora 31 KM- KSh. 1,064,762,019

(iii) Moi's Bridge - Kachibora 20 KM- KSh.536,046,915

1122. The original contract under Eldoret-Kabenes was terminated via our letter ref: KeRRA/06/1A/RWC /007/9255 dated 4th September 2019 after the contractor failed to perform and the outstanding works re-scoped and currently under procurement.

1123. The second section: Kabenes-Kachibora -31Km was procured and has been completed and taken over by employer.

1124. The third section: Moi's bridge – Kachibora- was procured under contract No RWC 357 -Moi's Bridge -Kachibora & Tugoin-Kapsigilai Road is substantially complete awaiting Inspection.

Committee Observations

1125. **The Committee made the following observations:**

(i) Due diligence and procurement processes at KERRA was still a challenge.

(ii) Most of the contracts commenced at KERRA end up terminated. It should be noted that most of the terminated contractors are local indicating either capacity issues or want of supervision.

(iii) The Committee notes with concern on award of contracts to contractors who have no capacity. They end up being terminated and reassigned.

Committee Recommendations

1126. **The Committee made the following observations:**

(i) The management of KERRA should always adhere to the procurement laws whenever procuring and implementing projects.

(ii) The KERRA should restructure identification process of contractors by building capacity on its department that does due diligence on contractors.

CONSTRUCTION OF KIBUNJA-MOLO-OLENGURUONE ROAD (D316) CONTRACT NO. RWC (FY 2014/2015 TO 2019/2020)

Failed project delivery

1127. The project was to be completed on 6 February 2012. However, going by the latest progress report for December 2014, only 67.73% physical progress has been achieved. This is about 3 years after expiry of the contract period. There was no progress report from December 201 4 to date which means no works have been done since. There was no evidence of approval for extension of time, but the employer has not invoked clause 47.1 of conditions of contract which provides for recovery of liquidated damages from the contractor after lapse of contract period if no extension of time has been granted.

Management Response

1128. Initial contract for Kibunja-Molo-Olenguruone of ksh 844,344,347 to Kimili Hauliers, including the assigned works of KSh. l13,137,730 was terminated due to Non-performance. The outstanding works were rescoped into two contracts: ((Kibunja-Molo; and Molo-Olenguruone). These were awarded to China Railway No 10 and Buffloc Investments Ltd.

- **Molo-Olenguruone** Road was awarded to China Railway is substantially completed under Defects liability period.
- **Kibunja-Molo Road** was awarded to Buffloc Investments Ltd and is substantially complete

Assignment of works

1129. The Committee heard that the contractor agreed to sub-contract works amounting to KSh. 1 13,137,134,730 to another contractor, Raflo Services to speed up the progress in accordance with clause 3.1 of Conditions of Contract. However, this arrangement could not also deliver the project.

Management Response

1130. Initial contract for Kibunja-Molo-Olenguruone of ksh 844,344,347 to Kimili Hauliers, including the assigned works of KSh. l13,137,730 was terminated due to Non-performance. The outstanding works were rescoped into two contracts: Kibunja-Molo; and Molo-Olenguruon both later awarded to China Railway No 10 and Buffloc Investments Ltd.

- **Molo-Olenguruone Road**: This was awarded to China Railway and was substantially completed under Defects liability period.
- **Kibunja-Molo Road**: This was awarded to Buffloc Investments Ltd and is substantially complete

Liquidated Damages

1131. The Committee heard that the contract agreement provided for recovery of liquidated damages from the contractor if works were not completed within the stipulated time but no evidence was provided on whether there was any recovery.

Management Response

1132. In mitigation all surcharges and amounts owing are subject to recovery against the retention amounts held.

Termination of the contract

1133. The Committee heard that on 5th March 2015, the Acting Director General wrote to the contractor a notice of termination of contract. On 23rd March 2015, contractor was notified of termination of the contract and the contractor was required to demobilize from the site. The employer re-tendered the works.

Management Response

1134. The contract for this road was terminated on 23rd March, 2015. A new contract for Molo-Oleguruone road section was awarded on 15th October, 2015 to China Railway No. 10 and the project is now completed.

Committee Observations

1135. **The Committee made the following observations:**

(i) **It was not clear why into took KERRA three years to terminate the contract having realized non-performance from the part of the contractor.**

Committee Recommendation

1136. **The Committee recommends that the management of KERRA should always adhere to the procurement laws whenever procuring and implementing projects.**

CONSTRUCTION OF SIGALAGALA – MUSOLI – SABATIA – BUTERE ROADS (D260/E390) (FY 2014/2015 TO 2019/2020)

Delayed Project Delivery

1137. This project was to be completed by 6th June 2013 but this was revised to 9 July, 2013 through an extension of time. The latest progress report dated 30 June 2015 show that only 34 99% overall progress has been achieved i.e. two years after expiry of contract period. This was noted to have been caused by the contractor undergoing internal financial distress.

Management Response

1138. The overall progress was **95%** as follows:

- The Assignee Contractor had completed the assigned section of **20.0Km** and the same had been Taken-Over. The main Contractor has substantially completed the **14.25 Km** balance work but was yet to be Taken-Over.
- The Employer had been deducting liquidated damages from the Main Contractor due to delayed completion

Assignment of Works

1139. In December, 2014, the contractor entered into an agreement with another contractor, East African Development Engineering and Trading Co. Ltd to assign part of the works in time with clause 3.1 of the Conditions of Contract. Out of the total road length of 34.25km the Assignee was to construct 20 km at a contract sum of 1,113,658,597.90. The main contractor will thus only handle 14.25km. The Assignee was given 18months to complete the works. This by effect means the contract period has been extended by default without any claim of time on the side of the contractor.

Management Response

1140. The Assignee Contractor had completed the assigned section of **20.0Km** and the same had been Taken-Over. The main Contractor has substantially completed the **14.25 Km** balance work but was yet to be Taken-Over.

Committee Recommendations

1141. **The Committee recommends that the management of KERRA should always adhere to the procurement laws whenever procuring and implementing projects.**

Construction of Konyu-Kairo, Nyamari- Kahuri-lria-lni- Mugaa-lni, Gichiche JCN-Kiganjo TBC, Witima-imbaya, Kariki-D430 Jcn (E549) &Gatugi- D430 JCN (E552) Road (FY 2015/2016)

Assignment of Works

1142. On 10 July 2012, part of the works, comprising 11.4 KM section of Konyu- Mucharage Road identified as Km 7+ 800 to Km 19 + 200, was assigned to M/S China Overseas Engineering Group Co. Ltd (Covec Ltd) for KSh.605,082,355 due to poor performance by the original contractor.

Management Response

1143. To ensure timely delivery of the project to the users, management decided to assign the works to another contractor after the initial contractor experienced challenges. The works were substantially complete and the road opened to traffic.

Interest on Delayed Payments

1144. The Contractor had charged a total of **KSh.5,211,178** as interest on delayed payments which was a nugatory expenditure and should not have been a charge to public funds.

Management Response

1145. Budgetary allocation to projects was often less than the contractor capacity to generate payment certificates, thus leading to an accumulation of pending bills and hence the interest charges. Interest is settled in accordance with contractual terms.

Current Status

1146. In the month of June 2020 the National Treasury gave the Authority a sum of Ksh 25 billion which was used to clear all pending bills as at 29th February 2020.

Committee Observations

1147. **The Committee made the following observations:**

(i) It is common at KERRA that contracts are given, underperformed, and assigned. This points to wanting procurement of main contractors. Assignments without subjecting the entire process through the provisions of Article 227 of the

Constitution and more specifically competition and equity. The assignee did not bid in the contract.

(ii) The variation of a contract scope from 68.5 km to 72.5 km and subsequent change of contract amount from KSh 3.156 billion to KSh 3.625 billion through an addendum was within the 25% allowed in the PPADA 2005.

Committee Recommendations

1148. **The Committee made the following recommendations:**

(i) KERRA should put in place mechanisms to allow competition when assignment is done to ensure compliance with Article 227 of the Constitution.

(ii) The management of KERRA should always adhere to the procurement laws whenever procuring and implementing projects.

Construction of Sigiri Bridge and Approach Roads on Road R43 - RW-C092 (FY 2016/17 TO 2019/2020)

Slow Progress

1149. The contract period for the project elapsed on 12th February 2017 and there was no evidence for approval of extension of time but as per the latest progress report dated 31st October, 2017, the overall progress was at 81.27% against an elapsed contract time of 24 Months equivalent to 133.33% of the contract period. Although management has indicated that the project is substantially complete, no evidence was availed in support of this, and it was not possible to confirm the status of the project as at 29th May 2018.

Management Response

1150. Management concurred with the Auditor observation that there was slow progress implementation, however the project has since been completed and take over. The Employer had deducted liquidated damages of ksh 15.6 million for slow progress.

1151. Works on the bridge had been successfully completed and opened to traffic. The Authority noted that the project was substantially handed over by the contractor on **5th July, 2018** pursuant to Sub Clause **10.2** of the Conditions of Contract, Design, Build Maintain (DBM).

1152. Further, during the project implementation, the contractor was awarded a total of **209** days extension of time pursuant to Sub Clause **9.3** of the Conditions of Contract, Design, Build Maintain (DBM) which revised the Contract completion date to **9th September 2017**.

Committee Observation

1153. **The delayed implementation of the project saw deduction of liquidated damages after issuance of commissioning certificate.**

Committee Recommendations

1154. **The Committee made the following recommendations:**

(i) **The accounting officer for the KERRA should always report non-performing contractors to the PPRA.**

(ii) **Non-performance of contractors should be one of the criteria for debarment envisaged under the Public Procurement and Asset Disposal Act, 2015**

Isiolo Township Roads Lot1 RWC /174A FY 2018/2019 and 2019/2020

1155. The contract for Isiolo Township roads was awarded on 6 January 2017 at a contract sum of ksh 980,682,371. It was to be implemented in twenty -four (24) Months ending on 23 March 2019. The progress of work report dated 21 June 2019 indicated that work done was equivalent to 53 % of the scope of the project. The value of certified works paid was ksh 501,618,904 equivalent to 56% of the contract sum. Although the project was behind its scheduled completion date, there was no evidence of the contract period having been extended or Management having invoked liquidated damages clause in the contract.

1156. Further delay in completing the project may result in escalation of its costs due to economic or other causes.

Management Response

1157. The works commencement date was 22nd December, 2016 and the completion date was to be 22nd December, 2018. The Contractor has submitted Extension of Time (EoT) claim No. 1 which is at an advanced stage of evaluation.

1158. The physical progress as at December 2019 was 53.05% against a time elapsed of 150%. The slow progress had been occasioned by many challenges including delayed payment, low mobilization by Contractor and encroachment of the road reserve among others. The Employer through the mother ministry was in the process of raising adequate funds through an Infrastructure bond to ensure Contractors are paid on time to expedite their work. Further, issue of encroachment of road reserve had been resolved. Regarding low mobilization, the Contractor had been given early warning and the Employer shall revert to deduction of liquidated damages if the Contractor fails to qualify for EoT.

1159. The contractor had lagged schedule and should be deducted liquidated damages. However, it was difficult to establish the quantum of liquidated damages applicable until the requested extension of time is adjudicated. Once the quantum is established, liquidated damages would be deducted from the contractor's interim payment certificates or deducted from the retention monies owed to the Contractor by the Employer. As at 9th February 2022, the project was 82.28% Physical Progress as per project progress report of November 2021.

Committee Observations and recommendation

1160. There was a discrepancy between the header (Isiolo Township Roads Lot 1RWC 174) and the details of the auditors observations which appear to refer to a different contract vis laisamis-Ngurunit contract number RWC 315. Considering this anomaly from the audit report, the committee considered the matter spent.

Donor Funded Projects FY 2019/2020

1161. The implementation of improvements of rural roads and market infrastructure in western Kenya project No. BMZ 2007-65 123 (KFW) and the following value for money observations: -

Loss of funding due to Low absorption

1162. During the year under review, the Project thorough a letter dated 5 March 2019 referenced No 22340/200765123 refunded EUR 720,000(Ksh 82,492,200) due to non-absorption of funds. Further, the project incurred avoidable foreign exchange losses in processing the refund of ksh 2,775,024 due to fluctuations in exchange rates.

Management Response

1163. It is true that KfW recalled EUR 720,000 as stated above. This refund was in compliance with Clause 8 of Annex 6 of the Separate Agreement**.** The main cause of this was disbursement challenges related to movement of Loan funds from the Special EURO Account at Central Bank to the Disposition Fund Account operated by the Project Executing Agency. After disbursement of the Loan Funds by KfW, it took considerable time and processes to move them from National Treasury Account to Ministry Account and eventually Disposition Fund Account operated by KeRRA and (NIC Bank).

Committee Observations

1164. **The Committee made the following Observations:**

(i) It was inconceivable that because of bureaucracies in the National Treasury which delayed this money to KERRA for about a year even without counter-part funding, the donor recalled the donated fund when Kenya was in dire need on development.

(ii) Further, the road in question had been tendered out meaning that a contractor may have charged interest on delayed payments.

Committee Recommendation

1165. **The Cabinet Secretary for the National Treasury should always provide Government of Kenya counterpart funds meant to implement donor funded projects.**

Training of Contractors on Labour-Based Contracts

1166. The project paid the Kenya Institute of Highways and Building Technology -Kisii Campus ksh 166,534,650 in the Financial Year 2018/2019 for training of local contractors on labour-based maintenance of roads. Thirty-three (33) contractors from three counties of Bungoma, Kakamega and Vihiga were subsequently trained. However, it was not possible to identify how trainings were carried out as there were no project files maintained in the regional offices on the training and no contracts had subsequently awarded to the trained contractors in the year under review.

Management Response

1167. Kisii Training Centre under KIHBT was the official Training agency indicated in the Separate Agreement. KeRRA signed a Training Agreement with Kisii Training Centre. Identification of Contractors for Training was done through a competitive process following an advert was placed in the local dailies. A report on the recruitment process was forwarded to KfW. A copy of KfW no objection to the selection process together with the advert Notice used in the local Dailies to invite interested Local Contractors

1168. As part of the Training Module, the Trainee Contractors were assigned sections of roads measuring between 1.5-2km within the focal area (Kakamega, Bungoma & Kakamega) to implement as Trial Contracts. These were the thirty-Three (33) Trial Contracts. KeRRA paid KSh 166,534,650.00 to KTC towards implementation of the same.

1169. Project files were in custody of Kisii Training Centre the Trainers who also managed the payments for works implemented under Trial Contracts. The objective of the Training under the Programme was capacity Building which was achieved. All records of payment for works implemented under Trial Contracts were at Kisii Training Centre where funds were managed after disbursement from KeRRA.

Committee Observations

1170. **This query related to accountability of the funds used for training at the time of appearance before the Committee. Management did not appreciate and therefore remained unanswered i.e no evidence of who was trained, paid and awarded works.**

1171. **The accountability documents were however provided to the Committee on 11th Feb 2022 thus dispensing the query.**

Committee Recommendations

1172. **The Committee made the following recommendations:**

(i) The accounting officer for the KERRA should always provide documents for audit review within the statutory timelines.

(ii)

2.17 KENYA AIRPORTS AUTHORITY (KAA – FY 2016/2017 AND 2017/2018)

EXAMINATION OF THE REPORT OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF THE KENYA AIRPORTS AUTHORITY FOR THE FINANCIAL YEARS 2016/2017 AND 2017/2018

Mr. Alex Gitari, the Ag. Managing Director of the Kenya Airports Authority, accompanied by Ms. Katherine Kisila, (Corporation Secretary) and Mr. Fred Odawo (General Manager, Projects) appeared before the Committee to adduce evidence on the audited accounts of Kenya Airports Authority for the financial year 2016/17 and 2017/18.

NON-CURRENT ASSETS - FY 2016/2018 AND 2017/2018

1173. The non-current assets balance of KSh.51,643,374,000 as at 30th June 2017 reflected Property, Plant and Equipment balance of KSh.50,773,193,000 which included an amount of KSh.249,263,000 for freehold land and KSh.5,520,788,000 for leasehold land. Examination of these balances and supporting records revealed the following unsatisfactory observations:

1174. As similarly reported in the previous year, the leasehold land balance of KSh.5,520,788,000 excludes Plot LR No.9042/668 measuring 3.29 acres in Embakasi village which had not been valued for inclusion in the financial statements as at 30 June 2017. The management has explained that this parcel of land was physically surrendered for construction of Embakasi Police Station and the Authority plans to transfer the title to National Police Service. However, documents and correspondences to show when and how the alleged surrender of the land took place as well as the consideration given to the Authority for the land was not availed for audit verification. In the circumstances it was not possible to establish the validity and legality of the alleged transfer.

Managements Response

1175. The Authority had not surrendered the land and title documents to National Police Service. The Authority was the registered proprietor of the Land. The value of the land as determined by the Government valuer in 17th June 2019 was to be included in the financial statements for the year ended 2019/2020.

Committee Observations

1176. **The Committee made the following observations:**

(i) The authority has since valued the assets including the police station. All this will be included in the KAA's books.

(ii) The explanation offered was contradictory to what the KAA told the Committee in the 23rd report that KAA intended to transfer the property to the National Police Service. The management, and through its board approval, had resolved to lease the impugned land to the National Police Service. Further, 3.29 acres is too much for construction of the police post.

Committee Recommendation

1177. The land in question should be leased to National Police Service and included in the KAA books of accounts.

Unsupported Freehold Land Balance at Kisumu International Airport

1178. Included in the freehold land balance of KSh.249,263,000 above is KSh.190,763,189 described as land acquired during Kisumu International Airport expansion but for which no further supporting documents were availed for verification.

Managements Response

1179. The requisite documents were availed to the auditor for verification.

Committee Observation

1180. **The Committee made the following observations:**

(i) This query arose due to late submission of the documents which was later submitted and verified.

(ii) Late submission of documents for audit verification is an offence under the Public Audit Act 2015

Committee Recommendation

1181. **The KAA management should always provide documents for audit within the required timelines failure to which the provisions of Section 62 of the Public Audit Act 2015 to ensue.**

Two title deeds for Kisumu International Airport

1182. Records available at the Headquarters revealed that the Authority had two title deeds for the Kisumu International Airport. i.e. Title No. L. R. Municipality / Block No.1/8 for 206.09 Hectares, and title No.LR Municipality/Block No.1/21 for (362.9) Hectares. No satisfactory explanation was provided. In addition, no explanation was provided as to why the title L.R. Municipality/Block No.1/21 for (362.9) Hectares was reflected as negative.

Managements Response

1183. The lease with respect to Kisumu Municipality/Block 1/Parcel No.21 was issued to the Authority on 23rd November, 2005 without the surrender of Kisumu Municipality /Block 1/8. The Authority sought clarification from the District Land Registrar on retention of title Kisumu Municipality / Parcel No. 8 and has since been advised to surrender the same since it is part of Kisumu Municipality/BLOCK1/ Parcel No. 21. The Authority was to surrender the title by 31st August, 2020.

1184. A letter dated 29th April 2019 was written to the Chief Land Registrar to advise on the particulars of the title and clarification on the implications of representation of the acreage in parentheses. A response from the Land registrar was yet to be received at the time of appearance before the Committee.

Committee observations and Recommendation

1185. **The two titles were surrendered and were in KAA custody therefore resolving the matter.**

Missing Title Deeds

1186. Included under the leasehold and freehold land balance above are two parcels of land for Manda Airstrip and Ukunda Airstrip with values of KSh.135,800,000 and KSh.58,500,000 respectively whose ownership could not be confirmed as their title documents were missing at Kenya Airports Authority Headquarters. Further, although the management explained that the title deed for Ukunda Airstrip was submitted to Ethics and Anti-Corruption Commission on 1st September, 2008 for investigations, as at the time of audit, the investigations had not been concluded.

<u>Managements Response</u>

1187. With respect to title document for Portion 21, registered as CR 35747, Manda Airstrip, the Registrar of Titles issued a Gazette Notice No. 7470 of 27th July, 2018 notifying the Public on the issuance of a provisional certificate upon expiration of sixty (60) days. The Provisional Certificate was subsequently issued by the Registrar and available for verification.

1188. Through a letter dated 25th June 2018, the Ethics and Anti-Corruption Commission returned the Ukunda Airstrip title document to the Authority.

<u>Committee Observations</u>

1189. **The Committee made the following observations:**

(i) This matter was discussed in PIC's 23rd Report recommending DCI to investigate circumstances under which the Manda Airstrip got lost. There is no indication as to whether the the DCI had completed investigations.

(ii) The title to Ukunda land was provided to the OAG and verified thereby closing the matter.

<u>Committee Recommendations</u>

1190. **The Committee on Implementation should follow up implementation of the PIC recommendations pursuant to its mandate.**

<u>Moi International Airport Land</u>

1191. The leasehold land balance above includes an amount of KSh.583,000,000 for Moi International Airport land which differs with the amount of KSh.538,000,000 in the valuation report on the same parcel of land resulting into overstatement by KSh.45,000,000. In addition, the original title deed L.R No. MN/VI/3888 reflects blank lease registration stamps No. 7 to 12 stamped between 10 June 2003 and 5 May 2006 for which no explanation was provided.

Managements Response

1192. The overstatement amount of KSh. 45,000,000 was adjusted in 2017/18 financial statement. Journal Voucher copy is hereby attached**.** In addition, the Authority carried out a valuation exercise in 17th June 2019 that updated the land value for Moi International Airport which will be reflected in the 2019/2020 financial statements.

1193. The Authority instructed its advocates to conduct a search of the title and the deed file revealed that the blank entries related to leases to various parties whose registrations were not completed and therefore not signed by the Registrar. The same are of no effect.

Committee Observations

1194. **The Committee made the following observations:**

(i) The error of overstatement was adjusted in the 2017/18 financial year.

(ii) The error may have been due to transposition. The explanation offered was therefore satisfactory

Committee Recommendation

1195. **The matter was adequately addressed and the matter resolved.**

Disputed Parcels of Land - Embakasi village 2016/2017 and 2017/2018

1196. As reported in the previous year, an unregistered parcel of land under Ref. No.KAAD1-DA at Embakasi village measuring 0.867 acres and valued at KSh.4,335,000 was excluded from the leasehold land balance of KSh.5,520,788,000. Information available indicated that the Authority obtained a letter of allotment from the National Land Commission for part of this parcel of land measuring 0.443 acres (0.1794 hectares) on 25 September 2017 and that the other part measuring 0.47 acres (0.1902 hectares) was illegally excised and allocated to a third party.

1197. Though the management had written to the National Land Commission requesting investigation on this illegal excision, there was no evidence to show if any investigation on this happened and the outcome of the same.

Managements Response

1198. A follow up letter dated 9th June 2020 to National Land Commission had been done and KAA await their reply. The Authority had also filed a Petition in the Environment & Land Court and obtained a favourable order of temporary injunction pending hearing and determination of the Application. The order was served on the irregular allotee and the matter was scheduled for *inter partes* hearing on 12th October, 2020.

Committee Observations

1199. **The Committee made the following observations:**

(i) The matter was pending in Court.

(ii) The NLC had not responded to the KAA request despite numerous requests. NLC's inaction may have been detrimental to the KAA.

(iii)The matter was discussed in the 23rd PIC report with recommendations that the DCI to investigate.

(iv)The third party had started putting in development but stopped through a court order.

(v) The KAA management owned the mother title which includes the impugned piece of land. The valuation KAA did in 2019 included the impugned piece of land.

Committee Recommendations

1200. **The accounting officer for the KAA should liaise with the security agencies to secure the property while the matter is being litigated and apply.**

Disputed Parcels of Land – Jomo Kenyatta International Airport FY 2016/2017 and 2017/18

1201. As similarly reported in the previous year, the leasehold land balance of KSh.5,520,788,000 includes two parcels of land within Jomo Kenyatta International Airport Land (L.R. No. 21919) under plots Nos.LR.13512 and 14231 both of which have been allocated to third parties. The land under LR.No.21919 measuring 4,674.60 Hectares in Nairobi was compulsory acquired by the Government of Kenya on 26 April 1971 vide Legal Notice No.1105/1106 for development of the Airport currently known as Jomo Kenyatta International Airport and the Authority acquired the title deed for the land on 26 July 1996.

1202. As previously reported, around year 2002, Kenya Airports Authority discovered that a group of people had purportedly obtained title documents for the parcels Nos.LR.13512 and 14231 which are within the above-mentioned land. The Authority moved to court and instituted two cases against the groups vide HCCC No.206 of 2004 and HCCC 489 of 2004 respectively, where it got temporary court orders to restrain defendants from dealing with the said piece of land. However, despite the court orders to maintain status quo, the defendants continued to sell, sub-divide and develop the land falling under the contentious area. In November 2011, the Kenya Airports Authority demolished houses belonging to private developers on the disputed land.

1203. The private developers have sued the Authority and both the Authority's and the private developer's cases are yet to be determined. Although management has explained that the land dispute is still pending in High Court through Court Cases No. HCCC No. 489 of 2004 (Kenya Airports Authority Vs. Uungani Self Help) and HCCC No. 206 of 2004 (Kenya Airports Authority Vs. Mlolongo Brothers) and that the matter came up for mention on 20th July 2016, as at time of the audit, it was not possible to determine the direction and the effect the ruling of the case may have on the Authority's land.

Managements Response:

1204. The parcels of land (LR. No. 14231) in the name of Uungani Settlement Self Help Group and; LR No. 13512 in the name of Mlolongo Brothers Association) are within JKIA land (LR.21919) and have been included in KAA books.

1205. The Commissioner of Lands by way of a letter dated 30th December, 2005 confirmed that the alleged letters of allotment are not genuine.

1206. The Authority was challenging the alleged allotment. Parties concluded hearing of the matter on 16th January, 2020 however the matter was pending issuance of a judgement date by the court**.**

Committee Observations

1207. **The Committee made the following observations:**

(i) This matter was discussed in the 23rd PIC report and called upon the DCI to investigate.

(ii) Two parcels of land i.e 13512 and LR 14231 within the bigger LR 21919 had been excised and allocated to third parties.

(iii)The allottees that had allotment letters not cancelled and enjoy possession on the land.

(iv)The matter was pending in Court (the two cases were consolidated into one), hearing ended in January 2020 but judgment had not been delivered at the time the management appeared before

Committee Recommendations

1208. **The Committee made the following recommendations:**

(i) Pending determination of the matter in court, KAA management should secure the land through caveats and fencing.

(ii) The accounting officer for the KAA should apply for speedy conclusion the matter. It has taken 16 years to determine the validity of the ownership dispute

Disputed Parcels of Land – Wilson Airport 2016/2017 and 2017/2018

1209. As previously reported, Wilson Airport Land LR 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 No. 437 of 2005 in the High Court of Kenya seeking temporary injunction restraining the Authority or their agents from demolishing or otherwise interfering with the plaintiff's ownership or possession or right of use of the parcel of land until hearing and determination of the suit. Evidence available indicates that on 25 October 2006, the court declined to issue the injunction orders sought.

1210. However, although the Authority has explained that a letter was written to the National Land Commission on 24th October, 2017 requesting the Commission to intervene and revoke the irregularly issued title, as at 30 June 2017, no action had been taken and therefore the ownership of the property remains unresolved.

Managements Response

1211. On receipt of the ruling abovementioned, the Plaintiffs failed to prosecute the matter and when the Authority applied to have the matter dismissed for want of prosecution, the Plaintiffs instead withdrew the case. The NLC in its response dated 29th January 2018 only addressed three (3) matters excluding the suit parcel. The Authority had written to NLC following up on the status of the revocation in light of its application for renewal of term.

Committee observations

1212. **The Committee made the following observations:**

(i) This matter was discussed in the PIC's 23rd report that recommended that KAA should reposes the and in the hands in the third parties and secure ownership documents within six months of adoption of the report.

(ii) The KAA was pursuing this matter out of court settlement it must be noted that Management produced a Search for the impugned land indicating that it belonged to the KAA.

(iii) The third Party was still occupying the Wilson Land; it is not clear whether the car max land was within the Wilson Airport land or outside

(iv) KAA was pursuing the matter with NLC for advice; despite being prompted, it had not responded on car max issue though it has done on all other properties.

Committee Recommendation

1213. **The Implementation Committee should follow-up Previous PIC recommendations on the matter and ensure the said government property was secured.**

Disputed Parcels of Land – Malindi Airport

1214. As reported in the previous year, the leasehold land balance of KSh.5,520,788,000 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, excludes land LR No.8540 measuring 5912.5sq.ft at the Airport, allocated to a petroleum company.

Managements Response

1215. The Authority had since confirmed from its records that the parcel LR No. 8540 had been included in the leasehold land balance as the same was within the Malindi Airport Title L.R. No. 10688 as indicated in the Report and Valuation of KAA dated 30th November, 2004 and the Malindi Airport.

Committee Observations

1216. **The Committee made the following observations:**

(i) KAA management confirmed that the land belonged to the KAA and that its value was incorporated in the KAA's financial statement

(ii) The KAA had since done a search dated 25th September 2020 for L.R. No. 10688 which was shared to the Committee. This is the mother title to Malindi land indicating that the land belonged to KAA.

(iii)The Babtised convention had a title L.R 25821 that was issued way back in 1992. The KAA had not instituted any legal proceedings on the impugned property.

Committee Recommendations

1217. **The Committee makes the following recommendations:**

(i) The accounting officer of the KAA should put a caveat on the impugned property.

(ii) The accounting officer for the KAAKAA should evict the anybody claiming the impugned land

(iii)**The Registrar of titles should help address this matter**

Disputed Parcels of Land – Airports/Airstrips (FY 2016/2017 and 2017/2018)

1218. A further review of records and correspondences relating to the Authority's land revealed that there were ownership disputes affecting 85 parcels of land in seven Airports/Airstrips as summarized below:

No	Airport/Airstrip	Land Reference	No. of Disputed Titles
1	JKIA	219191	46
2	WILSON AIRPORT	209/13080	8
3	MOI INT. AIRPORT	MV/VI/3888	10
4	KISUMU INT. AIRPORT	MUNICIPALITY/BLOCK NO.1/21	3
5	KITALE AIRSTRIP	25001	2
6	ELDORET AIRSTRIP	ELD/MUNICIPALITY/BLOCK 10/926	13
7	MALINDI AIRPORT	10688	1
8	EMBAKASI	LR.No.9042/668 &F/R 228/88	2
Total			**85**

1219. Management did not provide details on the nature of the disputes and the value of land involved as well as the parties involved and the status on the same. It was also not possible to confirm if there are other parcels of land with disputes and the exposure these may have on Authority's claim to the land.

1220. In the foregoing circumstances, the Authority's land was at risk and it had not been possible to confirm that the non-current assets balance of KSh.51,643,374,000 is fairly stated as at 30 June 2017.

Managements Response

1221. **Status of each Airport/Airstrip:**

NO.	**Airport/Airstrip ip**	**Land Reference**	**No. of Titles in Dispute**	**NATURE**
1.	**JKIA**	**219191**	**46**	**Illegal and irregular allocations** **The National Land Commission following its inquiries of titles within JKIA recommended revocation of the subject parcels of land vide Gazette Notice dated 15th February, 2019.** **The Authority had apprised the Principal Secretaries MOTIH&UD, Lands & Physical Planning & Interior & National Coordination on** **NLC's recommendations and sought their support to have the parcels revoked (correspondences available)**
2.	**Wilson Airport**	**209/13080**	**8**	**Illegal and irregular allocations – submitted to NLC for determination (Copy of correspondence to NLC available)**

3.	**Moi Int. Airport**	**MV/VI/3888**	**10**	**Irregular allocations** **The subject parcels of land were allocated prior to the issuance of the Authority's title MV/VI/3888 and do not form part of the net area measuring 538.76 Ha. As such they do not affect the value as stated in the financial statements**
4.	**Kisumu Int. Airport**	**Municipality/B lock No.1/21**	**3**	**Irregular allocations** **The subject parcels of land of LR Nos.** **22980-22982 and 24205 did not form part of Kisumu Municipality/Block No.1/21 and were outside the current airport title. As such the said parcels did not affect the value as stated in the financial statement.**
5.	**Kitale Airstrip**	**25001**	**2**	**Reverted to Authority through a court order (Copy of Court Order availed).**
6.	**Eldoret Airstrip**	**Eld/Municipality/Block 10/926**	**13**	**Irregular surveys** **The Authority had paid for searches to confirm the registration of the subject parcels and was awaiting the outcome. KAA was making a follow-up with the Lands Registrar Eldoret as evidenced from available**

				correspondences
NO.	**Airport/Airs trip ip**	**Land Reference**	**No. of Titles in Dispute**	**NATURE**
7.	**Malindi Airport**	**10688**	**1**	**Irregular allocations** **The subject parcels form part of Malindi Airport Title LR No. 10688 and as such have been included in the financial statements.** **The Authority shall engage NLC on review of the subject parcels upon renewal of their powers to review grants and dispositions.**
8.	**Embakasi**	**LR.No.9042 / 668 &F/ R 228/88**	**2**	**The Authority had not surrendered** **LR.No.9042/668 to National Police Service. The Authority remains the registered proprietor of the Land.** **The land has since been valued by the Chief** **Government Valuer Ministry of Lands & Planning which value was**

				to be included in the Financial Statements for 2019/2020. **Further investigations revealed that survey plan F/R 228/88 was not part of Embakasi Village and could not be included in the financial statement. (Annex 18 – Copy of Survey Plan)**
Total			**85**	

Committee Observations

1222. **The Committee made the following observations:**

(i) Most of the KAA land had issues relating to ownership thereby putting them at risk.

(ii) Though management indicated that it had been following on the matter with a view to securing ownership documents, much needed to be done especially putting caveats and fencing to ensure that the said land was not encroached into.

Committee Recommendation

1223. **The accounting officer for the KAA should expedite securing ownership documents for all its land.**

Construction of Terminal 4 Building, Parking Garage, Grade Parking and Other Associated Works at Jomo Kenyatta International Airport (FY 2016/2017 and 2017/2018)

1224. As reported in the previous year, the contract for construction of Terminal IA (formerly 4) building, parking garage, grade parking and other associated works was awarded to a contractor at a contract sum of KSh.4,147,677,413 with an estimated completion dates of

30 June 2011, 30 November 2011 and 31 May 2012 for grade parking, parking garage and Terminal IA (Formerly 4) building respectively. However, although the grade parking, parking garage and Terminal IA building were taken over by the employer (KAA) on 25 September 2012, 9 August 2013 and 12 August 2014 respectively, various outstanding works for architectural, mechanical, electrical as well as general works as detailed in the list (booklet) dated 12 August 2014 by the Consultant remained outstanding as at 12 August 2014 and were to be completed during defects liability period which ended on 13 August 2015.

1225. A review of the project in 2016/2017 showed that a performance certificate was given to the contractor on 31 May 2017 by the consultants but it stated that there were incomplete works and a list was attached. In the circumstances, it was not possible to confirm that the various outstanding works listed would be completed to the satisfaction of the Authority and that value for money was obtained.

Managements Response

1226. After the fire incident at JKIA in August 2013, there was urgent need by KAA to take over the project. A Taking Over Certificate was issued on 14th August 2014 though there were still some outstanding works.

1227. The Performance Certificate dated 31st May 2017 was issued. The Certificate listed incomplete items and stated that the Contractor (CATIC) was still liable for those works. The outstanding works as listed had since been attended to and a Discharge letter dated 3rd April 2018 to the Contractor issued by the Consultant (Discharge Letter dated 3rd April, 2018 and Performance Certificate).

Committee Observations

1228. The Committee made the following observations:

(i) **This matter was discussed in the PIC's 23rd Report with a recommendation that 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. It was however not clear to the Committee whether the DCI had completed the requested investigations at the time of compiling this report.

(ii) The works was completed and certified as such but the contractor had not been paid despite writing to the KAA requesting for payment severally without any response from the KAA. Though KAA indicated that its failure to apply was attributable to differences in disputed amounts, it should have responded and outlined areas of dispute rather than keeping quiet.

(iii) Appearing before the Committee, the contractor accused the KAA management of refusal to respond to its demand letters for payment. This was negligent on the part of the KAA has it has an implication on the continued accrual of interest.

Committee recommendations

1229. The Committee recommends that:

(i) The Committee on implementation should follow up implementation of the previous PIC Recommendations and ensure implementation

(ii) The accounting officer for the KAA should be reprimanded on his failure to respond to the contractor's request for payment leading to continued accrual of interest on delayed payments.

NEW GREENFIELD TERMINAL PACKAGE 5

1230. As reported in the previous year, the above project was awarded to Anhui Construction Engineering Group Ltd in a joint venture with China Aero-Technology International Engineering Corporation at a contract sum of US$ 653,782,815 (KSh.64,745,354,325). The project supervision contract was awarded to Louis Berger Group & Runji Partners (LBG) at a contract price of US$ 8.83M. This project was for construction of a new terminal building of 8.7 million capacity passengers per annum and floor area of 178,000 square meters.

Once completed, it was to have 50 international and 10 domestic check positions, 32 contact and 8 remote gates, associated apron with 45 stands and linking taxiways.

1231. The terminal was to be an environmentally sustainable building and be certified by the World Green Building Council using either LEED or green star certification processes. The project was to be implemented on design and build contract.

Irregular Contract Award

1232. Clause 5 of the Request for Proposal (RFP) documents required the contractor to secure a project financier as a condition for award. However, the employer entered into a contract agreement with Anhui Construction Engineering Group Ltd in a joint venture with China Aero-Technology International Engineering Corporation on 13 November, 2013 and was given possession of site through a letter dated 6 December, 2013 before a project financier had been identified.

Management Response

1233. The tender required the contractor to identify a financier. A contract would be executed upon confirmation of funding. The contractor had identified China Exim Bank and China Development Bank as prospective financiers. Discussion had commenced with Treasury on the engagement with financiers. Failure to secure a Government Guarantee stalled the proposed financing arrangements which partly informed invalidation of the contract.

Committee Observations

1234. **Despite management's explanation that discussions were ongoing, the management of the KAA was in beach of clause 5 of the Contract Agreement that made it a condition precedent for the contractor to secure a financier before signing a contract. It was not clear why the then management of KAA was in hurry to sign a contract whose condition precedent of securing a financier had not been made.**

1235. **Further, evidence from Anhui Construction Engineering Group Ltd in a joint venture with China Aero-Technology International Engineering Corporation to the Committee during their appearance before it on 2nd March 2022 pointed out that the contractor had identified two financiers (China Development Bank Corporation and**

China Exim Bank whose engagement was to be done by the Kenya Airports Authority. However, by the time the contract was being signed, the said engagements had not crystalized into a valid contract of financing. This persisted till May 2016 when the contractor submitted a progress report on Green Field Project to the KAA raising concerns of luck of funding.

1236. **It should be noted that the Committee invited the then Acting Managing Director for the KAA to its meeting to present her side of the story, but she could not be reached.**

<u>Committee Recommendation</u>

1237. **The then accounting officer for the Kenya Airports Authority should be reprimanded for entering into a contract before securing a financier, a condition precedent to signing a contract, to the Green field Project.**

<u>Exclusion of VAT in the signed Agreement</u>

1238. The letter of notification dated 16 December 2011 was clear that the contract sum of $653,782,814 was inclusive of all taxes but the management entered into a contract agreement dated 13 November 2013 indicating that the above contract sum was exclusive of 16% VAT in unclear circumstances thereby overstating the contract sum.

<u>Management Response</u>

1239. The issue of VAT was among the inconsistencies that resulted in invalidation of the contract.

<u>Committee Observations</u>

1240. **It was irregular in attempting to vary a Contract sum disguising that it did not include VAT in the first place. Evidence from Anhui Construction Engineering Group Ltd in a joint venture with China Aero-Technology International Engineering Corporation to the Committee on 2nd March 2022 appeared to suggest that the whole issue of VAT treatment was initiated by Kenya Airports Authority.**

1241. **Be that as it may, the contractor could also not exonerate itself from the matter as it helped to perpetuate an illegality. Though the contract was eventually cancelled, the totality of VAT treatment was geared towards pilferage of taxpayers' money.**

Committee Recommendation

1242. **The EACC should investigate the treatment of VAT element in the contract sum with a view to preferring appropriate charges against any person that will be found culpable.**

Groundbreaking Expenses

1243. A review of the project file showed that an amount of KSh.75,020,680 was paid to the contractors on 9 June 2014 for what was described as a contract variation. Other information available indicated that this payment was in respect of preparation of Greenfield Terminal Groundbreaking ceremony in unclear circumstances.

Management response

1244. The subject bills of quantities provided for KSh. 75,020,680 which was used for groundbreaking ceremony preparation works. An approval was obtained to appropriate funds from the contingency provision of the project.

Committee Observations

1245. **The Committee made the following observations:**

(i) **Following submissions from both KAA and Anhui Construction Engineering Group Ltd in a joint venture with China Aero-Technology International Engineering Corporation, it was confirmed that indeed Ground-breaking ceremony happened on 3rd December, 2013. It was however curious to the Committee on the huge expenditure (KSh 75 million) spent on this occasion.**

(ii) **It was however noted that the BQs for the ground-breaking were drawn by the KAA management, approved by the tender committee and communicated to the contractor on 25th November 2013.**

(iii) **It was further noted from the submissions of Anhui Construction Engineering Group Ltd in a joint venture with China Aero-Technology International Engineering Corporation that the expenditure for the groundbreaking ceremony was not provided in the original scope of work and therefore an irregular variation of the contract at that infancy stage.**

Termination of the Contract

1246. In a letter ref. KAA/ES/JKIA/658/DB/CS/VOL.2 (32) dated 29 March 2016, the management informed the contractor (ACEG) that the contract was void from the beginning and requested them to vacate the site. On the same date, the consultants were notified of termination of their contract vide a letter ref. KAA/ES/JKIA/723/DB/CS/VOL.2/ (33). There was no evidence to show if the contractors and consultants were in agreement and responses from the two parties were not availed for audit verification.

Management response

1247. The Contractor responded to the notice of invalidation of the Contract on 4th April 2016 and the Consultant acknowledged termination of their contract for convenience.

Committee Observations

1248. **The Committee made the following observations:**

(i) **The Committee established that termination letters done from KAA to the contractor and the consultants dated 29th March 2016 were responded to by the contractor on 4th April 2016, 6th April 2016, 16th August 2016 and 27th August 202016 declaring a dispute on cancellations.**

(ii) **Further, there were responses to the contractor's letters from KAA but much had not happened in terms of settlement of claims due to the contractor until 3rd June 2021 when KAA invited the contractor for negotiations after it emerged that the contactor had raised a claim of KSh 17 billion.**

(iii) **It was not clear to the Committee why the then KAA management violated the Public Audit Act 2015 in its failure to submit the requested correspondences relating to termination of the contract for audit verification.**

Committee Recommendations

1249. **The Committee made the following recommendations:**

(i) The accounting officer for the Kenya Airports Authority should adhere to statutory timelines provided in the Public Audit Act 2015 on submission of documents to the Office of the Auditor General for audit.

(ii) The accounting officer for the Kenya Airports Authority should commence constructive engagements with the contractor with a view to resolving the impugned claims amicably. Prior to those negotiations, the accounting officer for the Kenya Airports Authority should seek a legal opinion from the Attorney General considering that the contract was illegal and be mindful of the public interest and ensure that there is no loss of taxpayer's money.

Nugatory Payments under the project

1250. A review of the project further revealed that as at 30 June 2017, the contractor had been paid a total of KSh.4,310,901,806 while KSh.216,100,000 (USD 1,292,513) had been paid to the consultant but there was no evidence of work done.

Management response

1251. KSh. 4.31 billion was paid to the contractor as an advance payment as provided for in the contract agreement. The advance was to be recovered by off-setting from subsequent progress payments. The advance payment was secured by the Advance Payment Guarantee. The KSh.129.9 million paid to Louise Berger incorporating Runji and Partners was for project supervision and design review fees and was contractually payable on a time basis.

Committee Observations

1252. **The Committee made the following Observations:**

(i) The payments made to both the contractors and consultants were not based on evidence of evaluated works. Since the contract had been terminated without any work done, it was not clear why the management of KAA had not instituted measures to have the advanced monies refunded.

(ii) Further, submissions to the Committee on 2nd March 2022 indicated that the contractor had done works valued at USD 177,865,155 as at 31st October 2017. It was however not clear whether the KAA was agreeable to the contractor's exposition.

(iii) The Committee further noted the Attorney General did an opinion on the legality of termination of the contract dated 10th June 2016 and addressed to the Cabinet Secretary for the ministry of Transport and Infrastructure which communication was forwarded to the Ag. Managing Director of the KAA by the Principal Secretary for Mother Ministry on 16th June 2016 advising parties to engage in a without prejudice basis to settle on all gratis basis any costs incurred thus far and KAA should ensure that it received a warranty from the contractor that it would not make further claims on the contract. It was disturbing to the Committee that as late as November 2021, no meaningful engagement had been made between the contractor and the KAA.

Committee Recommendation

1253. **The accounting officer for the Kenya Airports Authority should immediately commence recover proceedings of the advanced monies to both the contractor and the consultants.**

Nugatory expenditure to price Water House Coopers

1254. It was also noted that Price Water Coopers were contracted to provide technical advisory service on project financing at a contract price of KSh.29,777,268 and the contract later terminated in unclear circumstances. The firm presented an invoice of KSh.19,356,693 but was later paid KSh.7,444,882 after negotiations but this amounted to a nugatory expenditure.

Management Response

1255. Price Waterhouse Coopers was paid KSh. 7,444,882.24 for services rendered before the contract was terminated. The services rendered were to produce the following:

a) Inception report covering:

- Project Scope and Timelines
- Project Structure
- Meetings with KAA Management, AfDB and other Stakeholders
- Information request list

b) Business and Financial Model Review

- Data Gathering and Business review
- KAA's balance sheet review
- Sector and Market Review
- Greenfield Terminal Project documentation and Financial Model review
- Management on the financing plan they developed.
- Data book shared with KAA's Management

c) Project Information Memorandum (PIM)

- Business Review
- Profile of KAA
- The Greenfield Project financing plan.
- Analysis of risks

1256. The exercise took a period of more than 12 weeks and the information was useful and a basis to the subsequent Technical Consultant for the Project.

- Minutes of 12th August 2014
- PWC letter dated 29th October 2014

- PWC letter dated 13 April 2015

Committee Observation

1257. **The PWC was paid per the contract terms, the said works on Green Field Project was terminated hence loss to the taxpayer.**

Legal Services

1258. A review of the project file and the Board of Directors minutes for the year under review revealed that the management appointed Amolo & Gacoka Advocates to represent them in a dispute arising from the project termination. It was, however, not explained how the Advocates were identified and their terms of engagement. Further, in a special Board of Directors meeting held on 17 January, a representative of the Advocates who was in attendance requested approval to engage an international firm with expertise in quantum to conduct an analysis of the value of work undertaken by the contractor and the same was granted.

1259. Subsequently, the Advocates engaged White and Case/Blackrock for the exercise at fee of USD 1,158,520. It was not clear why the management sought the services of foreign consultants for valuation which could have been agreed between the Authority's Engineers and the contractors/consultants.

1260. In the circumstances, it was not possible to confirm if value for money was realized from resources already paid under the project and amounts that may become payable under the ongoing dispute.

Managements Response

1261. The firm of Amolo & Gacoka Advocates was in the list of pre-qualified firms for the financial years 2015 to 2017 and were issued with a service Level Agreement stipulating their terms of engagement. To secure the interest of the Authority, the Board of Directors in a meeting held on 28th January 2016, found it necessary to engage independent legal and quantum experts in addressing the resultant disputes from the voided contract and valuation of works done, respectively, which engagement was approved by the Attorney General.

1262. The Attorney General, through a letter dated 5th December 2016 ratified the procurement process that was used to engage the firm of Amolo & Gacoka Advocates. The Attorney General further ratified the partnership between the firm and White and Case LLP noting that the international nature of contract and mode of dispute resolution. The legal fees were approved by the Board of Directors.

Committee Observations

1263. **The Committee made the following observations:**

(i) Though the matter of engagement of both Amolo & Gacoka Advocates and White and Case LLP was approved by both the KAA Board and the Attorney General, the Committee noted that the firm of White and Case LLP was subcontracted by the firm of Amolo & Gacoka Advocates.

(ii) Further, considering that the firm of Amolo & Gacoka Advocates had no capacity to undertake evaluation of works, it would have been prudent for KAA to directly engage an external firm without passing through the firm of Amolo & Gacoka Advocates.

Committee Recommendation

1264. **The Committee recommends that the EACC should investigate the procurement of White and Case LLP Amolo & Gacoka Advocates.**

CONSTRUCTION WORKS AT WILSON AIRPORT AND OTHER AIRPORTS/AIRSTRIPS

Rehabilitation of Pavements at Wilson Airport - KAA/ES/WAP/955/C (FY 2017 and 2018)

1265. The contract was awarded to M/s KIU Construction company Ltd at a contract sum of KSh.298,557,714 on 2nd March 2016, and was for a contract period of 12 months starting from 24th June 2016 with an expected completion date of 23rd June 2017. A review of the project during the year under audit revealed the following matters:

Variation of Scope

1266. It was noted that the contract sum was revised from KSh.298,557,714 to KSh.352,838,360 an increase by KSh.54,280,646 or 18% of the original contract sum. However, a review of correspondences leading to this variation showed that the request for this variation came from the Airport Manager who was not part of the contract team. Further, it was noted that though the variation was within the allowed limits, some works from the original scope were excluded to accommodate this variation.

1267. It was not clear what the cost of the excluded works was and the effect it had on the contract sum.

Management response

1268. The request for variation from the Airport Manager was not implemented. The contract was implemented without a variation. The works had since been completed, within the original budget, and a Certificate of Completion issued to the Contractor. The scope focused on the critically failed areas.

Exceeded Earthworks Bill of Quantities (BOQ)

1269. A review of payment certificate no. 2 of KSh.35,504,171 dated 24 March 2017 revealed that a total of KSh.61,171,243 had been paid under item no. 5 in the BOQ earthworks which had a provision of KSh.14,558,000 in the awarded BOQ's meaning it had been exceeded by 319%. Information available indicated that the Engineer instructed the contractor to undertake excavation for bitumen standards parking which was not provided for under the awarded scope.

1270. In the circumstances it is possible that the above variation in scope was done irregularly as instructions were given to the contractor first and ratification from the Tender Committee sought afterwards.

Management response

1271. No site/soil investigation was undertaken prior to tendering. Existence of black cotton soils on site necessitated issuance of instructions by the Engineer on the excavation depth. The approvals for utilizing Contingency Sum had since been obtained and evidence on the same availed. Management had however put in place mechanisms to ensure comprehensive site investigations were undertaken for future projects prior to tendering for proper design and quantification to avoid the same scenario happening again.

Delay in Project Implementation

1272. The project commenced on 06 June 2016 and was to be implemented in 12 months with the contract period ending on 05 June 2017. A review of progress report dated 09 October, 2017 showed that overall progress was at 25% while the original contract period had expired. The contractor is therefore behind schedule and this may lead to cost escalations.

Management response

1273. Delayed implementation was occasioned by extended consultations with stakeholders on the preferred surface finish for Temporary Apron; unanticipated huge quantities of excavated materials and delays in processing of the NEMA license. The works had since been completed with no cost escalation. However, the Contractor was charged liquidated damages for 79 days delay amounting to KSh. 790,000/= in line with the Contract.

Physical Verification

1274. During a physical verification carried out on 20 April, 2018, it was noted that the contractor was not on site and there were no ongoing activities. Also, the materials laboratory had no equipment or chemicals and there was no furniture in the project manager's office and also no equipment on site which means that the contractor had not fully mobilized.

Management response

1275. The works slowed down because the contractor was waiting for a decision on the type of surface finish for the Temporary Aprons (Remote Echo and Bravo Aprons). However, the contractor did not abandon site; he was able to continue works albeit with reduced work force in other areas such as the reconstruction of drains at Apron 3 & Apron 4. In addition, there was limited project implementation work in April and May 2018 due to onset of the long rains. Material testing was carried out in the Materials testing and research division of the Ministry sample test results attached. Further, the Resident Engineer's office was furnished

Committee Observations

1276. **The Committee made the following observations:**

(i) It was not clear why the airport manager initiated a variation for a project that was eventually concluded without a variation. Variations orders were eventually not issued

(ii) Regarding variation on Earthworks, it was due to re-measurements and not differences in soil as averred by the KAA management per the memo of 6th may 2020. Secondly, it was irregular to use contingency fund of one contract on another three years after completion. Contingency for Civil works normally last up to 12 months after final payments.

(iii) Eng. Beatrice Ongoro, Project Engineer at Wilson Airport submitted that after the letter from the airport manager for variation, the request went to the MD directly bypassing the tender committee. It was referred to the head of procurement (Patrick) who advised against the variation two years down the line. He had however advised that use of direct procurement (June 2019 when the request was made in March 2017).

(iv) On earthworks, Eng. Ongoro confirmed that no technical study of the area was done prior to commencement of the project which was an oversight

Committee recommendations

1277. **The EACC should investigate the circumstances under which the project was conceived without a feasibility study to lead to variations, irregular reallocations of contingency funds from another project towards this project with a view to proffering charges against those found culpable.**

Construction of Tseikuru Airstrip (FY 2016/2017 and 2017/2018)

1278. As reported in the previous year, a memorandum of understanding was entered into between the National Youth Service (NYS) and Kenya Airports Authority (KAA) on 20 November 2012 for the construction of Tseikuru Airstrip. The scope of works for phase 1 was for bush clearing and topsoil stripping, to cut and fill formation including drainage, as well as gravel sub-base and base construction. It was however noted that the above Memorandum was never signed by both parties.

1279. In addition, an advance payment of KSh.50,000,000 was made to NYS on 16 July 2012 even though the Memorandum of Understanding had not been 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 were availed for review and it was not satisfactory explained why the works had taken such a long time and when the same are expected to be completed.

1280. A review of the project in 2016/2017 revealed that no progress was made despite an allocation of KSh.117,993,000, KSh.25,000,000 and KSh.85,000,000 in 2013/2014, 2014/2015 and 2015/16 respectively. Management had not explained how the funds allocated in the above three financial years totalling to KSh.227,993,000 were utilized.

<u>Managements Response</u>

1281. A progress report on the project showing 85% completion was provided to the Committee. The allocated funds could not be utilized due to delays occasioned by land acquisition and compensation issues. The Authority wrote a letter to the Land Adjudication officer, Kyuso on 16th August 2019 for a joint boundary identification exercise. However, in November 2019 the Authority transferred the allocation of Tseikuru Airstrip totalling KSh.110 million to National Treasury to finance the Big Four Agenda initiatives. The funds allocated to the project was reconciled as follows:

a) Funds expended in this project: The only disbursement of funds to NYS from KAA was KSh. 50 million and was supported through RTGS clearance form dated 23rd July 2012.

b) Funds allocated for this project: There was a letter dated 25th November 2014 and Ref: MOT/ATD/28/243 Vol. IV (33) from Ministry of transport and infrastructure (MOTI) with an authority to charge KSh. 110,981,826.00 from the airstrip vote.

c) Annual Budget estimates for FY 2014/2015 for Tseikuru Airstrip**:** As per the recurrent and development expenditure for the FY 2014/2015, an amount of KSh. 117,993,000.00 had been budgeted for Tseikuru Airstrip.

1282. The table below shows a summary of funds allocated to this airstrip development

No	Budget	Amount	Remarks
1.	Budget 2013/2014	KSh.117,993,000	The funds budgeted in KAA but no letter from MOTI
2.	Budget 2014/2015	KSh. 25,000,000	Letter from MOTI attached
3.	Budget 2015/2016	KSh. 85,000,000	Letter from MOTI attached
4.	**TOTAL**	**KSH.227,993,000**	

Committee Observations

1283. **The Committee made the following observations:**

(i) The matter was discussed in 23rd PIC report with a recommendation that the EACC investigates on conceptualization and implementation of the project; and also requested the Department of Public Works to evaluate the status of the project to confirm whether it was indeed 85% complete.

(ii) Though the said progress report was eventually produced, the project's implementation was stopped as the monies meant to implement it was transferred to the National Treasury thereby casting doubt on the value for money spent on this project.

(iii)Further, it was not clear to the Committee whether EACC had dome the requested investigation or whether the Committee on implementation had followed up on implementation of the PIC's 23rd Report Recommendations.

Committee Recommendation

1284. **The Committee recommends that that the Committee on implementation should follow up on the House resolutions regarding the Public Investments Committee Reports.**

Proposed Rehabilitation of Runway, Apron and Car Park at Nanyuki Airstrip (FYs 2017 and 2018)

1285. As reported in the previous year, the above project was awarded to Doch Company on 3 September, 2014 at a contract sum of KSh.398,950,970. The contract period was 12 months which commenced on 24 November, 2014 with an expected completion date of 23 November, 2015. A review of the project file and other related records however revealed the following matters:

Slow Progress

1286. The initial contract period was 12 months with a completion date of 23 November 2015. The tender committee sitting on 12 November 2015 approved a 9-month extension which brought the revised completion date to 22 August 2016. A review of the last progress report dated 31 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

1287. As a result of continued non-performance and despite warning issued to the contractor for slow progress of works, the contract was terminated through a letter dated 10th May 2016, for non-performance.

Temporary Runway/ Unapproved Variation of Scope

1288. The scope under the contract as per tender documents and as per the signed agreement was as follows:

- Runway: 1500M Long and 23M wide
- Apron: Approximately 11,250M^2

- Access Road: Approximate 2,500M^2
- Carpark: Approximately 2,500M^2

1289. In a consultative meeting held on 12 November 2014, it was concluded that phasing out of works on the runway would pose safety challenges and recommended for construction of a temporary runway to allow runway rehabilitation works to proceed without interference on the Airstrip operations. However, site instructions for construction of the temporary runway and its cost estimation were not seen in the project file.

1290. The employer also did not respond to contractor's letters requesting for determination of applicable rates for this work as the rates used in the contract sum could not apply since this was 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

1291. Site instruction for the temporary runway was issued through the site instruction book dated 8th December 2014 at 8.06hrs. The Order to Commence works dated 13th November 2014 covered all works. The temporary runway was not a variation but was part of enabling works as captured in the Bills of Quantities. The existing carriageway was to be extended at both ends so that at any time at least 800m of the runway was available for landing. These were the quantities towards the construction of the temporary runway following a consultative meeting held on 12th November 2014.

1292. Through a letter dated 28th January 2015 from the Authority to the contractor, it outlined how the temporary runway works were to be measured and corresponding payments made. The temporary runway quantities were captured in the initial Bill of Quantities.

Lack of Inspection Report

1293. The contractor gave a notice of completion of temporary runway in a letter ref. KAA/ES/NANYUKI/931/C dated 15 June 2015 indicating that a part of the runway was to be handed over for use on 17 June, 2015 and the remaining section was to be completed on 30 July 2015. There was, however, no correspondence in the project files to show if the temporary runway was completed or if it was inspected and approved for use. Further, a letter dated 29 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 KSh.142,697,378 had been paid to the contractor by 30 June 2017.

Managements Response

1294. Minutes of a joint inspection of the temporary runway undertaken on 24.04.2015 identified outstanding; minutes of the meeting of 24.07.2015 confirmed that the snags had been satisfactorily addressed and the runway was fit for use.

Contractor's Claim on Temporary Runway

1295. The contractor through their advocates, Zed Achoki & Company, had placed a demand of KSh.120,610,876 for the temporary runway which was about 30% of the awarded contract sum and above the allowed limits of variation.

Managements Response

1296. The temporary runway was part of enabling works for the main runway and did not constitute a variation as the quantities were already covered within the contract. This was pointed out to the contractor vide a letter dated 28th January 2015.

Other Claims on Termination of Contract

1297. A review of the project file revealed that the contractor placed a claim of KSh.955,275,371 for idle equipment and other costs related to contract termination through a letter Ref: Doch/NanyukiAirstrip/Claim/Jan.04/01 dated 24 January 2018 but there was no evidence to show that the management responded to this claim.

Managements Response

1298. This is the contractual claim submitted by the contractor on wrongful termination as filed in court. As stated above, tt was agreed that an out of court settlement was the most ideal to resolve all the outstanding issues outlined in the letter dated 3rd May 2018 and Ref; KAA/ES/NANYUKI/931/C/VOL.1(68). The negotiation meeting between the Contractor and KAA took place on 5th October 2018 where KAA also lodged a counter claim to the Contractor. In KAA's counter claim which is basically based on works done the Contractor owes the Authority about KES 5 million considering the Contractor's claim relating to work done including the temporary runway. (Counter Claim calculation is as per the tabulation below:

	NANYUKI AIRSTRIP		AMOUNT (KES)		AMOUNT (KES)
1	Appraisal for Works Done		**170,810,850.00**		**170,810,850.00**
2	Paid-to-Date		(142,697,377.70)		(142,697,377.70)
3	Sub-Total 1		**28,113,472.30**		**28,113,472.30**
4	Less Performance Guarantee		(39,879,785.00)		
5	Sub-Total 2		**(11,766,312.70)**		**28,113,472.30**
6	Retention		14,269,737.77		14,269,737.77
7	Sub-Total 3		**2,503,425.07**		**42,383,210.07**
8	Less Project Vehicle (Accident)		(7,500,000.00)		
9	**Net Due**		**(4,996,574.93)**		**42,383,210.07**

1299. The amount due to the contractor should be KSh. **42,383,210.07** subject to renewing performance guarantee and surrendering of the motor vehicle.

1300. This working was sent officially to the Contractor through the Authority's advocates on 8th October 2018. The contractor did not respond to the Authority's settlement proposal.

The contractor's advocates instead fixed the matter for mention with the intention of having the dispute referred to arbitration by the Court.

1301. The matter was stood over generally to 4th February 2019 to give the parties a chance to agree on an Arbitrator. Through a letter dated 25th January 2019, the Authority's advocates advised that the parties had mutually agreed on the appointment of Engineer Peter Scott to be the sole arbitrator in the matter. Through a letter dated 28th March 2019, the Authority upon review of the curriculum vitae of Engineer Peter Scott granted its consent to his appointment as the sole Arbitrator in the matter. The advocates for the Claimant however raised objections on how the agreed Arbitrator was to be formerly engaged. The matter was stood over to 18th September 2019, for highlighting of submissions.

1302. The court delivered its Ruling on 13th February, 2020 during which it dismissed the Claimant's Application and upheld the Authority's long held argument that there having been an arbitration clause in the Agreement dated 3/9/2014, it was an act of abuse of court process on their part to have invoked the court's intervention in the first instance in the appointment of an arbitrator.

1303. In view of the above, the Authority wrote to Doch Company Limited towards agreement on an acceptable arbitrator. Doch Company Limited wrote to the Authority on 16th July, 2020 proposing Peter Scott as their nominee to arbitrate over the matter. The Authority was yet to be served with a formal claim by the contractor for purposes of the arbitration proceedings

<u>Committee Observations</u>

1304. **The Committee made the following Observations:**

(i) This matter was discussed in the 23rd PIC report that called on the EACC to investigate procurement and implementation of the project with a view to preferring charges those found culpable. It was however not clear to the Committee that such a recommendation had been implemented at the time of producing this report.

(ii) The matter had been taken to arbitration and partly heard. Further hearing was to be done in February 2020.

Committee Recommendation

1305. **The Committee on implementations should follow up on implementation of the PIC's 23rd Report recommendations**

Demolition of Existing Arrivals Hall, Baggage Area and Multi-Storey Office Block at J.K.I.A-Contract No.KAA/ES/JKIA/908/C (FY 2016/2017 and 2017/2018)

1306. As reported in the previous years, the contract above was awarded to Machiri Ltd for a contract sum of KSh.326,695,830. The works had a contract period of 6 months which commenced on 9 July 2014 and was to end on 16 January 2015. There were three extensions of time approved for this contract which brought the revised completion date to 14 August 2015.

Provision of temporary offices, stores and other facilities

1307. In accordance with the awarded bill of quantities, the contract was to provide temporary offices, stores and other facilities at a cost of KSh.23,624,979. However, there was no evidence such facilities were provided during the contract period while an amount of KSh.292,802,679 equivalent to 90% of the contract sum had been paid by 30 June, 2017. In addition, a review of the project during the year under audit revealed that the Contractor, vide letter dated 27 January 2017 had submitted a further claim amounting to Ksh.340,012,145 which had not been evaluated and no evidence of any action taken.

Managements Response

1308. There existed an office at the demolition site. Through a letter dated 22 May 2015, the contractor informed the Project Manager of the intention to relocate his offices from the site to their offsite yard to facilitate laying of the concrete blocks. In addition, there was a 5-acre site disposal yard that was provided for and is captured in the Google earth images of the temporary facilities during the Contract period. The project was completed on 15th July 2015.

1309. The claim had been evaluated in the sum of KSh. 956,086.88 but the matter has been referred to arbitration as the contractor's claim stood at KSh. 340,012,145.

Committee Observations

1310. **The Committee made the following observations:**

(i) **This matter was discussed in the PIC's 23rd Report recommending EACC and the DCI to investigate and also that the KAA management seeks legal advice from the AG. The KAA management could however not confirm to the Committee whether these recommendations had been implemented when management appeared before the Committee.**

(ii) **The matter had been taken to arbitration whose proceedings were filed on 25th August 2020 and were to be heard on 20th January 2021. Outcome of these proceedings were not clear to the Committee during compilation of this report.**

(iii) **There could be a likelihood that the contractor will be charging accrued interest on KSh. 340 million.**

Committee Recommendation

1311. **The Committee recommends that the Committee on implementations follows up implementation of the PIC's 23rd Recommendations on this matter.**

Contract Variation for the Runway Strengthening & Widening, Parallel Taxiway and Cargo Apron at Kisumu Airport Contract NO. KAA/ES/KSM/690/C (FY 2016/2017 and 2017/2018)

1312. The project was awarded to China Overseas Construction Group Co. Ltd (COVEC) at a contract sum of Ksh.1,708,295,391 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 then consequently divided into two stages. Stage 1 – Construction of Parallel Taxiway, cargo apron and public car park and Stage 2 – Runway Strengthening and Widening.

1313. The contractor completed construction of parallel taxiway and cargo apron and public car park in February 2014 at a cost of Ksh.1,375,117,326 inclusive of 16% VAT. The works under this contract were originally awarded to China Overseas Construction Group Co. Ltd (COVEC) at a contract sum of Ksh.1,708,295,391. Due to financial constraints, the works completed by February 2014 were valued at Ksh.1,375,117,326 and treated as phase one.

1314. The contactor was issued with a completion certificate for phase I and his retention monies paid. An amount of KSh.333,118,065 remained from the original contract sum to be utilized for phase 2 works. Further, on 19 August, 2015 the employer and the contractor entered into an addendum for the remaining works packaged at a contract of KSh.436,067,580 thereby revising original contract sum by KSh.102,949,515 (from 1,708,295,391 to KSh.1,811,244,906). Phase 2 works were to be executed in 28 Months. On 24 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 KSh.143,532,200.

1315. This second addendum brought the total variation to Ksh.246,481,715 (14.5%) with the revised contract sum being KSh.1,954,777,106. The Tender Committee that approved this variation pointed out that there was erroneous omission of KSh.190,156,845 in computation of the first variation and occasioned by failure to consider the VAT component on amount paid in phase 1 works, but this could not be supported. Despite the revision of contract sum as pointed above there was reduction in the initial contract scope. A review of Paragraph 6 of the addendum above showed that heavy duty manhole covers valued at KSh.17,933,117 were excluded from the revised scope.

1316. Management had not explained what occasioned the contract sum variation above or the logic behind KSh.190,156,845 omission as approved by the Tender Committee as the original contract was inclusive of 16% VAT.

1317. Further, the latest progress report for 15 January 2018 showed that overall progress was at 90% while the revised contract period elapsed on 8 June, 2017. The contractor was therefore behind schedule in project implementation but there was no evidence of recovery of liquidated damages by the employer in line with the conditions of contract.

Management response

1318. The original Contract Sum was KSh.1,708,295,391.2 which was varied by a figure of KSh. 102,949,515 through Addendum 1 Ref: CL/125/2011, dated 19th August 2015. This variation resulted to a Revised Contract Sum of KSh. 1,811,244,906.

1319. The negotiated variation of KSh.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

1320. The aggregate of the KSh. 246,481,714.66 variation and the balance of KSh.333,118,064.87 from the original contract was KSh. 579,599,779.53. The detailed scope of works covering these variations and the balance of KSh.333,118,064.87 from the original contract was supported by the Bill of Quantities in Amendment to Addendum 1 above.

1321. The use of VAT to justify variation of KSh. 190,156,845.00 was erroneous and therefore was not executed as per Tender Committee resolution.

1322. The exclusion of manhole covers was done after a re-evaluation of the project's priorities to accommodate the revised project scope within the allowable threshold for variations.

Committee Observations

1323. **The Committee made the following Observations:**

(i) This matter was addressed in the PIC's 23rd Report that recommended investigation on the reported variations that eventually comprised of the quality of the works done especially removal of heavy duty manholes; and how the VAT element was used to inflate the figure. It was however not clear to the Committee whether any such investigations had been done by the EACC and concluded by the time the Committee was compiling its report.

(ii) There was a total variation (increase) of Ksh. 190m while the scope of work was reduced in the process for things that should have been foreseen

(iii)This was a contract funded by taxpayer

(iv) New works were given that should have been retendered

(v) The addendum was done in august 2015 when the contract was completed in 2014. Doing an addendum to a project after completion of the contract is not known in law and therefore an illegality.

(vi) The variation exceeded 10% allowable under Section 47 of the PPAD 2005 Act and Regulation 28 of the PPAD regulations and within the contract period. This means that KAA broke the law

Committee Recommendation

1324. **The Committee recommends that the Implementation Committee follows up on the PIC's 23rd Report recommendations on the matter and ensure implementation.**

Emergency Repairs of Runway at Isiolo International Airport-Contract No:KAA/ES/ISIOLO/1105/C (FY 2016/2017 and 2017/2018)

1325. The contract for above works was awarded to Star General E.A. Ltd on 10 March, 2017 at a contract sum of KSh.82,434,788. The project had a contract period of 3 months with works which commenced on 7 April, 2017 and was to end on 7 July, 2017. A review of the project file and procurement records revealed the following matters:

Procurement

1326. The Ag General Manager (P&ES) through a letter Ref.KAA/ES/ISO.Vol.2 (94) dated 6 February, 2017 requested the Managing Director for approval to use restricted tender method for this contract and the same was granted. The management later obtained a list of 10 prequalified contractors from Kenya Rural Roads Authority (KERRA) vide a letter Ref.No.RM/KeRRA/9/Vol.1/67 dated 7 February, 2017 and bids were invited the same day. Bids were opened on 20 February, 2017 and only 4 bidders returned their tenders.

Evaluation

1327. A review of evaluation report dated 28 February, 2017 revealed that 3 out of the 4 bidders who returned their bids failed at the preliminary stage. Further, it was noted that the three failed because they lacked experience in similar works undertaken in the last 3 years and did not have the required turnover. Considering that this was a restricted tender it would appear that the prequalified list of contractors obtained from KERRA was not for similar scope.

Managements Response

1328. KAA opted to use KERRA's prequalified list for Isiolo and Samburu counties due to the urgency of the works required. The lead time and cost of mobilization to the site were also considered. The request to KERRA was for contractors prequalified for similar works. However, 3 out of the 4 bidders failed at the preliminary stage.

Slow Progress

1329. The project had a contract period of 3 months starting from 7 April, 2017 and ending on 7 July, 2017. The only progress report availed was for July 2017 which indicated an overall progress of 37% while the contract period had elapsed by 5 months an indication that the works are behind schedule which may lead to escalation of Project costs. Further, there was no evidence of recovery of liquidated damages from contractor's payments in accordance with the contract terms.

Managements Response

1330. Progress reports were provided to the Committee. The project was delayed and the issue of liquidated damages will be addressed at Final Account.

Committee Observations

1331. **The Committee made the following Observations:**

(i) The KAA management confirmed using a list of tenderers from KERRA in restricted tendering.

(ii) The KAA management further confirmed having annual prequalified firms but chose to use KERRA's list. Section 56 of the PPAD allows use of a list from another agency if there is urgency and that the firm that prequalified it does similar works; get written approval and subject the list alongside its own pre-qualified list

(iii)There was delayed implementation of the project hence finding refuge on urgency under section 56 of PPAD could not be sustained

(iv)The KAA MD confirmed of poor workmanship of Isiolo airport and that the Board of KAA had been briefed and was working on remedial measures.

(v) Restricted tendering conditions as provided for under Section 102 of the PPAD 2015 were not met and therefore could not be used in this procurement.

Committee Recommendation

1332. **The Committee recommends that the EACC investigates the procurement process and implementation of this project with a view to preferring charges on those that may be found culpable.**

Rehabilitation of Wajir International Airport (Runway, Taxiways, Apron and Access Road-KAA/ES/WAJIR/1075/C (FY 2016/2017 and 2017/2018)

1333. The contract was awarded to M/s Halane Construction Co. ltd. On 24 March, 2017 at a contract sum of KSh.819,264,953 and works commenced on 24 April, 2017. A review of the project files and procurement records revealed the following:

Inadequate Budget Allocation for the Project

1334. Procurement of above works was based on a budget allocation of KSh.250M from the Airstrip funds investment income and the balance was to be provided for under supplementary budget for 2016/17. In a letter Ref.MOT&I/C/AT/024/3 VOL.VIII/76 dated 21 December 2016, the Permanent Secretary for Department of Transport wrote to the Managing Director advising him to stop the project due to the budgetary rationalization by the Treasury which would affect other priority projects. Subsequently, the procurement process was terminated and this communication was sent to all the bidders on 27 January, 2017.

1335. However, M/s Halane Construction Company Ltd successfully challenged the termination in the Public Procurement Administrative Review Board and the Authority was directed to award the tender. The management obliged and awarded the tender to the bidder on 24 March, 2017. However, it was not satisfactorily explained why Management initiated the project implementation with inadequate budgetary provisions and why no appeal was made against the ruling.

Managements Response

1336. Procurement was commenced following confirmation of availability of KSh. 250 million out of the projected cost of KSh. 830 million. The tender was terminated on account of insufficient funds. However, on appeal the PPARB ruled that an award be made. The Authority prepared for an appeal to PPARB's decision but was directed otherwise by the mother ministry.

Evaluation/Award

1337. A review of the technical evaluation report dated 17 December, 2016 showed that only one bidder, Halane Construction co. Ltd was successful under the mandatory stage and was eventually awarded at a contract sum of KSh.819,264,953.10 against an Engineer's stated estimate of KSh. 830,000,000. However, no documentary evidence for the Engineers estimate of KSh. 830,000,000 was availed for audit verification.

Management Response

1338. Engineers estimate for the proposed civil works was KSh 599.3 million and KSh. 230.9M for the Airfield Ground Lighting System.

Committee Observations

1339. **The Committee made the following Observations:**

(i) The Management of KAA confirmed that the KAA engaged in a contract knowing it will have funds to implement the said project but was later stopped by the mother ministry on the grounds of budget rationalization. This arbitrary breach of contract was stopped by the Court but the but was not appealed by KAA on direction by the mother ministry not to appeal which was curious.

(ii) There was no justification for failure to avail the engineers estimates for audit verification

(iii)At the time of compiling this report, it could not be confirmed whether the said project implemented and if not, the interest the contractor will charge the KAA for idle time.

(iv)Letter from the PS, Irungu Nyakera to the MD, KAA dated 21st December 2016 asking suspension of the project owing to budgetary constraints was submitted. On the strength of this letter, the MD directed stoppage of this project.

(v) There were a series of correspondences from the Principal Secretary for transport who initially approved the project, then directed cancellation due to budgetary constraint and later wrote indicating availability of budget after PPRAB ruling in favour of the contractor directing issuance of award letter to him. The Committee could not comprehend this; could be abuse of office.

(vi)The project was scaled down and was being implemented at the of KAA management's appearance before the Committee.

Committee Recommendation

1340. **The Committee recommends that the EACC investigates the circumstances under which this project was initiated and later on to be stalled under unclear circumstances even after the PPRB recommended its progression.**

Contingent Liability (FY 2016/2017)

1341. Note 50 to the financial statements reflected an arbitration award of KSh.4 billion (US$ 49,000,000) awarded to World Duty Free case in 2012 for which the Authority had appealed against the arbitration award and had stated that no provision was required in the financial statements. There was also an amount of KSh.1,357,550,000 for a plaintiff claiming ownership of property LR No. 13512 in the name of Mulolongo Brothers Association for which the Authority had sought the intervention of the National Land Commission. There was also a claim of KSh.992,336,004 sought by one Patrick T. Kanyuira for damages sustained in demolition of illegal structure at Wilson Airport. The High Court and Court of appeal ruled in favor of the Authority but the claimant filed the matter before the Supreme Court and the matter was yet to be determined. The note also had a claim of KSh.404,686,165 from Baseline Architects and 3 others for outstanding payments for work done for which the management had indicated that it would pursue amicable settlement. An amount of KSh.290,000,000 relating to a legal suit involving Diplomatic Duty Free Ltd/World Duty Free was also disclosed but the management believed the liability would not crystallize. The note also included a claim from Queens Quay Architects Inc. amounting to KSh.3,337,709 for wrongful termination of contract and outstanding fee note for reorganization of existing passenger terminal facilities at JKIA. The note also indicated that the Ministry of Tourism had lodged a claim of KSh.2,135,151,597 for Special Tourism Promotion Fund which it intended to create to be funded by Air Passenger Service Charge. Further, the note included information on Greenfield Terminal project which was terminated for Authority's convenience but no amount of possible claim was disclosed.

1342. There were also several other claims which were pending arbitration and in the courts of law. Although in all the above cases the Authority had stated that the liabilities would not crystallize and had therefore not made any provision in the financial statements on the same, there was a high risk of liability before the cases were fully heard and determined.

Management Response on duty free issue

1343. The court in its order dated 5th October, 2018 ruled in favour of the Authority setting aside the Arbitral Award and dismissing the claim made against the Authority. The Appeal filed before the Supreme Court had narrow chances of success as all the engagements with World Duty Free and its subsidiaries were found to be null and void ab initio.

1344. There was also an amount of KSh. 1,357,550,000 for a plaintiff claiming ownership of property LR No. 13512 in the name of Mulolongo Brothers Association for which the Authority has sought the intervention of the National Land Commission.

Management Response on molongo brothers issue

1345. LR No. 13512 in the name of Mlolongo Brothers Association) was within JKIA land (LR.21919). The Commissioner of Lands by way of a letter dated 30th December, 2005 confirmed that the alleged letter of allotment issued to Mlolongo Brothers Association was not genuine. The Authority was challenging the alleged allotment. Parties concluded hearing of the matter on 16th January, 2020 however the matter was pending issuance of a judgement date by the court**.**

1346. There was also a claim of KSh.992,336,004 sought by one Patrick T. Kanyuira for damages sustained in demolition of illegal structure at Wilson Airport. The High Court and Court of appeal ruled in favor of the Authority but the claimant filed the matter before the Supreme Court and the matter was yet to be determined.

Management Response on Patrick matter

1347. Through a letter dated 28th January 2018, the National Land Commission recommended that the Authority should compulsorily acquire the land. Implementation of NLC's recommendation was untenable due to financial constraints hence the Authority was pursuing amicable resolution. The matter before the Supreme Court was pending hearing and determination.

1348. The note also had a claim of KSh.404,686,165 from Baseline Architects and 3 others for outstanding payments for work done for which the management had indicated that it could pursue amicable settlement.

Management Response

1349. These proceedings emanated from an arbitral award against the Authority. The Court of Appeal is yet to determine the matter in its entirety. An amount of KSh.290,000,000 relating to a legal suit involving Diplomatic Duty Free Ltd/World Duty Free was also disclosed but the management was of the opinion that the liability would not crystallize.

Management Response

1350. The Authority maintained the position that the legal fees was not payable.

1351. The note also includes a claim from Queens Quay Architects Inc. amounting to USD 3,337,709 for wrongful termination of contract and outstanding fee note for reorganization of existing passenger terminal facilities at JKIA.

Management Response

1352. The Authority's position was that Queens Quay Architects Inc. was paid the contract sum in full but the company disputes this. The matter is being referred to arbitration.

1353. The note also indicated that the Ministry of Tourism had lodged a claim of KSh.2,135,151,597 for Special Tourism Promotion Fund which it intends to be funded by Air Passenger Service Charge.

Management Response

1354. The provision of KSh. 2,135,151,597 did not actualize as there was no amendment to the Air Passenger Service Charge Act at the time of making the provision to provide a legal basis for payment of the amount. However, in June 2018, the Act was amended and the Authority complied with the new requirements.

1355. Further, the note included information on Greenfield Terminal project which was terminated for Authority's convenience, but no amount of possible claim is disclosed. There are also several other claims which are pending arbitration and in the courts of law. Although in all the above cases the Authority has stated that the liabilities would not crystallize and has therefore not made any provision in the financial statements on the same, there is a high risk of liability before the cases were fully heard and determined.

Management Response

1356. The contract between the Authority and the Contractor (ACEG-CATIC Joint Venture) was invalidated on account of inconsistencies in the contract and tender documents. The contract between the Authority and the Consultant (Louise Berger LBG incorporating Runji & Partners) was terminated for convenience. The Authority engaged experts to advise on a strategy aimed at minimizing its exposure on the project. M/s. ACEG-CATIC Joint Venture has lodged a claim of KSh 17,614,324,251/=

Committee observations

1357. **The Committee made the following observations:**

(i) The KAA had a myriad of contingent liabilities that may or not crystalize.

(ii) Though KAA management indicated that it was confident that majority may not crystalize against the authority, it needed to take be cautious these calims were

under adjudication processes either in Court or Arbitration and therefore anything was possible.

Committee Recommendations

1358. **The committee recommended that:**

(i) **The accounting officer for the KAA should ensure that the Authority makes adequate representation before the Courts and tribunals dealing with the impugned contingent liabilities to safeguard taxpayers' money.**

(ii) **The accounting officer for the KAA should institute measures to avoid recurrence of huge contingent liabilities.**

Kenya Airways Debt FY 2017/18

1359. The statement of financial position reflected trade and other receivables balance of KSh.14,321,565,000 (2017 - KSh.10,604,369,000) and as disclosed under Note 34 (a) to the financial statements. Included in the balance was an amount owed by Kenya Airways of KSh.2,189,086,493 (2017 - KSh.1,743,890,276) a 25.5% increase. This could indicate difficulty on the debtor's ability to settle their accounts as and when they fall due. From the foregoing, it was not possible to confirm whether the necessary adjustments by way of provisions for doubtful debts had been effected to ensure the reported trade and other receivables balance of KSh.14,321,565,000 as of 30 June 2018 was fairly stated

Management Response

1360. The debt owed by Kenya Airways remaind due and recoverable. KQ had paid a total of KSh 1.59 billion between July 2018 and June 2021. KAA was working closely with National Treasury to ensure recovery of the debt was effected.

Committee Observations

1361. **The Committee made the following observations:**

(i) **Though KQ had been paying about KSh 50 million monthly, the current debt to KAA stands at KSh 7.5 billion which is too high and affecting the operations of the KAA.**

(ii) Previously, the KAA had been engaging KQ on the issue of debt but it had since involved Treasury who had equally not promised much.

Committee Recommendation

1362. **The Cabinet Secretary for the National Treasury should intervene and have the amount owed to the KAA by the KQ settled.**

Staff Receivables FY 2017/18

1363. Included in the trade and other receivables balance also was staff receivable balance of KSh.124,794,000 (2017-KSh.140,683,000) which included an amount of KSh.78,384,046 owed by staff on account of payments made against job evaluation outcome of 2006 and subsequently rescinded by the board of directors. The recoverability of the amount is in doubt as management had not acted to recover the balance despite the significant lapse of time.

Management Response

1364. An equivalent amount is recovered from staff who benefited from this payment from their terminal dues at the time of separation with the Authority. An amount of KSh. 4,422,950 has been recovered to date. The balance that relates to current employees will be recovered.

Committee Observation and Recommendation

1365. **The Recovery process of the overpaid money from staff had inordinately taken long. The Managing Director to the KAA should, in addition to recovery from the final dues, recover the overpaid money from the salaries and allowances of responsible staff.**

Kenya Airways Debt FY 2017/18

1366. The statement of financial position reflected trade and other receivables balance of KSh.14,321,565,000 (2017 - KSh.10,604,369,000) and as disclosed under Note 34 (a) to the financial statements. Included in the balance was an amount owed by Kenya Airways of

KSh.2,189,086,493 (2017 - KSh.1,743,890,276) a 25.5% increase. This could indicate difficulty on the debtor's ability to settle their accounts as and when they fall due. From the foregoing, it was not possible to confirm whether the necessary adjustments by way of provisions for doubtful debts have been effected to ensure the reported trade and other receivables balance of KSh.14,321,565,000 as of 30 June 2018 was fairly stated

Management Response

1367. The debt owed by Kenya Airways remained due and recoverable. KQ had paid a total of KSh 1.59 billion between July 2018 and June 2021. KAA was working closely with National Treasury to ensure recovery of the debt is effected.

Committee Observations

1368. **The Committee made the following observations:**

- **(i) Though KQ had been paying about KSh 50 million monthly, the current debt to KAA stands at KSh 7.5 billion which is too high and affecting the operations of the KAA.**
- **(ii) Previously, the KAA had been engaging KQ on the issue of debt but it has since involved Treasury who has equally not promised much**

Committee Recommendation

1369. **The Committee recommends that the Cabinet Secretary for the National Treasury should intervene and have the amount owed to the KAA by the KQ settled.**

Staff Receivables FY 2017/18

1370. Included in the trade and other receivables balance also was staff receivable balance of KSh.124,794,000 (2017-KSh.140,683,000) which included an amount of KSh.78,384,046 owed by staff on account of payments made against job evaluation outcome of 2006 and subsequently rescinded by the board of directors. The recoverability of the amount is in doubt as management had not acted to recover the balance despite the significant lapse of time.

Management Response

1371. An equivalent amount would be recovered from staff who benefited from this payment from their terminal dues at the time of separation with the Authority. An amount of KSh. 4,422,950 had been recovered to date. The balance that relates to current employees would be recovered.

Committee Observation

1372. **The Recovery process of the overpaid money from staff was painfully slow.**

Committee Recommendation

1373. **The Committee recommends that the Managing Director of the KAA should expedite recovery process of the overpaid monies to the staff.**

Emergency Repairs Isiolo International Airport Runway FYs 2016/17 and 2017/18

1374. As reported in 2016/2017, the contract for above works was awarded on 10 March, 2017 at a contract sum of KSh.82,434,788. The contract period was for 3 months commencing 7 April, 2017. A review of the project file and procurement records revealed the following unsatisfactory matters: -

Procurement

1375. The Ag. General Manager (P&ES) through a letter Ref: KAA/ES/ISO.Vol.2 (94) dated 6th February, 2017 requested the Managing Director for approval to use restricted tender method for this contract and the same was granted. Using the list of 10 prequalified contractors obtained from Kenya Rural Roads Authority (KERRA) vide a letter Ref: RM/KeRRA/9/Vol.1/67 dated 7th February, 2017. Bids were invited from the 10 firms on the same day of receipt and opened on 20th February, 2017. Only 4 bidders returned their bids.

Evaluation

1376. A review of evaluation report dated 28 February, 2017 revealed that only 1 of the 4 bidders that returned their passed the preliminary stage. The three firms failed the preliminary stage for lack of experience in undertaking similar works in the last 3 years or did not have the requisite turnover. Considering that this was a restricted tender it would appear that the prequalified list of contractors obtained from KERRA was not for similar scope of works.

1377. Further, Section 56 of the Public Procurement and Assets Disposal Act 2015, provides that an entity is allowed to use registered persons from another state organ provided that the list represents all the persons registered under that category and the list is valid and obtained through a competitive process. There is no evidence to confirm the management satisfied itself that the list obtained from KERRA was for the required category and if it included all persons registered under the said category and it was obtained through a competitive process.

Managements Response

1378. KAA opted to use KERRA's prequalified list for Isiolo and Samburu counties due to the urgency of the works required. The lead time and cost of mobilization to the site were also considered. The request to KERRA was for contractors prequalified for similar works. However, 3 out of the 4 bidders failed at the preliminary stage.

Committee Observations

1379. The Committee made the following observations:

(i) Though the law allows an entity getting a list of prequalified firms from a sister entity, the picked firms should have been prequalified for the same category of works that is intended in the new procurement; this appears not the case as 3 out of 4 firms failed preliminary evaluation.

(ii) The works should have been tendered but KAA failed to do it in clear violation of the Public Procurement and Asset Disposal Act 2015.

Slow Progress

1380. Project progress report dated July 2017 indicated an overall progress of 37% despite being in the last month of the contract. The contractor was thus behind schedule in project delivery but there was no evidence of recovery of liquidated damages from contractor's payments in accordance with the contract terms. During the year under review no project progress reports were made available for review hence the audit could not determine project status.

Managements Response

1381. Progress reports was later provided, On project delayed and the issue of liquidated damages, it will be addressed at Final Account.

Committee Observations

1382. **The Committee made the following recommendations**

(i) Management's failure to provide document for audit within the stipulated timelines is an offence under the Public Audit Act 2015 and the Public Finance Management Act 2012.

(ii) The project had taken inordinately long to conclude.

Committee Recommendation

1383. **KAA Committee recommends that:**

(i) The management should provide documents for audit within the stipulated timelines failures to which sanctions imposed under the Public Audit Act 2015 and the Public Finance Management Act 2012 should ensue.

(ii) The EACC should investigate the circumstances under which the KAA picked a prequalified list from KERRA for different work not related to the works at hand

Kisumu Airport Runway Contract No.- KAA/ES/KSM/690/C FY 2017/2018

1384. As reported previously, the contract was awarded at a contract sum of KSh.1,708,295,391 inclusive of 16% Value Added Tax (VAT). Works commenced on March 2012, however the scope was scaled down in October 2013 due to inadequate funding from the Ministry and then phased out into two: -

Phase 1 - Construction of Parallel Taxiway, cargo apron and public car park; and

Phase 2 - Runway Strengthening and Widening

1385. Phase 1 was completed on February 2014 at a cost of KSh.1,375,117,326 inclusive of 16% VAT against an original contract award amount of KSh.1,708,295,391. The balance of the contract of KSh.333,118,065 was rolled over to be utilized under phase 2 works. On 19 August, 2015 the Authority and the contractor entered into an addendum for the phase 2 works packaged at a contract sum of KSh.436,067,579.87 thereby revising original contract sum by KSh.102,949,515. Phase 2 works were to be executed in 28 Months; on 24 May 2016, and before the works commenced, a second addendum to the contract was drawn and signed by the parties varying the contract sum by a further KSh.143,532,200.

1386. This brought the total variation to KSh.246,481,715 or 14.5% with the new revised contract sum standing at KSh.1,954,777,106.

1387. The Tender Committee approving the variation pointed out that there was erroneous omission of KSh.190,156,845 in computation of the first variation occasioned by failure to consider the VAT component on amount paid out in phase 1 works. However, this is unsupported. Despite the revisions of contract sum above there was reduction in the scope of works for instance, paragraph 6 of the addendum excluded heavy duty manhole covers valued at KSh.17,933,117.

1388. Management had not rendered satisfactory explanation for the contract sum variation above and the double charge of the VAT amount of KSh.190,156,845 approved expressly provided for in the original contract as inclusive of 16% VAT.

1389. A review of the latest available project progress report of 15 January 2018 put the overall progress at 90% despite the revised contract period having lapsed on 8 June,2017. Consequently, the contractor was behind schedule in project delivery but management had not acted to recover liquidated damages in line with the conditions of contract.

Management response

1390. The original Contract Sum was KSh.1,708,295,391.2 which was varied by a figure of KSh. 102,949,515 through Addendum 1 Ref: CL/125/2011, dated 19th August 2015. This variation resulted to a Revised Contract Sum of KSh. 1,811,244,906 (Annex 46 – Addendum dated 19th August, 2015).

1391. The negotiated variation of KSh.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

1392. The aggregate of the KSh. 246,481,714.66 variation and the balance of KSh.333,118,064.87 from the original contract is KSh. 579,599,779.53. The detailed scope of works covering these variations and the balance of KSh.333,118,064.87 from the original contract was supported by the Bill of Quantities in Amendment to Addendum 1 above.

1393. The use of VAT to justify variation of KSh. 190,156,845.00 was erroneous and therefore was not executed. (Tender Committee resolution).

1394. 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 Observations

1395. **The Committee made the followings observations:**

(i) This matter was addressed in the PIC's 23rd Report with the following observations:

a) From the addendum, it was clear that these were new works that should have been re-tendered. The Committee observed that an Addendum cannot be done on contracts once signed.

b) The Tender committee discussed and approved the variation during its 434th sitting. It was however not clear why the committee approved the variation without doing a thorough analysis. The variation was therefore not justified.

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

d) **The new works should have been retendered.**

e) **The original contract sum was inclusive of VAT. It was fraudulent to justify the error based on VAT which now the management acknowledged**

(ii) The Committee had recommended punishment of officers that varied the scope of works and removed heavy duty manholes. Further it was recommended that due to security reasons, heavy duty manholes should be installed.

Committee Recommendation

1396. **The EACC should investigate the entire procurement process including how addenda was introduced and executed with a view to preferring charges on those persons found culpable of improprieties.**

Supply and Assembling of Gym Equipment FY 2018

1397. The above contract was awarded on 3 October 2017 at a contract sum of KSh.10,702,721 with a term of six (6) weeks. Although the equipment was supplied later than the stipulated timeline on 2 February 2018, the equipment continues to remain idle and uninstalled as at 31 January 2019. The room in which they were to be installed is yet to be constructed.

1398. In the circumstances, it was not possible to confirm whether the Authority obtained value for money in incurring the expenditure of KSh.10,702,721.

Management Response

1399. The Gymn facility was finally refurbished as evidenced by the completion and defects liability certificate)**.** The contractor undertook to install the Gym Equipment within a months' time.

Committee Observations

1400. **The Committee made the following observations**

(i) Management failed to appreciate the query as it related to an issue of buying a gym equipment before construction of the room to install it.

(ii) **Management later concurred with the audit observation and undertook to be vigilant in future. Further, it was noted that the completion certificate of practical completion was signed in 2018 and a defect liability certificate issued in 2020.**

(iii) **The delay in installation was occasioned by delay in construction of the building which further led to the penalty on KAA from the contractor.**

Committee Recommendation

1401. **Kenya Airports Authority should be vigilant whenever contracting for services avoid unnecessary penalties. Any penalty that the contractor who installed the gym arising from delay in completion of the building should be recovered from the officers that awarded a contract knowing that the building in which it was to be installed had not been build.**

Suneka Airstrip Proposed Construction of a Passenger Mini Lounge, Fencing and Minor Runway Repairs

1402. As reported previously, the above contract was awarded on 14th January, 2015 at a contract sum of KSh.52,846,114 and for a contract duration of 12 months. The initial contract period was later extended by 10 months to 16th October, 2016. As at 30th June 2018, KSh.32,001,057 had been paid. However, the project progress could not be established as its progress reports were not made available for audit review. Consequently, it was unable to confirm the project status.

Management Response

1403. Progress report regarding the status of the project was provided to the Committee indicating that the works had achieved practical completion and a certificate issued to that effect.

Committee Observations

1404. **The Committee made the following observations:**

(i) **Though management indicated that the project was complete, albeit late, the query in question related to failure to provide progress report for audit verification contrary to Public Audit Act 2015.**

(ii) This was however attributed to contractor unwillingness to cooperate on the same. At the end of the project, it cost less than the KSh 52 million.

Committee Recommendation

1405. **The accounting officer for the KAA should submit the impugned progress reports and the total amount expended for audit verification and also comply with the Public Audit Act 2015 on submission of documents for audit.**

Proposed Fencing Works at Wilson Airport 2017/2018

1406. The above contract was awarded in July 2015 at a contract sum of KSh.86,923,727 and contract duration of ten (10) ending 10th June 2016 but later revised to 30th August 2017. The latest project progress report dated May 2018 made available for audit review indicates works at 95% and chain link on galvanized wire at 90% completion status. However, the beacon re-establishment and survey were still pending. Squatters had also encroached, denying the contractor access to some sections of the fence. The Project was behind schedule and could lead to cost escalations.

Management Response

1407. An area within the airport boundary is inaccessible because of existing State Department of Public Works (SDoPW) staff quarters, some of which fall within the boundary alignment. A section of the boundary which was inaccessible due to hostile squatters has since been resolved and works completed. Areas not fenced will be excluded from the Final Account, awaiting a joint survey with the SDoPW. Squatters have since been removed form airport land. The project has no cost escalations.

Committee Observations

1408. **Though some sections of the property had been completed and squatters removed, the entire property is not yet secured putting it at risk of grabbing.**

Committee Recommendation

1409. **The KAA management should expedite the process of a joint survey with the State Department for Public Works and secure its property**

Runway Capacity and Its Upgrading and Rehabilitation of Aircraft Pavement at Jomo Kenyatta International Airport

1410. The above contract was awarded on 30 October 2014 at a contact sum of KSh.6,249,683,529 and project duration of 30 months ending 30 April 2017. The Contractor was paid an advance payment of KSh.624,968,352 on 22 December 2014 in line with the signed contract. However, only KSh.79,449,614 had been recovered as at 30 June 2018 despite the continued progress payments. Further, there was no evidence that the advance payment guarantee that expired on 19 February 2017 had been renewed as management did not make available the project progress reports and records as of 30 June 2018.

Management Response

1411. The advance payment would be recovered from the certified payable amounts claimed by the contractor upon conclusion of negotiations between the parties.

Committee Observations

1412. **The Committee made the following observations:**

(i) The query related to failure to provide progress reports and make advance payments for a contract KAA had no money to implement; a clear violation of the Public Procurement and Asset Disposal Act 2015 for starting a project without a budget. KAA never bothered to ask renewal of the guarantee; which was a gross negligent.

(ii) Total Advance Payment was for the entire contract and recovery was meant to be effected upon each phase. So far, only phase I of the contract was executed explaining the amount recovered to date.

(iii)The contractor has claims on KAA to a tune of KSh 1.5 billion while the KAA wants to recover the excess advance payments. It was further noted that the contract has not been terminated and that the equipment continues to earn interest in idle equipment.

(iv) Management abdicated its duty by not seeking a legal opinion from the Attorney General thereby exposing the authority to loss.

Committee Recommendation

1413. **The EAAC should investigate the entire contract to determine whether the taxpayer may have lost money in the process and prefer charges against those that may have been found culpable.**

2.18 RURAL ELECTRIFICATION AND RENEWABLE ENERGY CORPORATION (REREC – FY 2006/2007 TO FY 2019/2020)

EXAMINATION OF THE REPORT OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF THE RURAL ELECTRIFICATION AND RENEWABLE ENERGY CORPORATION (REREC) FOR THE FINANCIAL YEARS 2006/2007 TO FINANCIAL YEAR 2019/2020

Mr. Peter Mbugua, the Managing Director of the Rural Electrification and Renewable Energy Corporation, accompanied by CPA Davis Cheruyot (General Manager, Finance Services); Wilfred Oduor; and CPA Emmanuel appeared before the Committee to adduce evidence on the audited accounts of the Rural Electrification & Renewable Energy for the financial years 2006/2007 through to the financial year 2019/2020.

FYs 2006/2007 to 2008/2009

1414. The authority had unqualified report. Auditing of its books as a separate legal entity begun in July 2008 having just been formed in 2006.

Board Allowances (FY 2009/2010)

1415. Included in the board expenses of KSh. 28,579,000 incurred under the financial year in review, was an amount of KSh.446, 000 paid to staff in attendance during the board committee meeting contrary to section 10 of the state of corporations Act Cap.446 Laws of Kenya, which provided that such allowance shall be paid to the chairman and members of a Board other than the Chief Executive. In the circumstances, it was not possible to confirm the validity and propriety of the payments and inclusion of the amount under the board of expenses.

Management Response

1416. In its financial statements for the year ended 30th June 2011, the Authority reported board expenses of KSh 28,579,000. Included in this figure were payments made to the persons representing the office of Inspector of State Corporations who were conducting the business of the board.

1417. The Authority received a letter from the Ministry of Energy directing stoppage of such payments on 28th Nov 2013, way after the payments were done. As recommended by the Auditor General, the Corporation complied and currently the board expenses account only carries expenses related to board members.

1418. It is also worth noting that a circular no C. 824/(31) from Auditor General guided on inclusion of such payments to Inspector of State Corporation or representative in board expenses. On the strength of this letter, the officers from the State Corporations that sit in Boards are also paid like the rest to the Board members.

Committee Observations

1419. **The Committee made the following observations:**

(i) Further payments of KSh 660,000 were made in the 2010/2011

(ii) There was no breakdown to show who exactly from the Inspectorate of State Corporations was paid.

(iii)There were no policy guidelines at the time whether officers from the Inspectorate of State Corporations attending Board meeting could be paid sitting allowances. The corporation has since been contradicting directions from both the Auditor General and the Attorney General on the matter thus bringing more confusion.

(iv)The Attorney General, in a letter to the Secretary of State Corporation Advisory Committee dated 22nd August 2013, advised that officers from the Inspectorate of Corporations were not entitled to sitting allowances whenever they attend Board meetings. The Head of Public Service wrote to all Cabinet Secretaries on 8th November 2013 directing that officers from Inspectorate of State Corporations were not entitled to payment of sitting allowances whenever they attended Board meetings as this was part of their work.

(v) However, a letter from the Auditor General to the Inspectorate of State Corporations and copied to the Chief of Staff & Head of Public Service dated 4th July 2017 advised payment of officers from Inspectorate of State Corporations sitting in Boards of State Corporations. This in effect negated prior advisories done

by the Attorney General and the Head of Public Service. On the strength of this advice, officers from the Inspectorate of State Corporations are currently being paid; this was confirmed by Mr. Makokha who attended the PIC meeting.

(vi) The matter has finally been laid to rest in an opinion the Attorney General did to the Committee responding to the matter advising that officers from the Inspectorate of State Corporations sitting in Boards of State Corporations should not be paid as that constitute their work.

Committee Recommendations

1420. **The Committee made the following Recommendations:**

(i) Going forward, accounting officers of all State Corporations should adhere to the current policy guidelines from the Attorney General, as a legal advisor the government pursuant to Article 156 of the Constitution on payment of sitting allowances to officers from the Inspectorate of State Corporations when they sit in Boards of State Corporations.

(ii) Considering that there was a confusion as to whether officers from the Inspectorate of State Corporations sitting in the Boards of State Corporations were to be paid sitting allowances, those that were paid such monies prior to the adoption of this report should not be surcharged.

(iii) The Attorney General should communicate his advisory to State Corporations Advisory Committee for onward communication to the State Communication to respective State corporations on payment of sitting allowances to the officers from the Inspectorate of State Corporations

Investments in Treasury Bonds (FY 2011/2012)

1421. During the year under audit, the Authority invested a total of KSh. 200,000,000 in Treasury Bonds with maturity period of twenty years whereas the Authority had a bank overdraft of KSh. 275,725,000 as at 30th June 2012. Considering the Authority's mandate of service to the public, it may not have been prudent to take up investment for such a long period while at the same time operate bank overdraft facilities. Consequently, it was not possible to confirm that the investment was in the interest of the public.

Management Response

1422. The Authority did not have a bank overdraft but rather had a negative cashbook balance of KSh 275,725,000 which was taken as an overdraft in audit. This situation arose due to posting all payments in the cashbook and updating the cashbook at the point of payment voucher generation and not on payment release. This assured the Authority then that all payments were done through the ERP system and captured in the cashbook to avoid incidences of unposted payments. The negative cash balance represented several unpresented payments which did not necessarily mean that the payments had been updated for the same.

1423. The corporation's procedure was that no payments were released without adequate funding of the paying account. Should such releases be made the corporation had an understanding with the Banks not to process such payments until the account was funded. The actual cash position as 30th June 2012 was analyzed and supported by bank statements which showed a positive position as follows:

Bank	Account Type	A/c No.	Balance in KSh.	Appendix
Co-operative Bank	Current	01136125016300	1,000,000.00	i
	Call	01150125016300	66,301,681.03	
Kenya Commercial Bank	Current	1103201557	361,679,958.90	(ii)
	Current	1103201808	22,308.21	
Standard Chartered	Current	0106004955900	999,050.00	(iii)
	Call	0140004955900	44,887,551.95	

CFC Stanbic	Current	0140083434801	223,412.52	(iv)
Total			475,113,962.61	

1424. The investment of KSh 200,000,000 in treasury Bonds with a maturity period of twenty years, generated for the Authority a total of 27,000,000 in interest that was utilized in electrification of rural populace in line with its mandate, which was done in the best interest of the Kenyan Public. Further the Authority was at liberty to liquidate the investment at any time in order to enhance its cashflow or take advantage of better yielding investment at any given time it deemed appropriate.

1425. At the moment, the authority do not report negative cash book balances. The set-up of the current system was such that any payment that had not been presented before the end of financial year was reported as unpresented payments and necessary reversals made in the cash book to restore the actual cash position.

Committee Observations

1426. **The Committee made the following Observations:**

(i) Contrary to the audit observation, it was later confirmed by the office of the auditor general that the figure recorded was not an overdraft. The query on overdraft was resolved as answered.

(ii) Regarding investments and contrary to the management's averments that there were requite approvals from both the National Treasury and Board, Board minutes of 29th Sep 2011 provided by the REREC management later indicated that the Board had resolved that all investments should be approved by the board. There was nothing in the minutes discussing impugned investments. There was no evidence of management engaging Treasury thus management breached the government policy that requires such approvals.

(iii) The investments were liquidated. It was not irregular for a state corporation to invest KSh 200m for 20 years considering that that authority had an option of liquidating the said investment any time when in need of cash flow.

Committee Recommendations

1427. **The Committee recommends that the accounting officer for REREC should always adhere to government policy and the law regulating investments.**

Inventory (FY 2012/2013)

1428. The statement of financial position as at 30th June 2013 reflected inventory balance of KSh. 3,618,807,000 which however differed with the adjusted ledger balance of KSh. 3,583,006,449 and the physical of KSh. 3,573,079,828. Although the Authority has attributed the variances to delays in updating records, stock miscount due to uneven stocks, approximation errors, system data capture errors, rejected materials, stolen materials, materials returned from the field and materials belonging to third parties, it is not clear why proper record keeping was not always maintained or why the three balances had not been reconciled.

1429. Under circumstances the completeness and accuracy of stock balance of KSh. 3,618,807,000 as at 30th June 2013 could not be ascertained.

Management Response

1430. At the time of the audit, inventory had a balance of KSh. 3,618,807,000 which differed from adjusted balance of 3,583,006,449 there were some items with variances between the physical and SAP balances due to the various reasons as highlighted by the Auditor. The reconciliation of inventory is as per the table below:

Statement of Reconciliation Between Adjusted System And Physical Stocks		
System Balance		3,424,738,164.40
Add	Receipts Not Posted Value	185,713,157.71

Less	Issues Not Posted Value	27,444,873.11
Adjusted System Balance		3,583,006,449.00
Physical Value		3,618,807,000.00
Less	Issues Not Picked	45,727,174.02
Adjusted Physical Balance		3,573,079,825.98

Committee Observations

1431. **The Committee made the following observations:**

(i) **Effective controls incorporating regular stock take and reconciliation had been put in place and all variances were explained and supported by relevant documents.**

(ii) **The Office of the Auditor General confirmed verifying these reconciliations.**

Committee Recommendation

1432. **The accounting officer for REREC should always ensure timely reconciliations of the Corporation's books of account.**

Damaged Wood Poles FY 2012/2013

1433. During the year under review, wood poles totalling 2,310 and valued at KSh. 30,177,505 were stored in open spaces on the ground at both Makuyu and Mariakani Substations thus being exposed to adverse weather conditions and were therefore damaged beyond reasonable use. Consequently, it was not possible to confirm that public resources were managed efficiently, economically and in an effective manner.

Management Response

Over five (5) years, the Authority had accumulated poles that needed disposal in its open yards as follows:

Stores	Material	Quantity (Nos)	Value (KSh)
Makuyu	Wood Pole 10m	7	65,494
Makuyu	Wood Pole 11m	1928	25,703,248
Makuyu	Wood Pole 12m	106	1,578,162
Makuyu	Wood Pole 14m	43	735,644
Mariakani	Wood pole 10m	121	915,244
Mariakani	Wood pole 11m	105	1,179,713
Total		2310	30,177,505

1434. These damaged poles had accumulated for long and could not be disposed due to delay in seeking approval for disposal of assets. During the time of audit, the materials identified for disposal for the year 2012, their disposal was to start in 2013.

1435. During the audit, the Authority was expediting the construction of permanent warehouses and to this end, the tenders for construction of the warehouses were floated, subsequently awarded and contracted.

Committee Observations

1436. **The Committee made the following observations:**

(i) The construction of the yards in Mariakani, Kisumu and Nyeri was ongoing at the time of REREC Management's appearance before the Committee. The Nyeri yard was to be completed by December 2020 while Kisumu and Mariakani were expected to be completed by June 2021. This would help in efficient storage of the corporation's properties. This is however too long

(ii) Poles were bought without clear plans for use. It was curious for the Committee to hear from the REREC management that it bought poles only to resort to hand them over to KWS. This handover failed thus indicating lack of planning. At the time,

Emmanuel Lugo (the Committee heard from him) was the manager for procurement.

(iii) **Though REREC management indicated in the first meeting it held with the Committee that there was a specific insurance cover for the damaged poles and compensation was received on the same, a retraction of this position later in writing cast doubt on the authenticity of the response given.**

(iv) **On evidence of an ad hoc committee meeting on disposal of poles, evaluation and disposal report dated 16th June 2011 provided by the REREC management indicated that there were no tenders received on disposal – no recommendation to dispose.**

Committee Recommendation

1437. **The Committee recommends that the EACC should investigate the entire procurement of the poles with a view to preferring charge**s **on those that may have abdicated and or violated the law.**

Property, Plant and Equipment FY 2013/2014

1438. The statement of financial position balance of Property, Plant and Equipment of KSh. 30,366,778,000.00 included items of Work In Progress (WIP) of KSh. 9,736,172,000. Included in work in progress was an amount of KSh. 54,218,400.00 (VAT) inclusive relating to the award of tender for the supply, installation and commissioning of diesel generators and associated boards at Kiunga and Hulugho towns in Lamu East and Ijara Constituencies.

1439. The five-month contracts had since been terminated by the issuing bank. The 5 months contract was to be completed by March 2011 and as at 30th October, 2014 the project was still incomplete. Consequently, the carrying values of Property, Plant and Equipment as stated in the financial statements as at 30th June 2014 could not be confirmed.

Management Response

1440. Annual report and financial Statements for the Corporation in FY 2013/2014 reported Property Plant and Equipment to include KSh 54,218,400.This was related to supply, installation and commissioning of diesel generators and associated boards at Kiunga, and hulugho towns in Lamu east and Ijara constituencies. The two Gensets were awarded and construction works commenced where materials worth 54,218,400 was delivered to the project.

1441. At the time of reporting, the two gensets fell under classification of work in progress hence omitting the two gensets in the REREC reporting could have resulted in understating of assets which was a fact against International reporting standards. The five-month bank guarantee for the contractor were cancelled by the issuing banks advising cancellation of the contract. However, the contract was re-awarded to another contractor later and the projects were completed and commissioned as per commissioning reports.

Committee Observations

1442. **The Committee made the following observations:**

(i) **Though the projects were completed and commissioned, there was no due diligence report provided on the terminated contractor to show whether it was capable to undertake the works despite the committee requesting it on several occasions.**

(ii) **Further, it was not clear whether liquidated damages were sought from the terminated contractor for failure to perform.**

Committee Recommendation

1443. **The Committee recommends that the EACC should investigate the procurement and implementation of the impugned project with a view to preferring charges against those found culpable.**

Receivable and Exchange Transactions (FY 2013/14)

1444. As disclosed in note 15 to the financial statements, included in the financial position, receivables from exchange transaction balance of KSh. 16,670,363,000 was an advance of vendors balance of KSh. 446,951,000.00 which had amounts totaling to KSh. 228,136,000.00 outstanding for more than eleven months. Any provision that would have been necessary in relation to this uncertainty had not been incorporated in this financial statement.

Management Response

1445. The receivables from exchange transactions balance was Ksh.1, 670,363,000 and not Ksh.16, 670,363,000 as shown in the financial statements. These balances were held in active vendor accounts and the projects were ongoing. Nothing had come to the attention of Management to necessitate a provision given the fact that these accounts were not deemed doubtful. The analysis below provides the status of the said advances.

CODE	VENDOR NAME	AMOUNT KSH	PURPOSE	STATUS
400330	FRONTIER ENGINEERING LTD	89,970,000.00	Construction of genset	Recovered
300045	SWECO INTERNATIONAL	44,387,415.65	Consultation of KEEP project	Recovered
300037	ELECTRICAL MANUFACTURING CO LTD	41,682,640.00	Materials for KEEP project	Recovered
401193	ALLAYAS SOUTHERN CORPORATION LTD	21,444,580.54	Construction of genset	Recovered
300038	NUCON SWITCHGEARS PVT LTD	12,618,763.13	Materials for KEEP project	Recovered
500533	LIMELIGHT CREATION LTD	11,083,626.52	Construction Of Gensets	Recovered
401201	TOTAL KENYA LIMITED	3,000,000.00	Fuel	Recovered
400625	SWELGADEM ENTERPRISES	1,633,599.72	Construction Of Gensets	Recovered
100666	TURN O METAL	1,593,130.00	Construction Of	Recovered

			Gensets	
500130	RELIABLE REFILLERS LTD	1,125,617.37	Construction Of Gensets	Recovered
100616	ALLAYAS SOUTHERN CORPORATION LTD	513,412.15	Construction Of Gensets	Recovered
	TOTAL	228,136,000.00		Recovered

Committee Observations and recommendation

1446. **The Committee noted that advances were fully recovered and therefore the query resolved.**

Inventory (FY2013/2014)

1447. The statements of financial position inventories, balance of KSh. 5,114,280,000.00 included an amount of KSh. 10,227,652.30 relating to faulty transformers that were identified during the stock take exercise conducted in the previous year. Under the circumstance, it was not possible to confirm the inventories figure was fairly stated in the financial statements.

Management response

1448. As reported in the statement of financial position, inventories included an amount of KSh 10,227,652.30 relating to faulty transformers which were reported as faulty for the previous financial period as follows:

Transformer Size	Quantity	Unit Price (KSh)	Value (KSh)
100KVA,33KV	7	343,403.41	2,403,823.87
50KVA,33KV	36	212,705.71	7,657,405.56

50KVA,11KV	1	166,422.87	166,422.87
Total			10,227,652.30

1449. These were transformers failed in the field for various reasons and were recovered for purposes of repairs. Once repairs were done, they were available for use in the projects. A list of repaired transformers was available.

Committee Observations

1450. **The Committee made the following Recommendations:**

(i) **REREC management confirmed that the said transformers were eventually repaired and re-issued.**

(ii) **It was REREC's policy that once a transformer is repaired, it is considered new and having same value as the new one. The committee considers this policy defective and misreading.**

Committee Recommendation

1451. **The Committee recommends that the repaired transformers should always be revalued so that a fair value is recorded in the books of account.**

Inaccuracies in Financial Statements (FY 20113/14)

1452. There were unreconciled differences between the financial statements and the general ledger in respect of the following account balances.

Item	Balance as per F/S KSh. '000'	Balance as per G/L KSh. '000'	Difference KSh. '000'
Advance to vendors	446,951	432,315	14,636
Invoice Creditors	716,434	694,338	22,096

Non-Invoiced Creditors	650,383	657,513	(1,130)
Total	1,813,768	1,784,166	29,602

Management Response

1453. The discrepancies between the general ledger and financial statement results from;

Item	Balance as per F/S KSh. '000'	Balance as per G/L KSh. '000'	Difference KSh. '000'	Reason for Difference	Action Taken
Advance to vendors	446,951	432,315	14,636	Debit balances contained in the creditors accounts due to surcharges and advances directly journalized to creditors accounts. Credit balances in the advance accounts not offset against the advances	Necessary journals were passed to correct the inaccuracies

				(not matched)	
Invoice Creditors	716,434	694,338	22,096	This related to unposted invoices at the financial year that were accrued in the financial report.	Necessary corrections were made to recognize the understatement.
Non-Invoiced Creditors	650,383	657,513	(1,130)	This difference arose due to payments that were posted directly to vendor accounts instead of posting through Local Purchase orders of service entry sheets.	The postings were reversed and necessary correction journals were passed to correct the inaccuracies
Total	1,813,768	1,784,166	29,602		

Committee Observation

1454. **The Committee noted that the ledgers were corrected to reflect the correct position and verified by the OAG.**

Committee Recommendation

1455. **The Committee recommends that accounting officer for REREC should ensure that accounting standards are adhered to and avoid simple errors.**

Matters of Governance (FY 2013/14)

1456. For the financial year end 30th June 2014, Authority's board of directors was not properly constituted as it only had a chairman, two principal secretaries in charge of Energy and Petroleum and the National Treasury and one other Member. It was further noted that the fiduciary responsibility of the Authority's financial management was performed by finance committee. The board, audit committee and Procurement Oversight Committee had no quorum/members and therefore never met during the period under review. All these contravened section 68(1) of energy Act, 2012.

1457. In the absence of properly constituted Board and the Audit and Procurement Oversight Committees, it was not possible to ascertain whether there was sufficient fiduciary oversight over operations of the Authority during the year.

Management Response

1458. As correctly observed, there was no constituted board by the end of the financial year 2013/2014 as the term expired as in the table below:

No.	Name	Appointment	Expiry
1	Bishop Njoroge Kariuki	27/07/2010	26/07/2013
2	Eng. Edwin Wasunna	27/07/2010	26/07/2013
3	Cyprian Kirera	29/10/2010	28/10/2013
4	Eng Njeri Kahiu	27/07/2010	26/07/2013

5	Joshua Nthenge Musili	13/07/2012	12/07/2015
6	Betty C. Korir	02/09/2011	01/09/2014
7	Mrs. Beatrice Gathirwa	07/03/2011	03/09/2014
8	Dr. Simon Gicharu	20/05/2014	19/05/2017
9	Ms Bertha Dena Josepth	27/07/2010	26/07/2013

1459. As per Energy Act, 2006 which established the Authority then, Sec 68 (1)(d)), the power to appoint Board of Directors vests in the Minister for Energy.

Committee Observation

1460. **The Cabinet Secretary abdicated his duty by delaying appointing board members when vacancies arose for reasons unknown to the Committee.**

Committee recommendation

1461. **The appointing authority should always ensure that Board members are appointed in time to avoid crippling of the operations of REREC.**

Work In Progress (FY 2014/2015)

1462. Included in the Property, Plant and Equipment (PPE) net book value balance of KSh. 48,912,145,000 and as disclosed in note 19 to the accounts was WIP figure of KSh. 22,931,284,000 of which works valued at KSh. 9,741,407,850 are brought forward from prior years. The works could not be vouched and assigned to specific asset items as projects details including commencement and targeted end dates were not availed during the audit. Considering this, it was not possible to confirm whether the PPE figure of KSh. 48,912,145,000 as presented in financial statements was fairly stated.

Management Response

1463. The PPE had a balance of KSh.48, 912,145,000 with WIP figure of KSh.22, 931,284,000 of which works valued at 9,741,407,850 were brought forward from previous years. A list of ongoing projects at the end of financial 2015 was provided in soft copy owing to the size of the document.

1464. The Work In Progress balance of KSh. 9,445,589,000 was available as at 30th June 2019. The list of projects under construction totalling to Ksh 2,315,210,651 was provided on soft copy due to size of the report of ongoing projects at the end of financial 2019, with project name and reference numbers for audit verification. The transitional accounts on the other hand had ledger balances of KSh 786,287,175.01 and not 1,004,740,651 as stated. Also provided was the analysis of the transitional accounts with the most current balance.

1465. It is worth noting that these accounts always had carrying amounts at the close of the every financial year. All these constituted costs of ongoing projects and those not yet commissioned.

Committee Observations

1466. **The Committee made the following observations:**

(i) Reconciliation should ordinarily be done promptly, which was not the case here.

(ii) The amount from prior years had significantly been reconciled and assigned to specific asset items in the 2019/2020 audit.

Committee Recommendations

1467. The Committee made the following recommendations

(i) The accounting officer for the REREC should ensure prompt reconciliation of REREC accounts promptly

(ii) In the next audit cycle, the Office of the Auditor General should confirm on the authenticity of the figures provided for audit verification before this query is cleared.

Receivable (FY 2014/2015)

1468. The statement of financial position as at 30th June 2016 and as disclosed in note 16 to the accounts reflected advances to vendors figure of KSh. 318,400,000 which included an amount of Ksh.215,884,000 or 68% of the total advances that had been outstanding for long periods with some of them up to 4 years. No bank Guarantees had been obtained from respective vendors for backup/collateral in the event of default. There were no provisions as at the statement date. Although the management had indicated that goods and services had subsequently been rendered post the statement date and recoveries of advances effected, information to support this could not be verified.

1469. Any provision that would have been necessary in relation to this uncertainty had not been incorporated in these financial statements.

Management Response

1470. Note 16 to the Financial Statements reported advances to vendors of Ksh.318,400,000 out of which KSh 215, 884,000 was outstanding for a period longer than 12 months. The said advances related to projects that were ongoing as at 30th June 2015 some of which had since been completed and recoveries effected. Out of the outstanding KSh 215,884,000, a total of KSh 183,989,951.75 had since been recovered upon project completion leaving out KSh 31,487,178.25. The Authority did not consider the recovery of these advances doubtful except for Apar Industries which was fully provided for.

Descriptions	Document Date	Amount in KSH	REMARKS	CURRENT STATUS
Taxes in respect -APAR ID	30-Jun-14	31,894,048.25	duty paid to kra on behalf of customer	On going case
INOLIAN ENTERPRISES -CLEAR GOODS	8-May-14	7,000,000.00	to supply insulators-WIP	Recovered
10%advance - TURN O METAL ENGINEERS	23-Jan-12	1,593,130.00	for construction-WIP	Recovered
		40,487,178.25		
ADVANCES ALREADY RECOVERED				
Descriptions	**Document Date**	**Amount in KSH**	**REMARKS**	**CURRENT STATUS**
ADVANCE TO INOLIAN ENTERPRISES -CLEAR GC	8-May-14	3,000,000.00	to supply insulators-WIP	Recovered
50%-advance-tanelec limited	9-Dec-13	2,418,676.75	to supply transformers-WIP	Recovered
vat advance-33kv tension insulator-Eswari	7-Jun-14	712,923.00	to supply insulators-WIP	Recovered
Advance -vat goods in port- 2014MSA4760743	16-May-14	1,006,124.00	to supply insulators-WIP	Recovered
payment vat -for 33kv tension insulators -advanc	28-Apr-14	1,003,800.00	to supply insulators-WIP	Recovered
vat advance-to customs for clearence of insulators	27-Mar-14	1,093,791.00	to supply insulators-WIP	Recovered
advance -logger repair-makuyu	13-Jan-14	99,760.00	advance already accounted for	Recovered
advance -padlocks mbs rd office-high security	13-Jan-14	112,230.00	advance already accounted for	Recovered
advance for hiring prados - SWISS TRAVEL	25-Jan-13	370,000.00	advance already accounted for	Recovered
advance to SPART FREIGHT LOGIST LTD thro' GLO	9-Jul-12	265,659.00	advance already accounted for	Recovered
advance to frontier -rea/12-13/ot/045-design	31-Oct-13	45,000,000.00	makoina substation-WIP	Recovered
advance payment 10%-kalimung'orok substation	3-Jun-14	8,576,474.85	kalimung'orok substation-WIP	Recovered
advance payment 10%-kalimung'orok substation	3-Jun-14	17,509,714.66	kalimung'orok substation-WIP	Recovered
payment to entire valley-thru allayas-maint advanc	21-Mar-14	1,826,970.00	genset sbstations-WIP	Recovered
payment to entire valley-thru allayas-maint advanc	21-Mar-14	1,826,970.00	genset sbstations-WIP	Recovered
advance-imprt vat payment -2014msa4654329	13-Mar-14	1,016,323.00	genset sbstations-WIP	Recovered
ADVANCE VAT TO MS ASIATIC ELECTRICALS	14-Feb-14	469,562.00	to supply insulators-WIP	Recovered
advance -to ALLAYAS-MAINTAINANCE FEE	14-Feb-14	1,800,000.00	genset sbstations-WIP	Recovered
advance -to ALLAYAS-MAINTAINANCE FEE	14-Feb-14	1,800,000.00	genset sbstations-WIP	Recovered
advance-kra tax assesment 2nd installment	16-Sep-13	11,073,772.50	advance already accounted for	Recovered
advance-kra tax assesment	28-Aug-13	11,073,772.50	advance already accounted for	Recovered
10% advance payment-World Bank Contract	11-Mar-13	12,618,763.13	to expense to world bank acc	Recovered
advance to Jasco tho' ALLAYAS - Eldas project	31-Dec-12	5,316,965.94	genset sbstations-WIP	Recovered
advance to Cyska tho' ALLAYAS	31-Dec-12	3,000,000.00	genset sbstations-WIP	Recovered
advance toAquva thro Global market	19-Dec-12	5,036,233.80	genset sbstations-WIP	Recovered
advance to Tellhow thro' Global, Lokitang,Laisamis	19-Dec-12	311,621.24	genset sbstations-WIP	Recovered
advance to telhow thro Limelght, Faza,Lokichgio	19-Dec-12	1,633,997.51	genset sbstations-WIP	Recovered
advance to Jasco thro Limelght, Fazaland,Lokichgio	19-Dec-12	515,658.00	genset sbstations-WIP	Recovered
advance to Jasco thro Global, Lokitang, Laisamis	19-Dec-12	1,909,357.16	genset sbstations-WIP	Recovered
advance to Entire Valley thro Limelight	19-Dec-12	2,500,452.72	genset sbstations-WIP	Recovered
advance to Entire Valley thro Allayas,	19-Dec-12	5,101,358.16	genset sbstations-WIP	Recovered
advance to Entire thro Global,	19-Dec-12	5,101,358.16	genset sbstations-WIP	Recovered
advance to Cyska thro Limelight	19-Dec-12	2,000,000.00	genset sbstations-WIP	Recovered
advance to Cyska thro Global	19-Dec-12	3,000,000.00	genset sbstations-WIP	Recovered
advance to Car and General thro Global	19-Dec-12	2,254,373.11	genset sbstations-WIP	Recovered
advance to Car and General thro allayas	19-Dec-12	2,254,373.11	genset sbstations-WIP	Recovered
advance to Aquva thro Limelight	19-Dec-12	2,392,063.57	genset sbstations-WIP	Recovered
advance to Aquva thro Limelight	19-Dec-12	3,357,489.15	genset sbstations-WIP	Recovered
advance to Aquva thro Allayas,	19-Dec-12	5,036,233.73	genset sbstations-WIP	Recovered
		175,396,821.75		
TOTAL		**215,884,000.00**		

Committee Observations

1471. Out of the outstanding KSh 215,884.000, a total of KSh 183,989,951.75 had since been recovered upon project completion leaving out KSh 31,894,048.25 whose dispute is in court.

1472. Some payments done in 2015 did not have bank guarantee but nowadays no payment will be made without a bank gurantee

Committee Recommendations

1473. **The Committee recommends that:**

(i) **Going forward, the REREC should only make advance payments after securing a bank guarantee.**

(ii) **The accounting officer for REREC should apply for speedy conclusion of the cases relating to outstanding receivables**

(iii) **The judiciary is requested to expedite hearing and determination of cases in which REREC is a party.**

Long Outstanding Insurance Claim FY 2014/2015

1474. During the year under review, the Authority incurred losses to the tune of KSh. 22,054,000, due to theft of stocks at its Mombasa Road store. The loss according to management was reported to its insurers for compensation. However as at the time of concluding the audit, no compensation had been received.

Management Response

1475. The theft at Mombasa Road stores was reported to the Africa Merchants Assurance Company Ltd on 29 September 2014 for purposes of compensation. The insurance company subsequently appointed a claims adjuster to carry out the loss assessment. On 24.2.2016, the Authority received the assessors report from the insurance company requesting for additional documentations which were provided and the loss was adjusted to KSh 18,000,000.

1476. Amaco Insurance had already made partial payment of KSh. 6,000,000.00 leaving a balance of KSh. 12,000,000, which the Corporation was pursuing for full settlement of the claim.

Committee Observations and recommendation

1477. **The query was satisfactory answered. The REREC should pursue the insurer for settlement of the remaining balance.**

Unrecovered Duty Paid to KRA on Behalf of Vendors (FY 2014/2015 to 2017/18)

1478. The authority during the year paid an amount of KSh. 47,605,799 to KRA in respect of custom duty paid payable by two of its vendors. The amounts were KSh. 31,894,048 and KSh. 15,711,751 respectively. Available information indicated that this was preempting a KRA agency notice on the Authority bank account. Management had confirmed having recovered in full the duty paid on behalf of one vendor.

1479. Efforts to recover the other amount of KSh. 31,894,048 advance had not been successful. Although Management had made full provisions in the financial statements, it had not been possible to confirm whether and if so when the Authority would be able to recover the advance amount.

Management Response

1480. The KSh 47,605,799 paid to the Commissioner of Customs was because of an assessment by KRA arising from post clearing audit several years following the clearing and delivery of consignments to REREC by both Apar Industries and E-Trade. There were no undertakings or collaterals from the suppliers to support the claim since the claim was done to the Authority directly by Kenya Revenue Authority through Agency notice.

1481. The figure was recorded as an advance with an intention of recovery from future invoices and reported in the financial statements under receivables from exchange transactions.

1482. The Authority had since recovered KSh 15,711,751 from E-trade bringing the figure down to KSh 31,894,064. The Authority wrote a demand notice to Apar Industries dated 7th December 2015,giving them 30 days' notice for payment of the sums paid to KRA. The notice expired without response from Apar Industries, and the Authority then sought legal recourse against Apar and SDV Transami which were Apar Industries's clearing and forwarding agent.

1483. The Advocates issued another demand notice and a notice of intention to sue, which notice elicited a response from the vendor. In their responses, the vendor sought for more time (3-4 months) to review the claim and possibly have an amicable resolution of the same. Despite being given time to explore the amicable settlement, the vendor still failed and/or neglected to make good the payments and ultimately issued a categorical denial of the same. The Corporation therefore proceeded and filed a civil suit i.e <u>Rural Electrification</u>

And Renewable Energy Corporation –Versus- Apar Industries, Nairobi (Milimani) Hccc No. 153 of 2019 against Apar Industries seeking for the recovery of the said sum of KSh 31,894,064.00 together with interest and costs. Pleadings had since closed and the Corporation had since filed a request for judgment.

1484. In the meantime, the vendor had also filed an interlocutory application dated 12th September 2019 seeking to stay the matter before the high court and have the matter referred to arbitration. The matter was last in court on 7th May 2020, when the same came up for hearing of the vendor's application dated 12th September 2019 seeking to stay the matter before the high court and have the matter referred to arbitration. The ruling on the said application was to be delivered on notice.

Committee Observations

1485. **The Committee made the following observations**

(i) The Authority had since recovered KSh 15,711,751 from E-trade bringing the figure down to KSh 31,894,064.

(ii) It was however pursuing the payment of KSh 31,894,064 through a court process. REREC is currently not doing any business to the sued company.

Committee Recommendations

1486. **The Committee recommends that:**

(i) The accounting officer for REREC should not make any payment to any vendor that had not been cleared with KRA.

(ii) The accounting officer for REREC should apply for speedy conclusion of the matter in Court

Unremitted Taxes (FY 2014/2015)

1487. The financial statements of the authority reflected current tax payable to KRA amounting to KSh. 20,450,000 as reflected in note 24. Included in the amount is custom duty of KSh. 380,000 and withheld VAT of KSh. 16,636,822 not remitted to KRA on the due dates. The authority was at risk of incurring tax penalties with the continued delay in remittance of the withheld taxes.

Management Response

1488. The Corporation was appointed an VAT Withholding agent by KRA where VAT of 6% was to be withheld from payments that are VAT Inclusive and the same be remitted to Kenya Revenue Authority, as observed by the Auditor General a balance of KSh 20,450,000, Tax payable - withheld VAT included KSh 380,000 and KSh 16,636,822.80 for 16% withheld from vendors in 2011. Shortly after, KRA discontinued the withholding of VAT and withdrew all the certificates and the return forms hence leaving the corporation torn between remitting the withheld VAT to Kenya Revenue Authority or refunding the vendors back the money and since no withholding certificates were issued to the vendors claiming from KRA could not be possible.

1489. Therefore, the understanding was that this amount was refundable to suppliers and not KRA as indicated. Subsequent KRA audit carried out on REREC on withholding taxes did not raise these amounts as payable to KRA.

1490. A meeting with officials from Kenya Revenue Authority resolved that these amounts should be paid to KRA and any vendor claiming refund should be directed to the tax authority for tax credits. The amounts have since been remitted to Kenya Revenue Authority.

Committee Observations

1491. **The Committee made the following observations**

(i) **An email from an officer in KRA dated 28th September 2020 was provided to the Committee that indicated bank details on payment of VAT and a letter from REREC to cooperative bank dated 28th September 2020 paying withholding VAT of KSh. 16.6 m.**

(ii) **Further, an acknowledged receipt from KRA of the amount was provided to the Committee through a letter dated 11th Nov 2020.**

Committee recommendations

1492. **The Committee noted that the explanation offered was satisfactory and therefore resolving the matter.**

<u>Utilization of Project Funds on Authority's Operations (FY 2014/2015)</u>

1493. The Authority, through the Ministry of Energy and Petroleum, withdrew amounts totaling KSh. 124,227,076 from the special projects accounts on 29th June 2015 and the proceeds credited into its cooperative bank account. According to management, the funds were erroneously deposited by the Ministry of Energy and Petroleum into the Authority main account. The amount was refunded to the project account on 14th December 2015, five months later. The project funding agreement had specific provisions of which the funds should be applied for purposes other than those in the funding agreement; the Authority was therefore not in compliance with the agreement and was at risk of funding being discontinued.

<u>Management Response</u>

1494. Both the Project funds and the Authority funds were being sent to the Authority by Treasury through the Ministry of Energy and Petroleum. The identification as to whether the funds are certain/specific Project or the Authority's exchequer development or recurrent was by way of the receiving bank account through which funds are channelled, the Ministry will normally write a letter to the institution communicating the purpose of the funds released to the institution. Special Project funds were normally sent through a dedicated project account No. 011361125016301 held in Cooperative bank. The Authority funds from other sources including Exchequer were normally channelled/received through its bank accounts held in Cooperative bank or Kenya Commercial bank.

1495. The Authority requested for project's funds through the Ministry on 29th June 2015 and amounts of KSh 124,227,076.20 were erroneously deposited to REREC's main No. 1103201557 held at Kenya Commercial Bank on 7th July 2015 an account which was dedicated to other sources of revenues excluding special project fund. The authority upon receipt of revenues would utilize the funds to make payments as they fell due. Prior to this, there was a delay by exchequer to disburse funds and the Authority had accumulated huge pending bills and any amount received would be immediately utilized to pay the pending invoices together with other payments.

1496. By the time the Authority learnt that the funds were for the project but erroneously deposited as the Authority's, the amount had already been utilized. The authority was unable to transfer these funds due to cash flow problems occasioned by the slow disbursement of Government funds.

1497. However, once the disbursement from GOK were received, the Authority transferred the money to KEEP project Account on 17th December 2015.

Committee Observations

1498. **The Committee made the following observations:**

(i) The affected project Kenya Electricity Expansion Project (KEEP) had since been completed and closed.

(ii) This a case where money went to a wrong account. Management of REREC irregularly utilized funds without authority from the Board and the mother Ministry even though the said funds were later returned.

(iii) It was negligent of the REREC management in failing to report and seek approval from both the Mother Ministry and the Board on reallocation of the funds.

Committee Recommendation

1499. **The accounting officer for the REREC should always adhere to the law and government guidelines on budgeting and its execution.**

Property, Plant and Equipment - WIP FY 2015/2016

1500. The statement of financial position reflected property plant and equipment valued at KSh. 59,510,572,000 (2015 KSh.48, 912,145,000) as at 30th June 2016 further disclosed under Note 19 to the financial statements. Included in the balance was WIP valued at KSh. 18,717,253,000 out of which a balance of KSh. 2,433,682,000 related to WIP brought forward from prior years which however had not been supported with project analysis. Also included in the WIP balance was a transitional balance of KSh.1,123,212,000 that ought to have cleared into the WIP ledger but was outstanding as at 30th June 2016.

1501. Under the circumstances it was not possible to confirm if the property plant and equipment balance of KSh. 59,510,572,000 as at 30th June was fairly stated.

Management Response

1502. The value of Ksh.2, 433,681,673.28 as contained in the Work in Progress amount of KSh 18,717,253, 000 reported in the financial statements related to projects and projects related costs since the year 2009. The list of individual projects was not available to facilitate capitalization. At the time of audit, work in progress validation exercise was ongoing and was expected to be completed by end of the year 2017. The list of projects making up to the closing balance of KSh 18,717,253,000 was provided in soft owing to the size of the documents.

Current status

1503. The Work In Progress balance was KSh. 9,445,589,000 as at June 2019. The list of projects under construction totaling to Ksh 2,315,210,651 was provided on soft copy due to size of the report as Appendix 32, with project name and reference numbers for your review. The transitional accounts on the other hand had ledger balances of KSh 786,287,175.01 and not 1,004,740,651 as stated. Also provided was the analysis of the transitional accounts with the most current balance.

1504. It was worth noting that these accounts always had carrying amounts at the close of every financial year. All these constitute costs of ongoing projects and those not yet commissioned.

Committee Observation and Recommendation

1505. **This was a repeat paragraph but from the previous financial years handled in this report but with different amounts queried. The observations and recommendations made then obtain here.**

Unremitted Taxes (FY 2015/2016)

1506. As previously reported the financial statements of the Authority reflected current tax payable to KRA amounting to KSh. 17,039,000 as reflected in note 24 to the financial statements. Included in the amount is withheld Value Added Tax (VAT) totalling KSh. 16,636,822 not remitted to Kenya Revenue Authority (KRA) on due dates. The authority continued to expose itself to the risk incurring tax penalties for its delay in remitting the withheld taxes.

Management Response

1507. It is true that the balance of KSh 20,450,000, Tax payable - withheld VAT includes KSh 380,000 and KSh 16,636,822.80 for 16% withheld from vendors in 2011. Shortly after, KRA discontinued the withholding and withdrew the certificates and the return forms hence no certificates were issued to the vendors to facilitate claiming from KRA. This amount was refundable to suppliers, and not KRA as indicated. Subsequent KRA audit carried out on REREC on withholding tax had not raised these amounts as payable to KRA.

Status

1508. A meeting with officials from Kenya Revenue Authority resolved that these amounts should be paid to KRA and any vendor claiming refund should be directed to the tax authority for tax credits. The amounts had since been remitted to Kenya Revenue Authority and payment vouchers vailed for verification.

Committee Observations and recommendations

1509. **A similar matter was raised in the previous financial year albeit with different amounts.**

Delays in Completion of Diesel Power Stations (FY 2015/2016)

1510. Included in the property plant and equipment balance under WIP balance of KSh. 18,717,253,000 and as disclosed under Note 19 to the financial statements was the cost of four (4) diesel power stations projects under construction at Kakuma,Lokiriama,Maikona and Kholondile valued at KSh.622,635,639. The contractual completion dates for the projects had long passed with some more than three (3) years behind schedule.

Consequently, it was not possible to confirm when the projects would be completed and if so whether this would be at the initial contractual cost.

Management Response

1511. In note 19 in the financial statements, the Authority had reported a figure of KSh 18,717,253,000 which included KSh 622,635,639 for four (4) gensets as stated. The construction of these diesel power stations was behind schedule for more than three (3) years. These projects delayed due to challenges of security and specialized items. The costs, year of award, costs status and current status are shown in the table below:

Project name	**Award date/year**	**Contract Cost (as per status report)**	**Status in 2016**	**Current Status**
Kakuma Diesel Power Station	December 2014 June 2015	KSh.99,624,799.68 (Civil) KSh.49,706,000 (Genets)	75% of the works complete Delivered to site and awaiting installation	Commissioned in Feb 2018
Lokiriama Diesel Power Station	March 2014 October, 2016	KSh. 149,901,854 (civil) KSh.15,057,960(Genets –Relocation Cost)	Civil works completed. Generators delivered to site and awaiting installation	Commissioned in Feb 2018

Maikona Diesel Power Station	March 2014 June, 2015	KSh. 150,547,706.15(civil) KSh.59,727,406 (Genets)	Civil works commissioned under defect liability period. Factory Acceptance Test(FAT) scheduled for early January 2017	Commissioned in May 2020
Khorondile Diesel Power Station	May 2014 March, 2015	89,927,386.50(civil) USD 311,623.79 KSh. 39,308,126.89	80% of Civil works complete. All equipment delivered to site .Installation ongoing	Commissioned in July 2017

1512. The said gensets had since been completed and handed over to Kenya Power & Lighting Company Ltd as per the commissioning reports attached.

Committee Observations

1513. **The contract was completed belatedly due to insecurity at no extra cost.**

Committee recommendation

1514. **The matter was resolved**

Property Plant and Equipment –Work-In-progress (FY 2016/2017)

1515. The financial statement reflected Property Plant and Equipment valued at KSh 65,633,640,000 (2016;KSh.59,510,572,000 as disclosed in note 16 included in this figure in Work –In-Progress (WIP) balance of KSh 10,965,748,000, out of which KSh.2,315,210,651 related to WIP brought forward from prior years which had not been supported with detailed project analysis. The WIP brought forward further included a transition account balance of KSh.1, 004,740,651 which ought to have cleared into the WIP ledger but was outstanding as at 30 June 2017 casting doubt on the fair statement of accounts.

Management Response

1516. It is true that the transitional accounts had a balance of KSh 2,315,210,651 at the close of the year 2016 and by the beginning of the financial year under review a balance of KSh 1,004,740,651. However, these figures have subsequently cleared and the balances carried forward were projects which were in progress at the end of the financial year. The bulk of this amount was attributed to Garissa power plant which was completed in October 2018.

Status

1517. The Work In Progress balance of KSh. 9,445,589,000 as at June 2019. The list of projects under construction totalling to Ksh 2,315,210,651 was provided on soft copy due to size of the with project name and reference numbers for your review. The transitional accounts on the other hand had ledger balances of KSh 786,287,175.01 and not 1,004,740,651 as stated. Also provided was the analysis of the transitional accounts with the most current balance.

1518. It is worth noting that these accounts always have carrying amounts at the close of every financial year. All these constitute costs of ongoing projects and those not yet commissioned.

Committee Observations

1519. **This is a repeat paragraph from the previous year but with different figures.**

Property Plant and Equipment – Work-In-Progress (FY 2017/2018)

1520. The financial statements reflect property, plant and equipment valued at KSh 82,607,142,000 (2017: KSh 65,633,640,000) as disclosed in note 16. Included in this figure wass Work-In-Progress (WIP) balance of KSh. 18,338,953,000 (2017: 10,965,748,000) out of which KSh. 2,315,210,651 related to WIP brought forward from prior years which however had not been supported with detailed project analysis. The WIP brought forward included a transitional account balance of KSh. 1,004,740,651. Which ought to have cleared into the WIP ledger but was outstanding as at 30 June 2018. According to management, these balances have subsequently cleared and the outstanding balances related to projects which were in progress at the end of the financial year and that reconciliation was yet to be completed.

1521. Under the circumstances, it was not possible to confirm whether the property, plant and equipment balance of KSh 82,607,142,000 as at 30th June 2018 was fairly stated.

Management Response

1522. The Work In Progress balance of KSh. 9,445,589,000 as at June 2019. The list of projects under construction totalling to Ksh 2,315,210,65 was provided on soft copy due to size of the report with project name and reference numbers for your review. The transitional accounts on the other hand had ledger balances of KSh 786,287,175.01 and not 1,004,740,651 as stated. Also provided was the analysis of the transitional accounts with the most current balance.

1523. It is worth noting that these accounts always had carrying amounts at the close of every financial year 2019. All these constitute costs of ongoing projects and those not yet commissioned.

Committee Observations and recommendations

1524. **This is a repeat matter but from the previous financial year but with different figures.**

Procurement of Distribution Transformers (FY 2017/2018)

1525. The Authority procured 200 transformers from a Tanzanian Company through direct method of procurement, as opposed to the required method of open tender. According to management, reliance was placed on Section 103(2b) of the Public Procurement and Asset Disposal Act, 2015 which states that, direct procurement due to, among other reasons, when there is an urgent need for the goods, works or services, and engaging in tendering proceedings or any other method of procurement would be impractical, provided that the circumstances giving rise to the urgency were neither foreseeable by the procuring entity nor the result of dilatory conduct on its part.

1526. Management considered the procurement to be urgent, outside its work plan and unforeseen owing to Government's plan to introduce the laptops project in all public schools, whose success was dependent on electricity connection.

Management Response

1527. The Corporation procured 200 transformers from Tanelec Limited through direct procurement as stated. On 19th December 2016, the Authority was directed to ensure that all Primary Schools were connected to electricity by 4th January 2017 (Board minutes referring to the directive). The directive was issued in a meeting chaired by the Cabinet Secretary for Energy and Petroleum and attended by the Board of Directors and Management. On the same date the Authority's Board of Directors and Management held a meeting in its offices at Kawi House (an ad hoc committee was constituted to strategize on how best to meet the target). On 9th January 2017, the committee reported to the board on its findings on several strategies to comply and meet the deadline issued by the ministry.

1528. The demanded completion of projects in progress was to facilitate the rollout of digital literacy program for class one pupils in primary schools across the country. It was reported that the program had stalled as several primary schools were yet to be connected to electricity. The Authority had been tasked with the responsibility for connecting the primary schools to electricity and were in the process of doing so with most of the projects being work in progress, and majority awaiting installation of transformers and commissioning.

1529. At the birth of the digital literacy program, the Ministry of Education had estimated the number of primary schools at 18,000. The actual numbers were however in excess of 20,000 thereby causing a distortion in the Authority's planning process thereby leaving several projects without transformers over a period of time occasioning the demand/directive to complete the projects.

1530. At the time of receiving the directive to complete and commission the projects by 4th of January 2017, the Authority had already awarded two contracts for supply of Transformers to two foreign companies M/S Sanbian SCI-Tech Limited of China and LTL Transformers PVT of Sri Lanka.

1531. The transformers from China and Sri Lanka had a lead time of between 6 and 9 months due to complex pre-shipment verification of conformity, shipping time and port clearance. The expected dates of delivery for the above ordered transformers would then be in October 2017 long past the deadline.

1532. By the time the Authority was directed by the Ministry of Energy on 19th December, 2016 to complete the projects, the two suppliers above had made no deliveries. Further engagements with them revealed that the transformers were under manufacturing and partial deliveries would be made as from May, 2017. If the Authority relied on deliveries from the two suppliers, it would never have met or come close to meeting the targets as set by the Ministry of Energy.

1533. Consequently, the management was directed by the Board to review all available options to identify a supplier who could deliver transformers within the shortest time possible. The local companies only repaired transformers and not manufacture. The Authority visited Tanelec Limited in Tanzania and found out that the company had all the materials needed to manufacture the Transformers. The company only required a month to do assembly, testing and supply as enumerated in their letter.

1534. It is at this point that a decision was made to purchase the Transformers from Tanelec Limited through direct procurement. The Authority relied on section 103 (2) (b) of the PPADA, 2015 as supported by a Professional Opinion in support. This section provides for the use of direct procurement in the acquisition of goods or works by a public entity as long as the purpose is not to avoid competition.

1535. Section 103(2) further enumerates the circumstances under which direct procurement may be used which includes, inter alia - section 103 (2) (b) "due to war, invasion, disorder, natural disaster or there is an urgent need for the goods, works or services, and engaging in tendering proceedings or any other method of procurement would therefore be impractical, provided that the circumstances giving rise to the urgency were neither foreseeable by the procuring entity nor the result of dilatory conduct on its part. REREC believes the circumstances the Authority found itself as explained hereunder qualified as an urgent need.

1536. Section 3 of the PPADA, 2015 defines an urgent need as follows: "urgent need" means the need for goods, works or services in circumstances where there is an imminent or actual threat to public health, welfare, safety, or of damage to property, such that engaging in tendering proceedings or other procurement methods would not be practicable.

1537. At the time of issuance of the directive to complete the projects by 4th January 2017, there were several projects that had been completed but awaiting installation and commissioning of transformers. The uncompleted projects had stalled the rollout of the digital literacy program to the class one pupils who had legitimate expectation from the government to implement the same. This coupled with the delay in connecting the other Kenyans around the schools were circumstances that represented an imminent or actual threat to public welfare (The welfare of school going children and neighbouring settlements). The roll out of the government digital literacy program was aimed at improving the welfare of all primary school going children. Further, the rural electrification program was supposed to improve the socio-economic welfare of Kenyans.

1538. In light of the foregoing, the Authority awarded a contract for supply of 200 Pieces of 25kva 33kv Transformer to Tanelec Limited and an LPO for the same was issued on 17th January, 2017. The 25kva 33kv transformer were the most critical at the time and were required to complete projects that did not have transformers. All the procedures for direct procurement were followed including negotiations with the manufacturer to ensure that the Authority received value for money.

Committee Observations

1539. **The Committee made the following Observations:**

(i) **The arguments advanced by the management did not buttress the use of direct procurement; there was no urgency and the REREC did not pick firms from the prequalified firms.**

(ii) **There was no evidence of communications from the Ministry of Energy and the Ministry of Education directing direct procurement. Even if it was to be there, it is trite that that which is illegal should not be obeyed.**

(iii) **There was no evidence that the mother ministry and the board directed management of REREC to do direct procurement as had been alleged by management. Management therefore may have misled the Committee.**

(iv) **Though not provided in law, the procurement manager should have consulted the legal department considering the magnitude of the matter in issue when providing his legal opinion.**

(v) **There was contradicting statements as to whether there was a meeting in which the Cabinet Secretary (CS) for Energy attended directing direct procurement. At one point Mr. Wilfred Oduor confirmed that the meeting was attended by the CS but the minutes of the meeting of 19th December 2016 indicates that the CS was not there thus casting doubt on the accuracy of the evidence adduced. Further, the Hon. Charles Keter (CS for Energy at the time) denied on record having hard such a meeting.**

(vi) **It was not clear how the ad hoc committee procured the Tanzanian company without ever doing a due diligence. By management of REREC failing to provide minutes of the ad hoc committee even after several requests, the Public Investments Committee could not ascertain how the stated ad hoc committee went about its work.**

(vii) **The number of schools to be served should were known from the onset. A claim that the ministry of education gave a number of 18000 when the number ought to be in excess of 20,000 could therefore not be sustained.**

<u>Committee recommendation</u>

1540. **The EACC should investigate the procurement process of the said transformers with a view to preferring charges on persons that may have been found culpable. This should be done within six months of adoption of this report.**

<u>Property Plant and Equipment – Work-In-Progress FY 2018/2019</u>

1541. As disclosed in Note 17 to the financial statements, the statement of financial position reflected a balance of KSh. 86,269,267,000 under property, plant and equipment. Included in the balance was work-in-progress amounting to KSh. 9,445,589,000 which, as previously reported, included a transitional account balance of KSh. 786,287,175. According to Management, the balance related to projects which were in progress at the end of the financial year and the reconciliation of the transitional account was ongoing.

1542. Under the circumstances, it was not possible to confirm whether the work-in-progress balance of KSh. 9,445,589,000 was fairly stated

Management Response

1543. The Work In Progress had a balance of KSh. 9,445,589,000 as at June 2019 out of which KSh 786,287,175.01 related to balances in the transitional accounts. Transitional accounts held costs of materials and services incurred during powerline projects implementation. These costs were periodically capitalized to assets under construction and later to fixed assets. It is worth noting that these accounts always had carrying amounts at the close of every financial year as capitalization of the amounts is a continuous process as materials and services were being accumulated to the projects through the financial years. All these constitute costs of ongoing projects and those not yet commissioned.

1544. The Corporation was also undertaking a System Applications and Products in Data Processing (SAP) optimization project which would address the issue of capitalization to ensure transitional balances were promptly capitalized through workflows. This would also ensure that projects information in the system is complete including Work In Progress validation.

Committee Observations and recommendations

1545. **This matter was adequately addressed and resolved**

Unrecovered Duty paid to KRA on Behalf of the Vendor FY 2018/2019

1546. As previously reported, the Corporation in the financial year 2014/2015 paid duty amounting to KSh. 31,894,000 to the Kenya Revenue Authority (KRA) on behalf of one of its vendors. Available information indicated that the payment was intended to pre-empt a KRA agency notice on the Corporation's bank account. However, despite the Corporation pursuing the vendor in court for recovery of the outstanding amount was yet to be recovered. Although Management has made a full provision for the outstanding amount in the financial statements, recoverability of the amount seems doubtful.

Management Response

1547. The Corporation filed a civil suit against Apar Industries for recovery of the said amounts vide **Rural Electrification and Renewable Energy Corporation vs. Apar Industries, Nairobi (Milimani) HCCC No. 153 of 2019**. However, Apar Industries made an application to refer the matter to arbitration. On 4th June, 2021, the court rendered itself referring the matter to arbitration (**Attached herewith is a copy of the Ruling dated 4th June, 2021**). **Annex 2** High Court ruling. Parties quickly agreed on the choice of arbitrator - Hon. Samuel Mbiriri, who then set a meeting to hear and handle preliminary matters on 5th October, 2021.

1548. The meeting then set the matter down for hearing on 9th, 10th and 15th December, 2021. However, the same was adjourned on account of the Respondent's failure to settle the Hon. Arbitrators' preliminary fees. Upon subsequent payment, the matter was then set for hearing on 9th February, 2022. On the dates aforementioned, the matter was heard and the Hon. Arbitrator gave directions on filing of submissions.

1549. The Corporation through its Advocates on record, the firm of HHM Advocates have since filed submissions with the Respondent's having corresponding leave to file their submissions. The Corporation has also been given leave to file its arguments on points of law by 18th March, 2022 on points raised by the Respondents. After parties comply, the Hon. Arbitrator will then issue a date for the Award. The Corporation had thus far made payment of KSh. 196, 200.00 towards the Hon. Arbitrator's interim fees.

Committee Observation

1550. **This is a repeat paragraph from the previous financial year (FY 2017/2018).**

Procurement of Distribution Transformers FY 2018/2019

1551. As previously reported, the Authority procured 200 transformers at a cost of USD505, 966 (KSh.54, 428,328) from a Tanzanian Company through the direct method of procurement. Management explained that the procurement was urgent, outside its work plan and unforeseen. It was therefore, in line with Section 103(2) (b) of the Public Procurement and Asset Disposal Act, 2015 which provides for direct procurement when there is an urgent need for the goods, works or services, and engaging in tending proceedings or any other method of procurement would be impractical. However, the direct procurement of the transformers was not an emergency in nature but arose from inadequate planning on the part of Management.

1552. In the circumstances the competitiveness of the procurement and value for money on the expenditure on the transformers was doubtful.

Management Response

1553. The Corporation procured 200 transformers from Tanelec Limited through direct procurement as stated.

1554. On 19th December 2016, the Authority was directed to ensure that all Primary Schools were connected to Electricity by 4th January 2017 **(**Board minutes referring to the directive) The directive was issued in a meeting chaired by the Cabinet Secretary for Energy and Petroleum and attended by the Board of Directors and Management. On the same date the Authority's Board of Directors and Management held a meeting in its offices at Kawi House. As mentioned earlier) where an ad hoc committee was constituted to strategize on how best to meet the target. On 9th January 2017, the committee reported to the board on its findings on several strategies to comply and meet the deadline issued by the ministry. (minutes of the meeting held on 9th January 2017**).**

1555. The demanded completion of projects in progress was to facilitate the rollout of digital literacy program for class one pupils in primary schools across the country. It was reported that the program had stalled as several primary schools were yet to be connected to electricity. The Authority had been tasked with the responsibility for connecting the primary schools to electricity and were in the process of doing so with most of the projects being work in progress, and majority awaiting installation of transformers and commissioning.

1556. At the birth of the digital literacy program, the Ministry of Education had estimated the number of primary schools at 18,000No. The actual numbers were however more than 20,000No thereby causing a distortion in the Authority's planning process thereby leaving several projects without transformers over a period of time occasioning the demand/directive to complete the projects.

1557. At the time of receiving the directive to complete and commission the projects by 4th of January 2017, the Authority had already awarded two contracts for supply of Transformers to two foreign companies M/S Sanbian SCI-Tech Limited of China and LTL Transformers PVT of Sri Lanka. **(**evidence on Local Purchase Orders issued to the awarded companies**)**

1558. The transformers from China and Sri Lanka have a lead time of between 6 and 9 months due to complex pre-shipment verification of conformity, shipping time and port clearance. The expected dates of delivery for the above ordered transformers would then be in October 2017 long past the deadline.

1559. By the time the Authority was directed by the Ministry of Energy on 19th December, 2016, to complete the projects, the two suppliers above had made no deliveries. Further engagements with them revealed that the transformers were under manufacturing and partial deliveries would be made as from May, 2017. If the Authority relied on deliveries from the two suppliers, it would never have met or come close to meeting the targets as set by the Ministry of Energy.

1560. Consequently, the management was directed by the Board to review all available options to identify a supplier who could deliver transformers within the shortest time possible. The local companies only repaired transformers and not manufacture. The Authority visited Tanelec Limited in Tanzania and found out that the company had all the materials needed to manufacture the Transformers. The company only required a month to do assembly, testing and supply as enumerated in their attached letter. **(**letter from Tanalec dated 3rd January 2017**)**

1561. It is at this point that a decision was made to purchase the Transformers from Tanelec Limited through direct procurement. The Authority relied on section 103 (2) (b) of the PPADA, 2015.

1562. The above section provides for the use of direct procurement in the acquisition of goods or works by a public entity if the purpose is not to avoid competition.

1563. Section 103(2) further enumerates the circumstances under which direct procurement may be used which includes, inter alia - section 103 (2) (b) “due to war, invasion, disorder, natural disaster or there is an urgent need for the goods, works or services, and engaging in tendering proceedings or any other method of procurement would therefore be impractical, provided that the circumstances giving rise to the urgency were neither foreseeable by the procuring entity nor the result of dilatory conduct on its part; We believe the circumstances the Authority found itself as explained hereunder qualified as an urgent need.

1564. **Section 3 of the PPADA, 2015 defines an urgent need as follows:** "urgent need" means the need for goods, works or services in circumstances where there is an imminent or actual threat to public health, welfare, safety, or of damage to property, such that engaging in tendering proceedings or other procurement methods would not be practicable.

1565. At the time of issuance of the directive to complete the projects by 4th January 2017, there were several projects that had been completed but awaiting installation and commissioning of transformers. The uncompleted projects had stalled the rollout of the digital literacy program to the class one pupils who had legitimate expectation from the government to implement the same. This coupled with the delay in connecting the other Kenyans around the schools were circumstances that represented an imminent or actual threat to public welfare. (The welfare of school going children and neighboring settlements) The roll out of the government digital literacy program was aimed at improving the welfare of all primary school going children. Further, the rural electrification program is supposed to improve the socio-economic welfare of Kenyans.

1566. In light of the foregoing, the Authority awarded a contract for supply of 200 Pieces of 25kva 33kv Transformer to Tanelec Limited and an LPO for the same was issued on 17th January, 2017. The 25kva 33kv transformer were the most critical at the time and were required to complete projects that did not have transformers. All the procedures for direct procurement were followed including negotiations with the manufacturer to ensure that the Authority received value for money. **(Negotiation minutes within the professional Opinion)**

1567. During the last appearance before Public Investment Committee (PIC) on this matter on 13th October 2020, the following additional information was requested.

Response to additional information sought:

1568. REREC relied on section 103 (2) (b) of the Public Procurement and Asset Act, 2015 to justify the direct procurement of transformers.

1569. The Cabinet Secretary for Energy and Petroleum, in a project status review meeting, held on 19th December 2016 at the Ministry boardroom, and attended by REREC's Board of Directors and Management directed the Corporation to ensure that all projects under construction were completed and commissioned by 4th January 2017 to facilitate the rollout of the digital literacy program in primary schools.

1570. The Board of Directors, thereafter, convened a special Board of Directors meeting at REREC offices situated at KAWI house, where it constituted a six-member ad hoc committee of the Board to oversee the achievement of the 4th January 2017 target set by the Cabinet Secretary.

1571. The Cabinet Secretary therefore neither attended nor chaired the Corporation's special Board meeting which was held on the same day after the conclusion of the meeting called by the Cabinet Secretary.

1572. As at the ad hoc committee's meetings, transformers were identified as the major hindrance to the achievement of the set deadline. It was established that the Corporation would require at least 1000 transformers to commission all the projects. Consequently, the committee resolved that Management pursue several options to avail the much-needed transformers including sourcing transformers from Tanzania.

1573. Whereas the Corporation was aware of the planned but delayed rollout of the digital literacy program in primary school, it had planned to complete the remaining projects by end June 2017. To this end, it had planned for the required 1,500 transformers and procured the same through the open tendering process. The requirement to complete the projects by 4th January 2017 was therefore completely unforeseen on the part of the Corporation.

1574. However, rather than procure the entire quantity, which was urgently required to complete the jobs, the Corporation exercised prudence and settled only for 200No of the critical 25kVA, 33/0.250KV transformers and opted to acquire the rest of the quantity by repairing damaged ones.

1575. Tanalec Tanzania was chosen because they were the only known manufacturer of Transformers in East and Central Africa. Since the transformer manufacturing requires a series of inspections, tests and approvals, these could be done conveniently and on time without lengthy travelling challenges and restrictions as they are located in Arusha, a driving distance from Nairobi. The Corporation stationed its engineers there to monitor the progress of manufacturing of the transformers and to deal with any technical issues that would require approval from time to time.

1576. The transformers were purchased from Tanalec at a price of **US$2,519.83** which was comparable to the corporation and Kenya Power prices for transformers. Sanbian Sci-Tech, LTL Transformers PVT and Muskaan Power Infrastructure had been awarded the tender to supply similar transformers through and open tender at **US$ 2,491.68**, **US$2,335.68** and **US$ 2,160** respectively. Muskaan Power Infrastructure's award was cancelled following an unsuccessful Factory Acceptance Tests. The fourth competitive supplier, Jiangsu Zhongtian Technology Co. Ltd from China had quoted **US$2,540.00**

1577. The budget for the procurement of the 200No transformers from Tanalec was reallocated by the Board in their meeting of 9th January 2017. (Minute No. **SMB/34/323/17)**

1578. Section 84 of the Public Procurement and Asset Disposals Act, 2015 mandates the head of procurement unit to issue a professional opinion on the procurement or asset disposal process. The AG was therefore not required to give an opinion.

1579. All the transformers ordered from Tanalec, Sanbian and LTL were delivered as summarized. As mentioned, Muskaan Power Infrastructure's award was cancelled for failure to meet quality and technical requirements following a factory visit by REREC engineers.

1580. The supply contracts for Sanbian SCI-Tech and LTL Transformers PVT were left to run their full course. The Corporation saw no need to renegotiate these contracts since the award to Muskaan Power Infrastructure for manufacture and delivery of 210No 25kVA, 33/0.250KV transformers had been cancelled.

Committee Observation

1581. **This is a repeat paragraph from the previous financial years which the Committee had already considered.**

Enterprise Resource Planning Overhaul FY 2018/2019

1582. Audit revealed that Management had initiated plans to overhaul the Corporation's Enterprise Resource Planning (ERP) system at a budgeted cost of KSh. 200,000,000. However, the system whose overhaul was underway had not been put into optimal utilization with some of the modules yet to be activated. The system, for instance, had a comprehensive Human Resources module, yet the Corporation's payroll was processed manually. According to Management, the related mainstream vendor support for the system will lapse in December, 2025.

1583. In the circumstances, the planned overhaul of the system, at a cost of KSh. 200,000,000 and four years before the lapse of vendor support, may not be justified.

Management Response

1584. At the time of audit, the Enterprise Resource Planning (ERP) for the Corporation had four disintegrated modules (Finance and Controlling (FICO), Human Capital Management (HCM), Project System (PS) and Material Management (MM). The modules were working as standalones and at the time of this assessment, the use and utilization of the system was 7%. The expanded mandate was also not factored in the initial implementation of the ERP.

1585. The current version of SAP installed at REREC; SAP ERP ECC 6.0 comes to end of mainstream support at the end of 2025. To this end REREC had already incorporated the upgrade of the current SAP system to SAP HANA in its strategic plan for 2016/17 – 2020/21 (**Strategic Plan 2016/2017 – 2010/2021 Extract).**

1586. On 15th May 2017 REREC requested SAP East Africa for a comprehensive audit of the use and utilization of the system **(REREC's letter to SAP East Africa**). SAP East Africa responded on 25th May 2017 and accepted to carry out the exercise. **Letter from SAP East Africa supports this assertion**. The audit was carried out and a detailed report submitted to the Corporation which cited that the entire scope of processes at REREC was not being executed in the system and this was leading to operational inefficiencies. **(Audit Report from SAP East Africa).**

1587. The report was presented to the board and a recommendation to do an overhaul was arrived. **Minutes of special board meeting of 30th June 2017 supports this assertion.** The overhaul was to be done at an estimated cost of Ksh. 600 million which Ksh. 400 million was budgeted for in FY 2017/2018 and KSh 200 Million was factored on FY 2018/2019 budget (Board Minutes approving Overhaul budget supports this assertion). The analysis of cost was provided.

1588. The costs for the overhaul were to cover for procurement of hardware, procurement of licenses (both SAP and non-SAP), training of users at REREC.

1589. The 4 modules (FICO, HCM, PS and MM) deployed on the current SAP system were based on the requirements gathered at REREC's (then REA) inception in 2009. The overhaul being done will expand the scope of automation to cover end to end processes, REREC's expanded mandate and integration to satellite systems which currently doesn't exist e.g integration to bank, integration to GIS system.

1590. The payroll was prepared and processed within the system, what was lacking was an integration between the ERP system and the bank which would allow the payroll to be posted directly to employees account from the ERP. This was part of the integration being addressed by the overhaul**.**

1591. However, the project was on course and super user trainings are going on with a Go-Live expected in June 2022.

<u>Committee Observations</u>

1592. **The Committee made the following observations:**

(i) **Justifying covid -19 pandemic for delay could not be sustained as the first case of covid -19 was reported in Kenya in March 2020 way after the much of the delay had occurred.**

(ii) **Further, as at 17th March 2022, the implementation status of the project was at 85% but only paid 20% of the cost (KSh 120, 000,000 already paid).**

Committee Recommendation

1593. **The accounting officer for REREC should always ensure timely implementation of projects to avoid costly variations.**

Lack of Fixed Assets Register FY 2019/2020

1594. As disclosed in Note 32 to the financial statements, the statement of the financial position reflects non-current assets with a net book value of KSh. 89,482,218,000. However, a fixed assets register was not provided to support the assets. Whereas Management indicated that the register was available in the Systems Applications and Products in Data Processing (SAP) System, the same was not generated as closure procedures has not been completed.

1595. In the circumstances, the accuracy and completeness of the non-current assets valued at KSh. 89,482,218,000 reflected in the statement of financial position as at 30 June, 2020 could not be confirmed.

Management Response

1596. The Corporation's asset register existed in the system. As mentioned earlier, the register could not be generated before the audit due to in adequacies' being addressed by the system overhaul. The system closure had not been done awaiting audit adjustments to be posted. After the audit adjustments the register was generated and is provided in soft copy due to the size of the report.

Committee Observations

1597. **The Committee made the following observations**

(i) **The explanation offered was satisfactory as the query arose due failure to submit information for audit.**

(ii) This matter should have been addressed during the management letter and the exit meetings.

Committee Recommendations

1598. **The query was resolved**

Unrecovered Duty Paid on Behalf of a Vendor FY 2019/2020

1599. As previously reported, the corporation paid import duty amounting to KSh. 31,894,000 to Kenya Revenue Authority (KRA) in 2015 on behalf of a vendor According to Management, the payment was intended to pre-empt a KRA agency notice on the Corporation's bank account. Although Management has made full provision for the amount in the financial statements and continues to pursue the matter in Court, the matter has not been concluded.

Management Response

1600. The Corporation filed a civil suit against Apar Industries for recovery of the said amounts vide **Rural Electrification and Renewable Energy Corporation vs. Apar Industries, Nairobi (Milimani) HCCC No. 153 of 2019**. However, Apar Industries made an application to refer the matter to arbitration. On 4th June, 2021, the court rendered itself referring the matter to arbitration (**a copy of the Ruling dated 4th June, 2021).** Parties quickly agreed on the choice of arbitrator - Hon. Samuel Mbiriri, who then set a meeting to hear and handle preliminary matters on 5th October, 2021. The meeting then set the matter down for hearing on 9th, 10th and 15th December, 2021.

1601. However, the same was adjourned on account of the Respondent's failure to settle the Hon. Arbitrators' preliminary fees. Upon subsequent payment, the matter was then set for hearing on 9th February 2022. On the dates aforementioned, the matter was heard and the Hon. Arbitrator gave directions on filing of submissions.

1602. The Corporation through its Advocates on record, the firm of HHM Advocates have since filed submissions with the Respondent's having corresponding leave to file their submissions. The Corporation has also been given leave to file its rebuttals on points of law by 18th March, 2022 on points raised by the Respondents. After parties comply, the Hon.

Arbitrator will then issue a date for the Award. The Corporation has thus far made payment of KSh. 196, 200.00 towards the Hon. Arbitrator's interim fees.

Committee Observation

1603. **This is a repeat paragraph. apply here.**

Unresolved Prior Year Matters FY 2019/2020

1604. In the audit report of the previous year, several issues were raised. However, the Management has not resolved the issues or given any explanation for failure to adhere to the provisions of the Public Sector Accounting Standards Board templates and The National Treasury and Planning Circular reference No. AG4/16/3 Vol. 1(9) dated 24 June, 2020.

Management Response

1605. These were matters under consideration by the Public Investment Committee and are included in this report.

Committee Observations

1606. **The Committee will make recommendations on each query on the previous financial years that had not been dispensed with.**

Committee Recommendations

1607. **The management of REREC should comply with the International Public Sector Accounting Standards and reporting circulars on preparation and submission of documents for audit.**

Long outstanding receivable FY 2019/2020

1608. Note 28A to the financial statements reflected other receivables – sale of power amounting to KSh. 760,606,000. The amount was due from Kenya Power and Lighting Company Plc under a power purchase agreement with the Corporation. However, the amount had been outstanding for long periods exceeding 360 days. Further, there was no debt management policy in place at the Corporation to guide recovery of overdue debts.

1609. In the circumstance, it was not possible to confirm existence of effective internal controls on management of debts.

Management Response

1610. As at 30th June 2020, the Corporations management had not received KSh 760,606,000 being sale of power to Kenya Power and Lighting Ltd. A demand was sent to the Company and subsequently, the KSh 760 million had been paid.

1611. The Corporation was in the process of formulating a debt management policy. Engagements were ongoing and by end of the current financial year 2021/2022, there will be a policy in place.

Committee Observations

1612. **The Committee made the following observations:**

(i) Management was negligent for not putting in place a debt recovery policy to an extent that the amount due had been outstanding for more than a year. Currently, KPLC owes REREC KSh 560 million arising from the generated energy from Garisa Power plant indicating that the trend continues and that there is a possibility that the KPLC may fail to pay if interventions are not put in place.

(ii) The Committee noted with concern that REREC took a loan of KSh 13.5 billion to construct the Garisa Power plant whose life span is 25 years but can only generated revenue of a maximum of KSh 500 million and that the repayment period was to be 15 years. It therefore means that by the end of 15 years, REREC would have paid only KSh 7 billion meaning it will not be able to repay the loan – a fact management indicated to the Committee it has communicated to the mother ministry.

Committee Recommendations

1613. **The Committee recommends that:**

(i) The accounting officer for the KPLC should make timely repayment to REREC.

(ii) The EACC should investigate the conceptualization and implementation of Garisa Power Plant to ascertain whether there was value for money and prefer charges, if possible, against persons that may be found culpable.

2.19 WATER SECTOR TRUST FUND (FY 2004/2006 TO FY 2018/2019)

EXAMINATION OF THE REPORT OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF THE WATER SECTOR TRUST FUND FOR THE FINANCIAL YEARS 2004/2006 TO FINANCIAL YEAR 2018/2019

Mr. Ismail Fahmy M. Shaiye, the Chief Executive officer of the Water Sector Trust Fund accompanied by Mr. Korir (Head, Internal Audit), and Mr. Samuel Gitahu (Chief Manager, Finance) appeared before the Committee to adduce evidence on the audited accounts of Fund for the financial year 2004/05 to financial year 2018/19.

Presentations and disclosures in financial statements (FY 2004/05)

1614. The Committee heard that the Financial Statements had not been prepared and presented according to the requirements of International Financial Reporting Standards and International Accounting Standards as significant accounting policies such as government grants recognition as well as revenue reserves had not been disclosed. Further, there were no notes on donor funds received from SIDA and DANIDA for KSh 60m and 151.8m respectively and the nature and purpose for these funds had not been disclosed.

1615. Consequently, the financial statements did not provide reliable, clear and understandable information.

Management Response

1616. Management concurred with the audit observations. However, the recommendations were implemented in the subsequent years. Water Trust Fund had adopted the IPSAS in the preparation of its financial statements and notes on donor funds received were adequately disclosed.

Committee Recommendation

1617. **The query was adequately addressed and therefore resolved.**

FINANCIAL YEAR 2005/2006

1618. The OAG issued unqualified report.

Manguva Community Water and Sanitation Project (FY 2006/2007)

1619. The Committee heard that on 1st August 2005, the Fund signed a funding agreement with an international water and sanitation Non-Governmental Organisation as the implementing agency to finance a water project situated in Mwingi District which fell within Tana Water Services Board area of jurisdiction. The implementing agency was to undertake and supervise the physical works for the dam construction from 23rd March to 23 September 2006. Records held by the Fund indicated that the project was expected to cost KSh 28,905,520 out of which KSh 27,327,520 was to be financed by the Fund and the balance of KSh 1,578,000 by the local community. As at 30th June 2007, a total of KSh 19,585,543 had been disbursed by the Fund as part of the financing cost.

1620. However, a site visit to the project on 10th October 2007 established that the dam did not physically exist despite the Fund having disbursed KSh 19,585,843 towards the project. It was explained that the dam was, on 11th November 2006, washed away by heavy rains due to the poor workmanship.

1621. A dam expert commissioned to determine the cause of dam failure recommended that the dam be redesigned and reconstructed and be supervised by licenced experienced dam contractors and designers. The Fund thereafter terminated the funding agreement and demanded a refund of KSh 9,163,479 which had not been utilized in the project. The implementing agency had not refunded the unaccounted funds amounting to KSh 9,163,479 and the matter had been referred to a lawyer for necessary action. In the circumstances, it was not possible to confirm that the fund obtained value for its money in this project.

Management Response

1622. Water Sector Trust Fund (WSTF) terminated the Funding Agreement with NETWAS upon realization that NETWAS had no capacity to reconstruct the dam. At the time of terminating the contract, WSTF demanded a refund of KSh.9,163,479 from NETWAS being the amount considered unutilized at the time of termination. Since termination a Demand Notice was made by WSTF lawyer on 17th June, 2009. The matter was referred for legal process.

1623. After consultations, with the Board of WSTF entered into agreement with NWCPC to re-design the dam and at the same time carry out some preliminary works that could enable the community to accrue some initial benefits while awaiting the re-construction of the dam. The Funding Agreement between WSTF and NWCPC was for KSh. 4,685,000 and was to run up to 15th March, 2008.

1624. NWCPC failed to submit a proper dam design to the WSTF to facilitate its reconstruction. The contract between WSTF and NWCPC was terminated and a demand letter for a refund of KSh. 3,010,305.00 written to NWCPC. It was later agreed that the NWCPC implement a water and sanitation project worth the amount being demanded.

Committee Observations

1625. **The Committee made the following observations:**

(i) It appears that there was no M&E done on the project. The CEO at that time was Eng. Japheth Mutai.

(ii) The WSTF had stopped working with NGOs and CBOs since 2014 to ensure accountability.

(iii) The NGO had been deregistered and therefore the court case could not proceed. It appears that the WSTF did not do due diligence before funding. Secondly, the WSTF should have followed the specific individuals and sued them rather than rely on deregistration.

Committee Recommendation

1626. **The Committee recommends that:**

(i) The accounting officer for the WSTF should sue the individual board members of the NGO that failed to perform the contract to make good of the lost money.

2007/2008 THROUGH TO 2012/2013

1627. The reports were unqualified

Other matter: Questioned costs FY 2013/2014

1628. During the year under review, there were questioned costs from past audits amounting to KSh 43,865,465 which had not been cleared. Though the management had disclosed these costs as contingent liabilities in the financial statements, it was not clear whether these would eventually crystallize.

Management Response

1629. The questioned costs were raised at the implementing partners' level due to various reasons such as lack of supporting documents, irregular procurement procedures, failure to account for funds, late completion of project activities, over expenditures on budget lines and use of funds for unbudgeted activities.

1630. The following were the measures which WSTF put in place to ensure that the funds released to Community Based Organizations (CBOs) and other IPs were properly utilized:

- **Follow up of documents and closure of questioned costs by the Board of Trustees;** upon release of the audit report, management has been following up documents to support expenditure and had the Board close the questioned costs.
- **County Engagement Strategy:** WSTF Board has approved a County Engagement strategy document that would enhance engagement of the Fund with various counties.
- **Risk Management Policy and Framework;** The Fund had implemented robust risk management policy and Framework which would enhance risk management in the project implementation cycle.
- **Governance Assessment Tool for water service providers;** with the support of Government of Netherlands, the Fund has developed a Governance Assessment Tool that would facilitate a detailed assessment of the governance structure and performance of water utilities in Kenya.
- **Project Implementation Manual**: the purpose of the Project Implementation Manual (PIM) was to provide detailed guidance for Implementing Partners (IP) of the approved projects within the WSTF funding cycle. The manual gives a road map from the procurement stage to project closure while considering critical obligations and responsibilities of different project stakeholders as part of financial contract management.

- **Corruption Baseline survey conducted by Kenya Institute of Public Policy and Research Analysis (KIPPRA**); recommendations made in the corruption baseline survey were under implementation.
- **Enhanced Monitoring and Evaluation;** Resources had been availed to enhanced monitoring and evaluation of funded projects.
- **Copies of all financial transaction**. A circular to all Implementing Partners (IPs) had been issued to submit copies of all financial transactions to WSTF on regular basis for reviews and filing. This will manage risks of missing document during audit at IP level.
- **Implementation of Grant Management System**; Board had approved the implementation of GMS which would enable implementing partners to provide soft copies of all documents.
- **Recruitment of County Resident Monitors, Resident Engineers and procurement experts**; these staff members were based in various counties and they assist the Implementing Partners in all aspects of project implementation.
- **Training of Implementing Partners**; regular training of implementing partners will enable the partners to implement projects efficiently.
- **Systems Integrated Project (SIP);** was under implementation and would integrate all programmes and enhanced visibility and decision making.
- **Project audit and monitoring checklist**. Development and Implementation of project monitoring checklists would ensure sufficient coverage of project transactions during monitoring and internal audit.
- **Procurement of Consultant to advice on Tax issues**; in various external audit reports, payment of taxes by implementing partners had been questioned as ineligible expenditures. Tax expert would assist in resolution of challenge by liaising with various stakeholders.
- **Technical Audits (External and Internal Audits);** where documents were not available, technical auditors would be able to assess the value of implemented projects

- **Governance and Legal Audit of the Fund;** this had been done and the recommendations made would be implemented

- **Information System and Communication (ICT) Policy**; This had been approved by the Board

- **Reporting to Ethics and Anti-Corruption Commission.** In situations of suspected cases of corruption, the matters were normally reported to the EACC for further investigation.

Committee Observations

1631. **The Committee made the following observations:**

(i) This query recurs in the subsequent financial years.

(ii) Supporting documents were provided to the Committee (break down of the vouchers) thereby addressing this query.

(iii)It must however be noted that the management had failed to provide documents for audit verification within the statutory timelines and therefore in breach of the Public Audit Act 2015.

Committee Recommendation

1632. **The accounting officer of the Fund should always adhere to statutory timelines on submission of documents for audit failure to which the sanctions provided for under both the Public Audit Act of 2015 and the Public Finance Management Act ensue.**

Segregation of duties FY 2014/2015

1633. In the year under review, segregation of duties had not been properly defined and enforced within the payroll management process. The situation was likely to cause inappropriate changes to the payroll master data which may be used to process unauthorized or fraudulent transactions. Data integrity was therefore likely to be compromised.

Management Response

1634. The matter was resolved with duties being clearly defined in the updated finance manual and human resources being allocated to address the issue of inadequate staff numbers.

Committee Observation and Recommendation

1635. **This matter was adequately addressed and therefore resolved.**

Outstanding ex-staff debtors FY 2015/2016

1636. Included in the receivables from non-exchange transactions balance of KSh. 572,000,817 as at 30 June 2016 was an amount of KSh. 1,776,342 being staff receivables of which ex-staff owe the Fund un-surrendered imprest of KSh. 329,169. The recoverability of the balance was remote and management had not explained how the ex-staff were cleared before surrendering the said imprest.

Management Response

1637. As shown under Note 14 to the audited Financial Statements, the KSh. 572,000,817 comprised mainly of advances made to projects not yet accounted for as at the end of the year (30 June 2016), prepayments and staff receivables (from imprests) which had been netted off with provision for doubtful debts of KSh. 14,051,823. From the outstanding balance of KSh. 572,000,817, KSh. 520,218,458 was aged between zero and nine months as at 30 June 2016 meaning it was still current. Total staff imprests/receivables included in the balance above at the end of the year were KSh. 1,776,342 and we made a provision for doubtful debts of KSh. 329,169.

1638. To put this into context, the KSh. 329,169 outstanding staff debtors consisted of funds owed by Officers who either died in the course of duty and therefore could not clear from duty and officers who left the fund without following the due clearance procedures. WSTF wrote to the National Treasury regarding the same matter requesting for approval to write off the amount. The staff receivables amounting to KSh 1,776,342 had subsequently been fully surrendered.

Committee Observation

1639. **This matter relates to the imprests that had not been accounted for at the end of the financial as officers were either in the field and not surrendered or officers that left the service due to natural attrition.**

Committee Recommendation

1640. **The accounting officer for the WSTF should make a provision to write off the remaining imprest of kahs 329,169 that has not been accounted for.**

Long outstanding advances FY 2015/2016

1641. Included in the receivables from non-exchange transaction balance of KSh. 572,000,817 as at 30 June 2016 were long outstanding advances to the project implementing agencies amounting to KSh. 13,682,100. The amount comprised of advances to projects which have since come to an end. The recoverability of the outstanding amount was doubtful. In the circumstances, the recoverability of the receivables from non-exchange transaction balance of KSh. 572,000,817 as at 30 June 2016 could not be ascertained.

Management Response

1642. As explained in (i) above, the KSh. 572,000,817 was recoverable. Though some project advances of KSh. 13, 682,100 were doubtful, this amount had been fully provided for (included in the provisions of KSh. 14, 051,823 as per note 14 of financial statements). The receivables relating to project advances amounting to KSh. 572,000,817 had subsequently been accounted for.

Committee Observation and Recommendation

1643. **Though management had provided for doubtful doubts, it should not write them off until all recovery options have failed.**

Non-current assets FY 2015/2016

1644. The non-current assets balance stood at KSh. 42,537,913 as at 30 June 2016. However, the Fund did not maintain an up-to-date fixed assets register as at 30 June 2016. Further, the audit revealed cases of assets disposed-off several years ago still being reflected in the assets register, some assets without code numbers in the system and some assets were not tagged.

1645. Additionally, assets worth Ksh 59,891,611 as at 30 June 2016 were fully depreciated and were therefore not depreciated during the year contrary to IPSAS. Management had not put in place a policy to guide on how to deal with such assets in terms of either revaluing them or disposing them. In addition, though notes to the financial statements stated that intangible assets were amortized on a straight-line basis, the fund did not amortize its intangible assets on that basis, since it would have resulted to KSh. 4,062,976 instead of KSh. 2,928,926 currently used.

1646. In view of the forgoing, it was not possible to ascertain the correctness and completeness of the non-current assets balance of KSh. 42,537,913 as at 30 June 2016.

Management Response

1647. The carrying value/ net book value of non-current (fixed) assets of KSh. 42,537,913 as at 30 June 2016 was the total cost of assets less the accumulated depreciation as at 30 June 2016. The balance of non-current assets was an amount that was carried forward from the previous year, which had been fully audited. The assets with a cost of KSh. 59,891,611 were fully depreciated as at the beginning (i.e., 1 July 2015) of the year ended 30 June 2016**.**

1648. Of the total cost of KSh. 20,314,879 relating to intangible assets (as per note 12 of the financial statements), KSh. 5,362,508 related to cost of software that was fully depreciated at the beginning of the financial year 2015/2016 i.e., 1 July 2015.

1649. The Fund maintained a fixed asset register that was updated with additions on a quarterly basis. WSTF policy was to use the historical cost model to recognize assets and for full disclosure of fully depreciated assets. Finance Policy had also been reviewed to take into consideration the auditor's observation.

1650. An asset depreciation schedule was run on SAP system on an annual basis with the depreciation rates used being in accordance with the Finance Policy.

Committee Recommendation

1651. **The accounting officer for the WSTF should always adhere to the IPSAS in reporting of its assets**

Cash and cash equivalents FY 2015/2016

1652. Included in the cash and cash equivalents balance of KSh. 736,802,229 as at 30 June 2016 was the cash book balance of KSh. 2,213,520 for the dormant National Bank recurrent account. However, management did not prepare bank reconciliation statement for the bank account during the period. Further, management had not explained why it retained KSh. 2,213,520 in a dormant account for over three (3) years without earning interest. Consequently, it was not possible to ascertain the accuracy and completeness of cash and cash equivalents balances of KSh. 736,802,229 as at 30 June 2016.

Management Response

1653. The amount related to the cash book balances for each of the bank accounts held by the Fund. Reconciliations for each of the 17 (Note 15 of the financial statements) bank account as at 30 June 2016 which reconciled the cash book balance to the bank balance was prepared and provided to auditors for review. The WSTF obtained direct bank confirmations from each of our bankers for all accounts held by the Fund (including the dormant account). There were, however, no payments made out of this particular dormant account during the year under review.

Committee Observations

1654. **The Committee made the following observations:**

(i) Though reconciliations were later availed, it was not clear why this was not explained during the audit process.

(ii) Further, it was not clear why the fund held funds in a dormant account that did not earn interest.

Committee Recommendation

1655. **The accounting officer for the WSTF should ensure that all the Fund's accounts are reconciled, information requested for audit provided within the statutory timelines and hold its funds in an account that is not dormant.**

Delay in the transfer of GOK counterpart funds to respective investment accounts FY 2015/2016

1656. The project expenditure is funded by both the development partners and GOK counterpart funds as per the funding agreements. However, management transferred KSh. 406,750,000 of the budgeted Government funds for the year after the year end contrary to the funding agreement. This impacts negatively on the implementation of Urban Project Investments.

Management Response

1657. The counterpart funds were transferred to respective project accounts after the year-end since the funds were received from the Government after year end i.e., 2nd July 2016.

Committee Observation

1658. **Failure by the National Treasury to release exchequer in time was responsible for this query.**

Committee Recommendation

1659. **The Cabinet Secretary for the National Treasury should ensure timely release of exchequer to avoid delay in project implementation**

Questionable costs 2015/2016

1660. During the year under review, there were questionable costs from current and past audits amounting KSh. 30,515,207 (2014/2015 KSh. 28,635,810) which had been cleared. Though management had disclosed these as contingent liabilities in the financial statements, it was not clear whether, or not these would eventually crystalize.

Management Response

1661. The questioned costs were raised at the implementing partners' level due to various reasons such as lack of supporting documents, irregular procurement procedures, failure to account for funds, late completion of project activities, over expenditures on budget lines and use of funds for unbudgeted activities.

1662. Follow up had been made by the Fund and a total of **KSh. 8,657,275** had been cleared by the auditors after follow-up audits. A total of **KSh 16,579,882** were reported to Ethics and Anti-corruption Commission (EACC) for further investigation.

1663. WSTF had put in place various measures to ensure that the funds released to Community Based Organizations (CBOs) and other IPs were properly utilized.

<u>Committee Observations</u>

1664. **The Committee made the following observations:**

(i) **Only KSh 8 million had been accounted for leaving a balance of KSh 20 million.**

(ii) **There was no indication as to whether the EACC had concluded investigating the matter and preferred charges against those found culpable. Investigations had taken inordinately long.**

<u>Committee Recommendation</u>

1665. **The Committee recommends that the EACC should expedite investigating the matter and make appropriate recommendations as per its mandate.**

<u>Information, Communication, Technology (ICT) policy (FY 2015/2016)</u>

1666. The Fund ICT operations were based on a 2012 ICT policy which was considered obsolete considering dynamic changes in the sector. Further, the IT controls on password settings, system audit logs, sharing of system files/ updates and monitoring of super users' activities were not functional. Lack of control increases the risk of data integrity. In addition, use of dormant accounts must be approved as well as system changes and or upgrades.

<u>Management Response</u>

1667. The ICT policy had been updated and approved by the Board of Trustees.

<u>Committee Observations</u>

1668. **It was negligent of the WSTF management to wait for a matter to be raised in the audit to take a belated action.**

<u>Committee Recommendation</u>

1669. **The Committee recommends that the WSTF should always ensure that its ICT policies and systems are current and capable of responding to immediate cyber security challenges.**

Emphasis of Matter by the Auditor General 2017/19 and 2018/19

Outstanding expenditure

1670. Note 10 to the financial statements related to project expenditure totalling KSh 16,848,188 (2017: KSh 720,600). This related to costs with outstanding queries arising from audit of project implementing organisations. According to management, the issue was being dealt with legally and administratively.

Management response

1671. Management had contacted the different implementing partners and presented the findings and was in the process of consolidating the supporting documentation for review. Once this was done, any supported expenditure would be recovered from each institution with punitive measures instituted in cases where misappropriation wass noted.

1672. The following were the measures which WSTF had put in place to ensure that the funds released to Community Based Organizations (CBOs) and other IPs are properly utilized:

1) Follow up of documents and closure of questioned costs by the Board of Trustees; upon release of the audit report, management has been following up documents to support expenditure and have the Board close the questioned costs.

2) County Engagement Strategy: WSTF Board has approved a County Engagement strategy document that will enhance engagement of the Fund with various counties.

3) Risk Management Policy and Framework; The Fund had implemented robust risk management policy and Framework which will enhance risk management in the project implementation cycle.

4) Governance Assessment Tool for water service providers; with the support of Government of Netherlands, the Fund had developed a Governance Assessment Tool that will facilitate a detailed assessment of the governance structure and performance of water utilities in Kenya.

5) Project Implementation Manual: the purpose of the Project Implementation Manual (PIM) was to provide detailed guidance for Implementing Partners (IP) of the approved projects within the WSTF funding cycle. The manual gave a road map from the procurement stage to project closure while considering critical obligations and responsibilities of different project stakeholders as part of financial contract management.

6) Corruption Baseline survey conducted by Kenya Institute of Public Policy and Research Analysis (KIPPRA); recommendations made in the corruption baseline survey were under implementation.

7) Enhanced Monitoring and Evaluation; Resources have been availed to enhanced monitoring and evaluation of funded projects.

8) Copies of all financial transaction. A circular to all Implementing Partners (IPs) has been issued to submit copies of all financial transactions to WSTF on regular basis for reviews and filing. This will manage risks of missing document during audit at IP level.

9) Implementation of Grant Management System; Board had approved the implementation of GMS which will enable implementing partners to provide soft copies of all documents.

10) Recruitment of County Resident Monitors, Resident Engineers and procurement experts; these staff members were based in various counties and they assist the Implementing Partners in all aspects of project implementation.

11) Training of Implementing Partners; regular training of implementing partners would enable the partners to implement projects efficiently.

12) Systems Integrated Project (SIP); currently under implementation and will integrate all programmes and enhanced visibility and decision making.

13) Project audit and monitoring checklist. Development and Implementation of project monitoring checklists would ensure sufficient coverage of project transactions during monitoring and internal audit.

14) Procurement of Consultant to advice on Tax issues; in various external audit reports, payment of taxes by implementing partners has been questioned as ineligible expenditures. Tax expert will assist in resolution of challenge by liaising with various stakeholders.

15) Technical Audits (External and Internal Audits); where documents were not available, technical auditors will be able to assess the value of implemented projects

16) Governance and Legal Audit of the Fund; this had been done and the recommendations made would be implemented

17) Information System and Communication (ICT) Policy; This had been approved by the Board

18) Reporting to Ethics and Anti-Corruption Commission. In situations of suspected cases of corruption, the matters are normally reported to the EACC for further investigation.

Committee Observations

1673. **The Committee made the following Observations:**

(i) This a repeat paragraph from the previous financial years.

(ii) All the measures instituted by the management have since been approved by the Board.

OTHER MATTERS OBSERVED BY THE AUDITOR GENERAL FY 2018/19

Delayed Funding and Project Implementation

1674. The statement of comparison of budget and actual amounts reflected a final budgeted total revenue of KSh 2,062,287,856 against actual received revenue of KSh 1,125,492,774 resulting in a revenue deficit of KSh 936,795,082 or 45% of the budgeted revenue. The deficit was caused mainly by delay in remitting budgeted funds by both the Development Partners and Government of Kenya.

1675. Further the Statement of Comparison of Budget and Actual amounts reflected actual project expenditure of of KSh 571,050,171 against the budgeted expenditure of KSh

1,680,717,504 resulting in an under-expenditure of KSh 1,109,667,333 or 66% of the budgeted expenditure.

1676. The delayed funding and implementation of the Fund's projects behind schedule may lead to cost overruns and non-provision of services to the intended beneficiaries.

Management Response

1677. There was delay in remitting budgeted funds by both the Development Partners and Government of Kenya. Continuous follow up was being undertaken to ensure timely receipt of funds.

Committee Observations

1678. **The Committee made the following observations:**

(i) The management and the Board of the Fund had been engaging The National Treasury for the last three years to ensure timely release of funds in funds.

(ii) Despite the apprehension from the OAG that there could be cost overlap and the project could delay, the Fund managed to complete the projects in time.

Committee Recommendations

1679. **The Cabinet Secretary for the National treasury should ensure timely release of funds meant to implement projects to avoid interest on delayed payments and delay in project implementation.**

2.20 POSTAL CORPORATION OF KENYA (FY 2012/2013 TO FY 2017/2018)

EXAMINATION OF THE REPORT OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF THE POSTAL CORPORATION OF KENYA FOR THE FINANCIAL YEARS 2012/2013 TO FINANCIAL YEAR 2017/2018

Mr. Daniel Kagwe, the Chief Executive officer of the Postal Corporation accompanied by Mr. Peter Korir (Head, Finance), Mr. Michael Masinde (Head of Procurement) and Ms. Joan Cherotich (Head of Legal) appeared before the Committee to adduce evidence on the audited accounts of Fund for the financial year 2012//13 to financial year 2018/19.

Plant, Property and Equipment FY (2013 to 2018)

1680. As previously reported, property, Plant and Equipment balance of KSh. 2,988,250,125 included sixty-three (63) properties which were not registered in the name of the Corporation. In the circumstances, it was not possible to ascertain that the balance of KSh. 2,988,250,125 as at 30th June 2012 was fairly stated.

Management Response

1681. These were properties which were vested to Postal Corporation of Kenya (PCK) without titles after the split of the Kenya Posts & Telecommunications (KPTC). The properties vested to PCK were contained in the Kenya Communication Act 1998 (No.2 of 1998), Legal notice No.156 which came to effect on 1st July, 1999.

1682. The Management had requested the Ministry of Lands to assist the Corporation in processing titles to the untitled properties. Relevant ownership documents for the untitled properties had been provided to the Ministry of Lands. The Corporation had contracted Land Surveying firms for acquisition of titles to the untitled properties. However, the exercise was being carried out in phases due to limited budgetary allocation.

1683. At the time of appearance before the Committee, surveyors were working on Chaani, Kikambala, Kagio and Kabiyet. Iten Post office plot No. 165 title had been acquired.

Committee Observations

1684. **The Committee made the following observations:**

(i) This query recurs for all the years under consideration

(ii) These properties had been valued but it was noted that there may have been undervaluation. The valuer (Wamae and Associated) was sourced competitively and did the work at Ksh. 20 million.

(iii) It was however not clear why the Postal Corporation did not use the Ministry of Lands for valuation.

Committee Recommendation

1685. **The Committee Recommends that:**

(i) The Ministry of Lands should expedite the titling of the remaining properties.

(ii) Leases to the Corporation properties should be based on current fair values.

Trade and other receivables FY 2012/13

Telkom Kenya Receivables

1686. The Committee heard that as reported in 2010/2011 trade and other receivables balance of KSh.3,165,598,010 included two debts on account of Telkom Kenya Limited which comprised KSh. 403,648,938 in respect of service debts and KSh. 36,478,729 for other debtors all totaling to KSh. 440,127,667 which had been owing since 1999. Further, debts in respect of money order interstate of KSh.95,148,847, Posta Pay of KSh. 177,742,768 and rent deposits of KSh. 184,746,066 all totalling KSh. 457,637,681 had remained uncollected over the years. However, no evidence was provided about efforts being taken to recover the debt.

Management Response

Telkom Kenya

1687. The Corporation had a Memorandum of Understanding (MOU) with Telkom Kenya regarding rendering of service to each other and settlement of accounts. A joint team was formed to fully reconcile all service relating to this account. The team reconciled and agreed on all earlier accounts up-to 2015. An inter account net off settlement was agreed and implemented.

1688. The reconciliation covered transactions done up to 2015 however the two institutions continued to trade with each other to date. As at 30.06.2020 the account was current with only a closing balance of KSh.2,069,960 payable to PCK.

Interstate Money Orders

1689. PCK had(s) a contract with Uganda, Tanzania Burundi Zimbabwe and South Africa in which they exchange (d) money transfers through a Universal Postal Union (UPU) standardized platform (International Financial System-IFS) with a clear settlement time frame. Due to PCK being a net payer in the service the outstanding amount of KSh. 60,343,230 was due from partners as at 30th June 2020 The breakdown is as follows:

- Uganda 53,749 931
- Tanzania 3,602,056
- Zimbabwe 1,140,082
- Money gram 1,851, 161
- Total 60,343,230

1690. The money transfer agreement with Uganda Post had experienced challenges of refund since 2006. The service had since then ceased. The Corporation pursued collection from Uganda by formal visits, agreed repayment schedule and involvement of Kenya High Commission in Kampala.

Rent Income of KSh. 184,746,066

1691. Rent receivable referred to amount due from various tenants for premises and spaces rent out over the country. The outstanding amount from Postbank had been consolidated with other debts due from Postbank and reconciliation between the two organizations had been agreed and due for final sign off. Telkom debt had since then been agreed, signed off and netted off. Amount of KSh.129, 441,487 was outstanding as at 30.06.2020 in this account.

Committee Observations

1692. **The Committee made the following observations:**

(i) The matter of Telkom had been resolved.

(ii) Considering that the contract with Money Gram had no clause on interest on

delayed payment, it was negligent on the part of Postal Corporation of Kenya to sign a contract that was skewed against them.

(iii)Post bank owed the corporation KSh. 64 million. The two entities have been doing reconciliation, but it was worrying that it had taken inordinately long.

Committee Recommendation

1693. **Going forward, the Postal Corporation should charge interest for the amount owed and pursue settlement of all the amount due to it.**

Foreign Administration (FY 2011/12 to 2017/2018)

1694. As reported in 2010/2011, Trade and Other Receivables balance of KSh. 3,165,598,010 as at 30th June 2012 included foreign administration and EMS receivables totalling to KSh. 869,189,075; the bulk of which had been outstanding for between five (5) and twenty two (22) years and whose provision for bad and doubtful debts was only KSh. 331,822,099.

1695. Also, the other agency debtor's balance of KSh. 123,820,641 disclosed in note 21 had insignificant movement of KSh. 14,643,042 during the year. Although management had indicated that international receivables were regulated by Universal Postal Union (UPU) and were collectable or enforceable, no evidence was provided of debts forwarded to UPU for collection or enforcement.

1696. Further the Trade and Other Receivables balance of KSh. 3,165,598,010 included under agency debtors KSh. 81,900,018 even though proceeds from the sale of land which had not been concluded as at 30th June 2012. Considering that the sale arrangement had not been concluded and the asset that was earmarked for sale was still in possession of the Corporation, no explanation was given for such accounting treatment.

Management Response

1697. As at 30th June 2016, the International Accounts and EMS had a balance of KSh. 869,189,075 cumulatively spread over many years. The figure stood at KSh. 1,272,114,698 as at 30th June 2020. An aging analysis of these debtors was done to assess their collectability and an appropriate risk of default by specific debtor country (Administration).

1698. Beside the aging criteria the Universal Postal Union (UPU) guidelines and collection mechanism was also applied in determining the provision. The UPU provisions were that a debtor country can be reported in the UPU post clear system where the debtor proceeds from other countries were utilized to pay Kenya, for instance.

1699. The management reviewed the current receivables which included Foreign Administration and EMS receivables and noted that the provision for bad debts which had been retained at KSh.331, 822,099 was not adequate. The provision was adjusted upwards to KSh.654, 880,769 in 2019/2020 financial statements

1700. **On Agency Account - KSh 123,820,641: t**he Corporation provided agency services to various Principal customers in its network and earning commission in return. While offering the services, the organizations owed each other in terms of commissions and principal amounts. As at 30th June 2020, Principal Customers owed Postal Corporation KSh. 109,177,599.

1701. During the year, the Corporation had initiated the disposal of property which had been approved by the Cabinet in year 2010 through competitive bidding for purpose of settling the of Actuarial deficit of KSh 1.547 Billion in the Posta pension scheme as per actuarial report of 2008.

1702. The full sale proceeds of Kizingo plot were however not realized as the process was cancelled due to non-payment of 90% of the bided amount within the conveyance period of 90 days. The 10% was charged to revenue while the plot was reversed to PCK asset Register in the period ending 30 June 2013.

1703. Transactions for the other plots were completed and Related properties transferred to the buyers. The Corporation also transferred Kericho, Mombasa and Ronald Ngala properties to the Pension scheme.

Property	Bid value	Amount	Balance
Kizingo	85,000,000	8,500,000	76,500,000

Mafuta	200,020	20,002	180,018
Uplands	3,000,000	300,000	2,700,000
Kinango	500,000	50,000	450,000
Subukia	2,300000	230,000	2,070,000
Total			81,900,018

Committee Observations

1704. **The Committee made the following observations:**

(i) The corporation's debt policy was that a debt that was outstanding for more than one year was provided for as bad debt.

(ii) Rent due from post bank was about a billion shillings as at the time of appearance before the Committee.

(iii) As at June 2018, total debt was over KSh. 3.4 billion (foreign debt alone was about 800 shillings). This shows that the corporation was not operating in prudent financial practices. The large debt had led to salary delays to an extent that the government had to bail them out up to a tune of KSh. 810 million and payment of statutory deductions.

(iv) The corporation owed retired staff over KSh 2 billion; one month salary to her current employees; and loans. It was however current with the payment of statutory deductions.

(v) Part of the reasons why revenue by the corporation had plummeted was the government's decision to take away the corporation's work of distribution of monies to elderly and poor. The Corporation had since appealed to the mother ministry on the same.

Committee Recommendation

1705. **The Corporation's Postmaster General should aggressively follow recovery of the receivables including instituting legal proceedings against the debtors.**

Kenya Post Office savings Bank of KSh.1,539,279,230 (FY 2011/2012 to 2017/2018)

1706. As reported in 2010/2011, Trade and Other Receivables balance of KSh. 3,165,598,010 included an amount of KSh. 1,225,114,538 being un-collected agency charges accumulated over a period of twelve (12) years on account of Kenya Post office Savings Bank. However, no confirmation of the balance had been received from the bank as at 30th June 2012. In the foregoing circumstances, it was possible to confirm that the Trade and Other Receivables balance of KSh. 3,165,598,010 as at 30th June 2012 was fairly stated.

Management Response

1707. Postal Corporation of Kenya had been offering agency services on behalf of Kenya Post Office saving Bank (KPOSB) in its network and earning commission in return. While offering the services, the two organizations owe each other in terms of commissions and principal amounts. As at 30th June 2020, Post Bank owed Postal Corporation KSh. 1,415,242,207 on the other hand PCK owed Postbank KSh. 1, 663,671,854

1708. The reconciliations had been going on accounts between the two organizations since the accounts were many and date back to many years. The reconciliation had been progressing well with the first sign off done and followed with CEOs' approval on 6th April 2017. The second sign off was ready and a meeting between the two teams had been scheduled for the final sign offs.

1709. It was expected that once this was through, net off would be applied and net amount settled. A meeting between the two teams had been scheduled for the final sign offs on 18th May 2021.

Committee Observation and Recommendation

1710. **The Committee made the following observation:**

(i) This issue had been resolved as the amount of KSh. 46 million had been agreed between the two entities.

Committee Recommendation

1711. **The accounting officer for the Postal Corporation should ensure that as it engages**

in transactions with other entities, there is concurrence of amounts of each transaction from either party.

Trade and Other Payables (FY 2011/2012

Kenya Post office savings bank

1712. As reported in 2010/201, Trade and Other Payables balance of KSh. 4,372,240,557 as at 30th June 2012 included KSh. 1,539,279,230 being outstanding debt to Kenya Post Office Saving Bank. However, neither reconciliation nor confirmation from the Bank was availed to confirm the accuracy of outstanding debt.

Management Response

1713. Response as in the above query in which an amount of KSh 46 million had been agreed on.

Posta pay payables of KSh. 92,544,872

1714. As reported in 2010/11, Trade and Other Payables balance of KSh 4,372,240,557 included an amount of KSh 92,544,072 which had been outstanding on an old account of Posta Pay for more than two years. Management was in dispute with a firm which was offering the services and an accounting firm had been appointed to carry out an investigation to determine the amount payable

Management Response

1715. The debt of KSh. 92,544,872 payables to Afri-payments Ltd represented an amount receivable from Afri-payments Ltd and KSh. 177,695,268 payables to PCK on account of Posta pay transactions. The contract between the Corporation and its Partner Afripayment Kenya Limited appeared to give overriding rights over Postal Corporation. The Board of PCK realized this and ordered an entire audit of the contract in 2007/2008 upon which the contract was terminated in year 2009. Appointment of a Forensic Auditor, Delloite and Touche was done to determine the Local and Foreign indebtedness where in their report it recommended further investigations by investigative agencies.

1716. This matter was handled by PIC, in the Twenty First Report of The Public Investments Committee the following recommendations were given:

i) The Ethics & Anti-Corruption Commission investigates the conduct of the then Postmaster General and the Members of the Tender Committee within six (6 months of the adoption of this Report with a view to prosecute and surcharge the concerned officers in accordance with the law for breaching the Public Procurement and Disposal Act, 2005 in procurement of Electronic Fund Transfer (EFT) Service in 2006.

ii) The Postmaster General should ensure that all procurement and disposal of goods/assets and services by the Corporation is undertaken under the provisions of the Public Procurement and Asset Disposal Act 2015 and its attendant Regulations and the Constitution of Kenya.

Implementation Status: (All regulations relating to procurements were being complied with)

iii) The Postmaster General should strengthen internal controls in the Corporation and ensure regular reconciliation of the Corporation's books of accounts in order to curb fraud.

Implementation Status: (ERP system had been implemented, it had strengthened internal controls beside enabling timely reconciliations for PCK accounts.)

iv) The Corporation ensures that it recovers money lost through the former employees from their terminal dues

Implementation Status: (All the concerned officers were dismissed on gross misconduct and with no benefits thus complicating the issue of recovery from terminal dues. They later took PCK to court on wrongful dismissal where they won their cases and were awarded damages that PCK Paid.

<u>Committee Observations</u>

1717. **The Committee made the following observations:**

(i) The case was lost because the Corporation's failure to follow due process of dismissal.

(ii) It was not clear why the corporation did not appeal this civil matter, but more

worrying was that criminal proceedings had not commenced.

Committee Recommendation

1718. **The Committee on implementation should follow – up implementation of the PIC's 19th report recommendations on the matter.**

Deferred Projects (FY 2011/2012)

1719. The Trade and Other Payables balance of KSh 4,372,240,557 as at 30th June 2012 also included deferred projects bills totalling KSh. 123,525,504. Although the management explained that the amount represented dues not paid on some projects that were started sometimes back but were later abandoned after it was established that the projects were not feasible, these bills had not been supported with the relevant records. In the foregoing circumstances, the accuracy of the trade and other payables balance of KSh. 4,372,240,557 as at 30th June 2012 could not be confirmed.

Management Response

1720. These liabilities on deferred projects were vested to the Corporation in 1999 through legal notice No 156. The defunct Corporation KPTC had hired the services of consultants for designing and construction of Kisumu Kericho and Malindi HPOs. This liability was an award by High Court based on a project to design and construct Kisumu, Kericho and Malindi HPOs, that was later found to have been designed and executed specifically to defraud the Corporation.

1721. HCCC case 1830 of 2001 and High court case number 1055 of 2000 were also ongoing on this matter, prudence call for the item to be maintained in the Corporation's books as a payable till the matter was fully concluded by the court.

Committee Observations

1722. **The Committee made the following observations:**

(i) **This case had taken inordinately long to conclude.**

(ii) **It was inconceivable that the management signed a contract to do works in the Malindi property which did not exist.**

Committee Recommendation

1723. **The accounting officer for the Corporation should apply for speedy conclusion of the matter and request the DPP to institute criminal proceedings.**

Board Expenses 2011/2012

1724. The State Corporations Act, Cap 446, Laws of Kenya section 10(1) allowed sitting allowance to be paid to the Chairman and members of a Board other than the Chief Executive upon attendance of the board/committee meetings. However, in the year under review, the Corporation paid a total of KSh. 420,000 as sitting allowance to non-Board members in attendance during board /committee meetings. The corporation was therefore in breach of the Law.

Management Response

1725. The Corporation obtained a clear clarification on paying of sitting allowances to members of Inspectorate of State Corporations who were attending board meetings. Since then, the corporation ceased further payments to officers from state corporation office.

Committee Observation

(i) **This matter also affects in the REREC audit reports.**

(ii) **The Current advisory from the AG is that staff from Inspectorate should not be paid sitting allowances.**

Committee Recommendation

1726. **The Attorney General should communicate his advisory to the accounting officers of state corporations for clarity and implementation.**

Property Plant and equipment (2012/12 FY)

1727. (Similar query as in 2011/2012 save for figures

Trade Receivables (FY 2012/13)

1728. Same as in the 2011/12 FY save for the figure

Foreign Administration and EMS Services FY 2012/13

1729. Same as in the 2012/13 FY save for the figures

Trade and other Receivables FY 2012/2013

1730. Same as in the 2011/12 FY save for the figures

Post pay payables FY 2012/13

1731. Same as in the 2011/12 FY save for the figures

Deferred Projects FY 2012/2013

1732. Same as in the 2011/12 FY save for change in figures

Plant property and Equipment FY 2013/14

1733. As previously reported, the Property, Plant and Equipment balance of KSh.3,157,135,829 as at 30th June 2015, included forty six (45) properties totalling to 16.3623 hectares and valued at KSh.34,440,000 which were not registered in the name of the Corporation. Although the management had contracted a firm for provision of land surveying, identification of beacons and title acquisition services for five post offices, it was not clear when such services would be carried out on the remaining forty (40) Post offices.

1734. In addition, the balance of KSh. 3,157,135,829 also excluded undetermined value of a parcel of land measuring 0.50 acres situated at Lamuria in Laikipia county and other grabbed and encroached parcels of land all totalling to 2.6465 hectares.

1735. In the circumstances, it was not possible to ascertain the ownership status of the forty five (45) properties valued at KSh. 34,440,000 and undetermined value of grabbed /encroached parcels of land and whether the property, plant, and equipment balance of KSh. 3,157,135,829 as at 30th June 2015 was fairly stated

Management Response

1736. The first part of the response on registration of properties is same as in the 2012/13 FY save for change in figures.

1737. A parcel of land measuring 0.50 acres situated at Lamuria was vested to PCK in 1999. The physical planning map of the area showed the plot which was reserved for Post office use was in Dol Dol. However, the same was vested to Telkom Kenya Ltd. The Ministry of Land and Housing confirmed through her letter of 16th March 2015 that there was no allocation of plot for PCK in Lamuria Trading centre.

Committee Observation

1738. **There should be a confirmation of the presence of the plot, ownership, size and whether there was double allocation.**

Committee Recommendation

1739. **The accounting officer of the Corporation should verify, from the legal notice, the ownership of the land. If it belongs to the Corporation, seek for its ownership documents.**

Cash and Bank Balances (FY 2013/14)

1740. The Corporation's cash and bank balance of KSh. 2,659,881,739 as at 30th June 2014 included the following reconciling items from various bank accounts as summarized below: -

- Credits in bank not in cash book **KSh.162,197.00**
- Debits in bank not in cash book KSh **4,895,388.50**
- Credits in cash book not in bank KSh **3,016,991.00**
- Debits in cash book not in bank **KSh 1,378,849.00**

1741. Also included in the cash and bank balance of KSh. 2,659,881,739 was an amount of KSh. 17,872,788 in respect to cash in transit that had been outstanding for a long period of time. Further, the cash and bank balance included stale cheques amounting to KSh. 2,198,207 which had not been reversed in the respective cash books. Arising from the foregoing, it was not possible to confirm the validity and accuracy of the cash and bank balance of KSh. 2,659,881,739 as at 30th June 2014.

Management Response

Un-reconciled balances

1742. With implementation of financial module, reconciliations had been updated to current. The Corporation cleared all outstanding amounts in these categories as per schedules and reconciliations provided.

Cash in transit 25,231,734

1743. Some of the Corporation branches were in towns which did not have banking facilities necessitating sending of hard cash from one office to another. This method of cash transfer involved some risks as the cash may be stolen along the way. As at 30th June 2014 KSh 25,231,734 sent within the corporation branch network had not reached the intended destination, However, cash amounting to KSh. 7,358,945.45 was subsequently received in July 2014 leaving out a balance of KSh. 17,872,788 that represented various frauds and thefts of cash. Most of these cases were at various stages of investigations. The Corporation maintained cash in transit insurance policy and in case of theft or frauds of the cash the Corporation was compensated for the loss.

Committee Observations

1744. **The Committee made the following observations:**

(i) Some matters were still in court while in other cases culprits had been dismissed from the service.

(ii) These cases had however taken inordinately long since they began in 2011.

Committee Recommendation

1745. **The Committee recommends that:**

(i) The Management of the Corporation should follow and recover the stolen money

(ii) The management should ensure that reconciliations are done promptly

Going Concern FY 2014/15

1746. The corporation recorded a deficit of KSh.147,308,055 (2013/2014 deficit of KSh.376,609,480) thereby reducing the accumulated reserves from KSh.571,671,891 in the year 2013/2014 to KSh. 470,830,511 as at 30th June 2015. Further, the current liabilities of KSh.4,685,866,519 exceeded the current assets of KSh. 4,236,260,001 by a negative working capital of KSh. 449,606,518 as at the same time. The financial statements of the corporation had therefore been prepared on a going concern basis on assumption of continued financial support from the government, creditors, and its bankers.

Management Response

1747. Postal Corporation of Kenya is obligated by the universal service obligation (USO) to provide affordable services to Kenyans on behalf of Government of Kenya. PCK had more than 600 outlets of which 80% do not break even but must be operated.

1748. The Corporation had experienced low revenue generation in the recent past leading to posting of deficits as observed in the finding for FY 2018/2019 and 2018/2020. The situation had been aggravated by Covid 19 effects on the Kenyan Economy. To reverse the trend the Ministry of Information Technology and Youth Affairs (MoICT) was undertaking a restructuring programme for Postal Corporation of Kenya (PCK). Currently MoICT was in the process of preparing a Cabinet memo for restructuring purpose of the Corporation.

1749. In the corporation's strategic plan of 2019/2022 whose implementation was already in place, PCK had laid out strategies to return it to profitability and improve its cash flow; this will assist in strengthening its liquidity and working capital.

Committee Observation

1750. **Management tabled a strategic paper meant to turn around the corporation for consideration. It was however not clear to the Committee whether implementation of the said paper had begun.**

Committee Recommendation

1751. **The Corporation should reduce expenses including consideration on centralization of procurement of high value items and maximize on her assets**

Posta switch FY 2014/15

1752. On 3rd May 2012, the Corporation entered into a contract with a company for Supply, Delivery, Installation and Commissioning of Financing Agency Solution at a contract cost of USD.893,800 equivalent to KSh. 76,151,760. The contract was denominated in dollar and the contract cost continued to rise due to the fluctuation of Kenya Currencies against the dollar. Although management was fully aware of the fluctuation of the contract cost, no evidence of budgetary provisions made to cater for the anticipated increase was availed for audit review. As at the time of audit the financing agency solution had not been fully in operation. The project was officially launched on 31st July 2013.

1753. It was observed that out of the various services it was supposed to offer, only agency banking module was operational. Other services include mobile money transfer, card-based transaction, e-commerce online disbursement of funds, E- payment for utility services, E-Ticketing and E- Government services were not operational. The stakeholders may not get any value for money.

1754. Further, the solution which was an intangible asset was not shown separately in line with International Accounting Standard No. 38 which required that each class of intangible asset, be disclosed, separated, the useful life, amortization rate and gross carrying amount.

Management Response

1755. On 3rd May, 2012 the Corporation entered into a contract with Ceva Limited for supply, delivery, installation and commissioning of a financial agency solution dubbed Posta Switch. Under the contract, the Posta switch implementation was to cover:

- The Agency Module

1756. Agency module involved integrating with partner banks' core banking systems and the settlement bank. The project delayed because the settlement bank (KCB) took long to integrate with the switch as they changed their core banking system in between project implementation. The solution was ready in time at PCK but it could not work without integrating with the other banks, a process that takes time. So far, the switch had integrated

KCB, NBK, COOP, Credit Bank, Berclays, DTB, and Posta Wallet Module into her system.

1757. The Posta Wallet Module and Card Management System Module had been developed and user. The project had not been completed thus completion of work certificate was still outstanding.

Committee Observations

1758. **The Committee made the following observations:**

(i) Management did not budget for the item ostensibly because the contract ended before completion of all the modules. The contract ended when the contractor failed to do all the work even after extension of time.

(ii) The contractor had been paid KSh 22 million for doing the first module. He had not performed the other part of the contract.

(iii) There was no indication from the management on the loss arising from delayed implementation of the project and whether the contractor can be surcharged. This company was however sourced in an open tender.

Committee Recommendation

1759. **The Committee recommends that the accounting officer for the Corporation should always ensure that the procurement laws are adhered.**

Trade and Other Receivables FY 2014/15

1760. This matter is similar to the previous financial years

Foreign Administration and EMS FY 2014/15

1761. This matter is similar to the previous financial years

Kenya Post Office Savings Bank FY 2014/15

1762. This matter is similar to the previous financial years

Tax Recoverable FY 2014/15

1763. Further, included in the trade and other receivables balance of KSh. 3,478,177,227 as at 30th June 2015 was an amount of KSh. 201,041,139 in respect of tax recoverable from the Kenya Revenue Authority some of which date back to 2013 and had not been recovered as at the date of this report. It was not clear and the management had not explained why they have not lodged a claim to recover the outstanding amount from KRA.

Management Response

1764. Included in the receivables was an amount of tax recoverable due from KRA. The Corporation had written to the Kenya Revenue Authority requesting for a refund of the overpaid amount where KRA had given the Corporation tax credits amounting to KSh.62,934,044. The Corporation was pursuing refund of the balance.

Committee Observations

1765. **The Committee made the following observations:**

(i) These were withholding VAT claims.

(ii) The corporation had been following up with the KRA. However, the corporation owed KRA huge amounts of money.

(iii) The corporation's intention was to net off the amount.

Committee Recommendation

1766. **The accounting officer for the corporation should engage the KRA with a view to netting off the amount owed**.

Outstanding Imprest FY 2014/15

1767. Included in the trade and other receivables of KSh 3,478,177,227 was a balance of KSh 74,900,031 in respect of outstanding staff advances and un- surrendered imprests. The balance of KSh 74,900,031 also included advances totalling KSh 4,363,340 whose supporting analysis was not available for audit review.

1768. In the circumstances, it was not possible to ascertain the full recoverability of the Trade and Other Receivable balance of KSh 3,478,177,227 and that the balance was fairly stated as at 30th June 2015.

Committee Observations

1769. **This is a case where documents were not provided for audit within the statutory timelines but have since been provided resolving the matter.**

Committee Recommendation

1770. **The accounting officer should ensure documents are submitted for audit within the stated timelines in the Public Audit Act 2015 failure to which the sanctions provided for in both the Public Audit Act 2015 and Public Finance Management Act 2012 should ensue.**

Trade and Other Receivables FY 2014/15

1771. **Same as previous financial years save for change in figures**

Intangible assets FY 2014/15

1772. The statement of financial position reflected intangible assets of KSh. 17,500,000 being payment to Rangers Football Club for marketing rights acquisition and sponsorship of Rangers Football Club. Although this amount had been recognized in line with International Accounting Standard (IAS) 38 (118 and 122) which required details for each class of intangible asset, such as, the useful life, amortization rate and gross carrying amount be disclosed, the Corporation did not disclose its useful life, the amortization rate and the gross carrying amount of the intangible assets.

1773. Further, the club was formed by PCK as a marketing tool to participate in National-wide league organized by Kenya football Federation and registered with Ministry of gender, Children and Social Development as a club by employees of Postal Corporation of Kenya. Management did not explain what it purchased as the club composed of employees of postal Corporation of Kenya. In the circumstances, it was not possible to confirm the propriety of tangible assets balance of KSh.17,500,000 as at 30th June 2015.

Management Response

1774. The club was in process of being transferred to the Corporation from Rangers Football

Ltd., thus being work in progress, it was expected to be a new intangible asset. However, the Corporation reversed the process and respective accounts were closed. The reversal was done the following year 2015/2016 and is evidenced in the 2015/2016 statement of financial position and the schedule of fixed assets.

Committee Observations

1775. **The Committee noted that the matter was pending in court.**

Committee recommendations

1776. **The Committee recommends that the accounting officer of the Corporation should apply for the speedy conclusion of the matter pending in Court.**

Cash and bank balances FY 2014/15

1777. The Corporations cash and bank balance of KSh.748,911,048 as at 30th June 2015 included the following reconciling items from various bank accounts as summarized below: -

Item	Amount KSh
Unpresented cheques	52,347,484
Direct credits not in the cash book	12,866,074
Direct debts not recorded in cash book	8,825,571

1778. In addition, and as similarly reported in 2013/2014, the cash and bank balance of KSh 748,911,048 included KSh. 17,872,788 in respect to cash in transit that had been outstanding for a long period of time. Arising from the foregoing, it was not possible to confirm the validity and accuracy of the cash and bank balance of KSh. 748,911,048 as at 30th June 2015 and the balance was fairly stated as at the same date.

Management Response

1779. With implementation of financial module in the ERP reconciliations had been updated to current. The corporation had cleared all outstanding amounts in these categories. Cash in transit totalling to KSh. 17, 872, 788 referred to fraud cases that were being pursued for conclusion through court, insurance compensation and management write off.

Committee Observations

1780. **This matter had been dealt with in the previous queries**

Unclear Procurement Procedures- Enterprise Resourcing Planning FY 2014/2015

Background

1781. The Corporation advertised for supply, Implementation and commissioning of an integrated Enterprise Resource Planning (ERP) vide tender number PCK/PRO/40/2013/2014. The contract was awarded to the lowest bidder at a contract price of USD 2,975,955 (KSh 284,709,615). It was however noted that two different contracts were signed between the Corporation and the Contractor at a cost of USD 2,975,955 (KSh 284,709,615) exclusive of VAT and another by a Consortium at USD 2,975,955 (KSh 284,709,615) inclusive of VAT. The contract was dated 2 January 2014. None of the two contracts contained a clause of cancelling the other contract. The following anomalies were also noted:

i. Both contracts contained payment clause which required the Corporation to pay 40% of the implementation cost upon the execution of the contract. The two contracts had the same contract date and the contract did not define specific deliverables and no commencement and completion dates of the project and penalties for non-delivery while details of user requirements were not availed for audit review

ii. On 30th January 2014, the Board of directors approved and authorized management to hire a consultant to oversee the implementation of the ERP project at a cost of KSh 5,000,000 which was not budgeted for.

iii. The Corporation paid the consultant in eight (8) installments of KSh 1,287,310 all totaling to KSh10,298,480 over and above the Board approved figure of KSh 5,000,000. The payment of KSh 10,298,480 could have been avoided since the Corporation has qualified ICT personnel who could oversee the project. The payment of KSh 10,298,480 was therefore done in contravention of Section 26(3)(a) of the Public Procurement and Disposal Act 2005 which states that all procurement shall be made within the approved budget of the procuring entity. Although the Corporation had paid the contractor KSh 216,043,649 as at the time of audit, no status of the progress report to indicate the level of completion of the project was availed for audit review.

iv. Disclosure: The total amount paid for the ERP software amounting to KSh 216,043,649 was shown under property, plant and equipment under work in progress contrary to International Accounting Standards No. 38 (Paragraph 118 and 122) which requires that each class of intangible asset be disclosed separately as follows:-

- The useful life,
- Amortization rate
- Gross carrying amount

1782. In the circumstances, it was not possible to confirm the propriety of expenditure totalling KSh 226,342,129 paid on the ERP project as at 30 June 2015.

Management Response

1783. The Corporation had one contract dated 2nd January 2014. An addendum to the contract was signed on 23rd May 2014. As per the provision of this contract clause 32 states that the contract supersedes any previous undertakings on the subject matter.

1784. The project plan was part of the contract on page 19 and had Roles and Responsibilities with detailed activities. Page21 of the contract shows work plan. The first Weekly consolidated project status report shows the project kick off date as 14/04/2014. In the first week of the project, the following tasks were completed: - (1) Project Kick off (2) Stakeholders Identification and Steering committee formed (3) SRS Team from each Department identified.

1785. The hiring of a consultant to oversee implementation of the ERP was approved by the Board based on experience on failed projects like ROSS that were not steered by a consultant. This expenditure was necessary thus was not avoidable. The initial budget of KSh 5 million was sourced from other votes through realignment of Procurement Plan.

1786. The project was phased and implemented over two budget periods, the amount of KSh.

124,000,000 refers to budgeted amount only for year 2014/2015 while part of the project cost had been paid for earlier.

1787. Disclosure: The ERP software is still in implementation stage thus accounted for as work in progress. in the year 2019/2020. The asset is now separately disclosed. The asset will be amortized within the PCK intangible asset Amortization rates once Project is complete.

Committee Observations

1788. **The Committee made the following observations:**

(i) The project budget did not include funds for the consultant. However, the Board reallocated the budget (KSh. 5 million) to cater for the same. The law allows reallocation of up to 10% of the budget. In the year, the corporation spent about KSh 3.588 billion

(ii) Management overshot the budget by more than 100%. However, this happened within 2 financial years.

(iii)The classification of assets was correctly done in the subsequent financial years.

Committee Recommendation

1789. **The Committee recommends that the accounting officer for the Corporation should always adhere to the laws on procurement and budget implementation.**

Prior year adjustment and Revaluation Reserve adjustment FY 2014/15

1790. Included in the statement of changes in reserves is an amount of KSh. 21,427,527 and KSh 25,039,147 being prior year adjustment and revaluation reserves adjustment respectively. It was not clear and the management has not explained why the prior year adjustment figures were not restated to the individual accounts item affected by the adjustment as required by International Accounting Standards No. 8 paragraphs (42-45) which requires that an entity must correct all material prior period errors retrospectively by restating the comparative amounts for the prior periods(s) presented in which the error occurred; or if the error occurred before the earliest prior period presented, restating the opening balances of assets, liabilities and equity for the earliest prior period presented. The Corporation was therefore in breach of the International Accounting Standard.

Management Response

Prior Year adjustment

1791. KSh. 21,427,527 the above adjustment was the net position of the following adjustments:

- Accrued EMS revenue of KSh.17,717,327.48 is proper to previous year before 2013/2014
- Accrued international accounts revenue that is proper to previous years before 2013/2014KSh 11,371,704.25
- Accrued conveyance expenditure proper to previous years KSh 7,661,504

Revaluation Reserve

1792. KSh. 25,039,149/= was the total amount of revaluation gain from properties disposed in the past but not yet written back to general reserve. This was a contra adjustment reducing revaluation reserve and increasing general reserve by the same amount. The adjustments occurred before the earliest prior period presented, the corporation had restated the equity for the earliest prior period presented as per IAS 8.

Committee Observations

1793. **These are accounting issues that had since been corrected.**

Committee Recommendation

1794. **Matter was resolved**

Mr. Dan Kagwe, the Managing Director of the Postal Corporation of Kenya accompanied by Mr. Peter Korir (General Manager, Finance), Mr. Julius Opini (General Manager, Legal Services), Mr. David Fundia (Ag. General Manager, Internal Audit), Mr. George Hinga (Manager, Finance) and Mr. Michael Masinde (Manager, Supply Chain) appeared

before the Committee to adduce evidence on the audited accounts of Corporation for the financial year 2015/16 to financial year 2017/18.

1795. The audit queries in Financial Year 2015/16 were considered in previous financial years.

CASH AND BANK BALANCES (FY 2016/17)

1796. The cash and cash balance of KSh. 297,186,443 as at 30th June, 2017 (KSh. 311,883,958 as at 30th June, 2018) could not be verified due to anomalies noted in the sample bank reconciliation statements. Five bank reconciliation statements as at 30th June, 2017 under Nairobi region reflected direct debits totalling KSh. 4,466,911, uncredited receipts totalling KSh. 3,222,687 and direct credits amounting to KSh, 348,905 whose nature and reason for non-clearance was not submitted for audit review.

1797. In the circumstances, it was not possible to confirm the accuracy, validity and completeness of the cash and bank balance of KSh. 297,186,443 as at 30th June, 2017.

Management Response

1798. With implementation of financial module in the ERP, reconciliations had been updated to current. The corporation had also cleared all outstanding amounts in this category, as per the provided schedule and the highlighted accounts' reconciliations.

Committee Observation and Recommendation

1799. **The audit query was resolved.**

TRADE AND OTHER RECEIVABLES FY 2016/17

Loss of Cash

1800. As disclosed in note 11 to the financial statements trade and other receivables balance of KSh.1, 068,589,247 included staff advance figure of KSh.72, 419,849. The figure of KSh.72, 419,849 also included an amount of KSh.26, 787,970 being cash stolen by staff at various stations at diverse dates. Although the management had made full provision for these losses in the financial statements and the staff involved dismissed from service, no evidence of any steps being taken to recover the amount was availed for audit review. In the circumstances, it was not possible to confirm that the trade and other receivables balance of KSh.1, 068,589,247 was fairly stated.

Management Response

1801. The observation that in the figure of KSh 64,866,489 that was disclosed as staff advances included KSh 26,787,970 as staff frauds was true. The amount related to frauds perpetrated by PCK Staff in various branch offices in the past periods. As per the list of fraud herewith provided, PCK maintained fidelity and cash in transit insurance policy to cover such frauds. PCK investigations section had also made recoveries from culprits relating to these frauds.

1802. A fully fledged section that was reporting direct to Postmaster General dealing with issues relating compliance of all rules and regulations was formed. The section was charged with responsibility of conducting Branch inspections and snap checks. PCK was also in the final stage of implementing an ERP system that was expected to produce timely reconciliations, real-time transactions and cash holding reports. This would provide the necessary controls in discouraging and reducing frauds. The amount was fully provided for under provision for bad and doubtful debts.

Committee Observations

1803. **The Committee noted that the management failed to appreciate that the query required management to show how it had tried to recover lost money and not how it intended to stop future pilferage.**

Committee Recommendation

1804. **The accounting officer of the Corporation should aggressively pursue stolen property by attaching properties as well as suing for recovery of lost property.**

PROPERTY, PLANT & EQUIPMENT FY 2017/18

Lack of Fixed Asset Register

1805. The statement of financial position reflected a figure of KSh. 7,736,114,740 as Property, Plant and Equipment. However, no detailed fixed assets register was availed for audit verification. Consequently, it was not possible to confirm the accuracy of KSh. 7,736,114,740 as at 30 June 2018 in respect of Property, Plant and Equipment.

Management Response

1806. PCK assets were valued and tagged on 30th June, 2020 and the current detailed and updated register provided for audit verification.

Committee Observation and Recommendation

1807. **The OAG confirmed that the Fixed Assets Register had undergone audit verification and therefore resolving the matter.**

Expired Lease

1808. The statement of financial position reflected a balance of KSh. 7,736,114,740 as Property, Plant and Equipment, which included six (6) properties measuring 2.7537 hectares of KSh. 197,300,000 with expired lease.

Management Response

1809. The Corporation had commissioned land survey firm Geosurv Ltd. to assist in renewal of the expired lease titles and the process was ongoing as at 25th August 2021.

Committee Observations

1810. **The Committee made the following observations:**

(i) Though five leases had since been renewed (Tom Mboya, Kitui, Wundanyi, Yala and Kabiyet Post Offices), it was negligent of the corporation to wait till the matter was raised in audit reports for action while aware that the impugned leases had expired.

(ii) Though this delay was blamed on the Ministry of Lands, management did not place any material before the Committee to support this assertion.

Committee Recommendation

1811. **The accounting officer of the Corporation should always be proactive in renewal of leases to its land before expiry.**

UNSUPPORTED REVENUE FY 2017/18

1812. The statement of profit and loss as at 30 June 2018 reflected a figure of KSh. 4,099,334,185 as total revenues. However, revenue of KSh. 667,981,042 was not supported as detailed below.

Account name	**Amount as per Financial Statements (KSh)**	**Amount not Supported (KSh)**
Postal Revenue	3,279,798,546	654,479,397
Agency services	110,476,628	13,501,645
Total	**3,390,275,174**	**667,981,042**

1813. Agency services agreements/contracts for a total of KSh. 107,496.748 out of the total of KSh. 110,476,628 were not provided for audit review.

1814. Consequently, the validity and accuracy of the figure of KSh. 4,099,334,185 in respect of total revenue for the year ended 30th June 2018 could not be confirmed.

Management Response

1815. Invoices that were missing for the relevant queried revenues were provided to the committee.

Committee Observations

1816. **The Committee made the following observations:**

(i) **This is case where management failed to provide documents for audit within the statutory timelines but chose to deliver them to the Committee which is a breach of the law.**

(ii) **All the necessary documents were later availed and verified by the OAG thereby resolving the matter.**

Committee Recommendations

1817. **The Accounting Officer for the Corporation should always adhere to the statutory timelines on submission of documents for audit failure to which the sanctions provided for under the Public Audit Act 2015 should ensue.**

UNSUPPORTED ADJUSTMENTS FY 2017/18

1818. The following account balances of profit and loss as at 30th June 2018 have adjustments that are not supported as highlighted below:

	Account balance	Amount of Adjustments KSh.
1	Postal Revenue	(400,000)
2	Operation expenses	24,487,996
3	Other expenses	(11,128,669)
4	Trade and other payables-Other creditors (Rentals)	22,500,000

1819. Under the circumstance, the accuracy and correctness of these expenditure accounts and the financial statements as at 30 June 2018 could not be ascertained.

Management Response

1820. The Auditor's observation that there were adjustments made to various account balances which were not supported is relevant. The adjustments were now fully supported by relevant journal entry.

- **KSh. 400,000:** This was an adjustment of was amount relating sale of tender documents that accounted for as stamp sale.

- **KSh. 24,487,996:** Postal services were subject to VAT in this period thus the gross revenues were adjusted with VAT in order to capture the net income.
- **Other expenses KSh. 11,128,669:** Expenses earlier accounted for VAT inclusive were re-adjusted to capture amount of VAT input tax claimed.
- **KSh. 22,500,000** Other creditors (Rentals were increased by rent payable to Teleposta pension scheme)

Committee Observation and Recommendation

1821. **The relevant journal entries were submitted for audit review and the query resolved.**

OTHER REVENUE FY 2017/18

1822. Statement of profit and loss as at 30 June 2018 reflected a figure of KSh. 575,686,499 as other revenue. This figure included a figure of KSh. 587,754,610 as debt recovery as reflected under note 3 to the financial statements. Although the explanation was that the amount was earlier provided for as bad and doubtful debt in financial year ended 30 June 2016 and upon recovery the amount was considered as income for the year 30 June 2018, this amount was not a bad debt written off but only a provision made in the year 30 June 2016.

1823. Further, the amount of other revenues of KSh. 575,686,499 was arrived at after netting off foreign exchange loss of KSh. 12,602,284 as reflected at Note 2 which is not in line with the International Accounting Standards No. 1.

1824. In view of the foregoing, the accuracy of the non-operating revenue figure of KSh. 575,686,499 as at 30 June 2018 could not be confirmed.

Management Response

1825. The Corporation had a Memorandum of Understanding (MOU) with Telkom Kenya regarding rendering of service to each other and settlement of accounts. A joint team was formed to fully reconcile all service relating to this account. The team was able to reconcile and agree on all earlier accounts up-to 2015. An inter account net off settlement was agreed and implemented.

1826. The reconciliation covered transactions done up to 2015 with net off of KSh. 587,754,610. However, the two institutions continue to trade with each other to date thus explaining the payable of KSh. 87,328,884.58 as closing balance.

1827. The amount of KSh. 587,754,610 was earlier provided for as bad and doubtful debts and charged to income statement as debit in the financial year 2015/2016, since the net off of debtors earlier accounted for as bad and doubtful is a recovery and was charged to income as bad and doubtful debt in 2015/2016, upon recovery income statement should be credited by the same amount to complete the double entry.

Committee Observation

1828. **Supporting documents were submitted to the OAG and verified.**

Committee Recommendation

1829. **The audit query was resolved**

OTHER MATTER FY 2017/2018

Procurement method for ERP software

1830. The Statement of financial position reflected a figure of KSh. 318,194,473 as Intangible assets. Postal Corporation of Kenya awarded M/S Nortis supplies Ltd to provide arbutus audit software for audit and risk management at a cost of KSh. 4,640,000 on 8 September 2017 using restrictive tendering. No justification was provided for using this method of procurement. In addition, no contract was signed between PCK and the supplier contrary to the procurement procedures. Further, the supplier was recommended by the requesting department thus making the request subjective.

Management Response

1831. Section 102 (i)C of the PPDA 2015 provides that an accounting officer may use Restrictive Tendering if there is evidence to the effect that there are only a few known suppliers of the whole market of the goods, works and services.

1832. The user is expected to have background information of the requested supply, for decision making and application or operationalization. As at the time of engagement, this software had been patented in Canada with few/selected support providers in Kenya. This enhances efficiency in service provision and does not amount to making the request subjective.

1833. This therefore necessitated for restrictive tendering due to the limited companies that provide the software and support thus justifying the method.

1834. The User recommended several suppliers to the Procurement unit as providers of the software in Kenya. A tender evaluation committee comprising of representatives from the User, ICT, and Finance and Supply Chain departments was formed to evaluate the tenders as per Section 46 of the PPDA 2015.

1835. The Acquisition of Arbutus audit Software was guided by the contract between PCK and Nortis supplies limited

Committee Observations

1836. **The Committee made the following observations:**

(i) The Corporation used restricted tendering by carrying out a market survey but did not advertise for the tender as per Section 102 (1) (d) of the Public Procurement and Assets Disposal Act.

(ii) The requirements imposed on the procuring entity to use direct procurement were not met

Committee Recommendations

1837. **The Committee recommends that the accounting officer for the Corporation should always adhere to the procurement laws.**

2.21 KENYA MARITIME AUTHORITY (FY 2017/2018)

EXAMINATION OF THE REPORT OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF THE KENYA MARITIME AUTHORITY (KMA) FOR THE FINANCIAL YEAR 2018

Mr. Robert Njue, the Director General of the Kenya Maritime Authority accompanied by Mr. Edwin Were (Finance Officer), Alphonse Kioko (ICT Officer); Janet Otieno (Corporation Secretary); Lucy Mwayah; Ahmed Dido; Joel Bii; and Francis Okello appeared before the Committee to adduce evidence on the audited accounts of the Authority for financial year 2017/2018.

Presentation of the Financial Statements

1838. The financial statements for the year ended 30 June 2018 availed for audit omitted, on the table of contents, Report of the Independent Auditors on Kenya Maritime Authority which was on page xxxvii. Consequently, the presentation of the financial statements did not comply with the International Public Sector Accounting Standard No. 1 as prescribed by Public Sector Accounting Standards Board.

Management Response

1839. Management noted the omission and took measures to ensure compliance with the relevant standards.

Committee Observations

1840. **The Committee made the following observations:**

(i) There was laxity from the part of the management in checking compliance of financial statements with the Public Sector Accounting Standards before their presentation for audit.

(ii) The OAG confirmed that the table of contents had since been rectified

Committee Recommendation

1841. **The Committee recommends that the Management of Kenya Maritime Authority should always adhere to public Sector Accounting Standards on reporting of financial statements.**

Revenue from Non-Exchange Transactions

1842. The statement of financial performance for the year ended 30 June 2018 reflected revenue from non-exchange transactions of KSh.1, 511,762,442 in respect of merchant shipping levy as disclosed in Note 3 to the financial statements. However, audit review of merchant shipping levy from cargo manifests sent by Kenya Revenue Authority totalled KSh.1,516,592,132, resulting to a variance of KSh.4,829,690 which had not been explained or reconciled. Further, although the records indicated that the Authority outsourced the collection of merchant shipping levy to Kenya Revenue Authority, no system had been put in place for determining the amount of levy collectible by Kenya Revenue Authority. In addition, Kenya Revenue Authority sent copies of cargo manifests to the Authority, but the management relied on revenue reports remitted by Kenya Revenue Authority. No evidence was availed to confirm that the reports were verified against the manifests.

1843. Consequently, the accuracy, validity and completeness of merchant shipping levy of KSh.1, 511,762,442 for the year ended 30 June 2018 could not be confirmed.

Management Response

1844. The variance of Ksh 4,829,690 between the financial statement of KSh 1, 511,762,442 and audit review of KSh. 1,516,592,132 related to the 2% commission and VAT on the commission deducted by KRA before remittance.

1845. KRA's system could not detect certain segments of cargo such as high cube containers and containerized exports, whose rates were different from the standard units. The challenge was being addressed under the ongoing installation of a new Integrated Customs Management System by KRA. KRA was further requested to put in place a manual intervention for the high cube containers.

1846. The OAG reconciliation report captured un-cleared, abandoned and seized cargoes whereas KRA remission was raised from the actual cargo released by Customs.

1847. To fully address the matter, arrangement had been put in place for joint quarterly reconciliation exercise to address any shortfall in good time. KMA would make follow up on the under collections.

Committee Observations

The Committee made the following observations:

(i) This item was discussed in the 23rd report with a recommendation that KMA institutes internal mechanisms to confirm accuracy.

(ii) KMA has since put in an integrated system to relay information from KRA to KMA.

(iii)The KRA's MoU with KRA required that data was relayed in really time.

Committee Recommendation

1848. **The audit query was adequately addressed**

Domestic Air Travel and Local Duty Travel Allowances

1849. Included in the general office expenditure was domestic and overseas air travel of KSh.22, 474,260, and duty travel allowances of KSh.69, 794,866. Records availed for audit indicated that KSh.1,841,903 domestic air travel, and KSh.6,161,507 local duty travel allowances all totalling to KSh.8,003,410, related to the Ministry of Housing, Infrastructure and Urban Development officers. However, the management did not provide explanations as to why Kenya Maritime Authority incurred the expenditure on behalf of the Ministry.

1850. Consequently, the propriety and validity of domestic and overseas air travel and duty travel allowances of KSh.8, 003,410 for the year ended 30 June 2018 could not be confirmed.

Management Response

1851. The expense was incurred during the International Maritime Organization Council, Committee and Sub-committee meetings. The Authority as the lead agency mandated with the regulatory role in the industry, has joint activities with the Ministry to deliver on its mandate. Objectively the staff in the Ministry are part of the team that attended the meetings on behalf of the country.

1852. The Authority went further to confirm whether the Ministry staff were paid for these travels. We received confirmation from the Ministry indicating the staff were not paid by the Ministry for the same duty travels.

Committee Observations

1853. **The Committee made the following observations:**

(i) There was no evidence from the Ministry requesting funding of the trip.

(ii) It is not clear whether there was a budget line item in the KMA accounts to cater for travels of Ministry officials.

Committee Recommendations

1854. **The EACC should investigate the circumstances under which payments for travels were made for officers outside the KMA without requisite approved budgets and prefer charges to persons that may have been in breach of the law.**

Legal Fees

1855. The statement of financial performance for the period ended 30 June 2018 reflected general office expenditure of KSh.375, 973,734. Included in this expenditure was KSh.4, 895,220 in respect of legal fees, out of which KSh.4, 344,000 was paid to a legal firm representing the Authority. Records availed for audit review indicated that the management made the payment without preparation of a payment voucher, quotations, tender evaluation and award minutes and evidence of services rendered. Further, no records were availed to confirm authorization of remittance of the funds to the law firm.

1856. In addition, the management did not provide evidence to confirm that the Authority sought approval and concurrence of the Attorney General before procuring private legal services as required by the Attorney-General Circular Ref. AG/CONF/6/E/247 VOL.II of 16 April 2014.

1857. Consequently, the propriety, validity and legality of legal fees of KSh.4, 344,000 for the year ended could not be confirmed.

Management Response

1858. The engagement of M/S Robson Harris & Co Advocates was approved by the Board of Directors of KMA sitting at the Special Board meeting held on 8th January, 2018. The nature, urgency and the importance of the cause or matter was considered during the determination of the same. In making their decision, the Board also took note of the penal decision attached to the order stating that "any person served herewith who disobeys or acts contrary to the provisions hereof shall be in contempt of court and liable to punishment by way of fine, imprisonment or both."

1859. M/S Robson Harris & Co Advocates was one of the legal firms prequalified by the Authority. Prequalification of the firms was reached following due process and procedure by the Authority.

1860. On the issue of consulting the AG before an advocate was retained to deal with the matter, the High court in Judicial Review Application No. 364 of 2018 Francis Andrew Moriasi Vs Attorney General where the Applicant challenged the decision of the Attorney General's circular dated 1st March, 2018 to various government Ministries and State Departments notifying them that every proposed engagement of external advocates by the State Corporations, Constitutional Commissions and Independent Offices must be with the written approval of the Attorney General, the Court found that the Respondent in making the impugned Guidelines was procedurally ultra vires the Office of the Attorney General Act, and procedurally unfair.

1861. The Court further stated that Circular dated 1st March 2018 were ultra vires to the extent that they sought to direct other bodies which are granted constitutional and statutory powers and independence in the manner they should act, went beyond the functions granted to the Respondent under the Constitution and in relation to provision of legal services, and were made more than powers granted to the Respondent in this regard. In addition, the said circulars were also contrary to provisions in the Constitution, the State Corporations Act, the Public Procurement and Asset Disposal Act, and the Advocates Act that regulated to the procurement of and payment for legal services.

<u>Committee Observations</u>

1862. **The Committee made the following observations:**

(i) **The case quoted was done in March 2019 way after the KMA had violated the AG circular.**

(ii) **Payment was done without a payment voucher but on the strength on signatories. KMA confirmed that there was no payment voucher. George mangaoi, Mr. Cherop and Mr. John Omingo and someone else signed the EFT without the knowledge for Mr. Edwin Were (finance Manager). The director of finance confirmed following this matter and informed the board as such in a formal meeting. Mr. Omingo averred that he was lied to by Mr. George (the then DG).**

(iii) **The KMA produced documents indicating how the prequalification of the lawyers was done. However, the law firm instructed in this query was handpicked allegedly on the firm's capability on the matter.**

(iv) **The amount paid (KSh. 4.3 million) did not adhere to the instructing contract that demanded compliance to the advocates remuneration order.**

(v) **There was a special board meeting held on 8th January 2018 instructing external counsel on the issues on this query.**

<u>Committee Recommendations</u>

1863. **The Committee Recommends that:**

(i) **The then corporation secretary (Jane Otieno) should be reprimanded for approving payment to the law firm without adherence to clause 6.0 of the contract demanding usage of advocates remuneration order**

(ii) **The signatories George Mangaoi, Mr. Cosmas Cherop and Mr. John Omingo should be reprimanded for paying the law firm without payment voucher and in**

contravention of the instructing letter demanding usage of advocates remuneration order.

(iii) **The cooperation secretary (Jane Otieno) should be reprimanded for handpicking a law firm to do a simple job that should have been done internally and not advising the board properly to instruct the law firm in disregard of the Attorney-General Circular Ref. AG/CONF/6/E/247 VOL.II of 16 April 2014**

HIV and AIDS Related Awareness

1864. Note 13 to the financial statements for the year ended 30 June 2018 reflected KSh.7, 535,484 in respect of HIV and AIDS related awareness. Included in this amount was KSh.1, 768,590, being expenditure incurred by employees for conducting community HIV and AIDS support activities. However, the management did not provided details of the specific support activities conducted and the target beneficiaries.

1865. A further sum of KSh.2,401,200 was incurred on conferences and accommodation of staff family members and KSh.515,200 on Authority's staff undertaking awareness activities in various shows across the country all totalling to KSh.2,916,400. Again, this expenditure was not supported by attendance lists for the conferences and evidence of travel for the shows conducted across the country.

1866. In addition, the Authority spent KSh.777, 220 on sensitization programs in Kisumu, Watamu and Lamu, out of which KSh.529, 240 was paid to individuals who were not its employees. However, the basis of rates used was not provided for audit confirmation.

1867. Consequently, the accuracy, propriety and validity of HIV and AIDS related awareness expenditure of KSh.5, 214,230 for the year ended 30 June 2018 could not be confirmed.

Management Response

1868. The activities were carried out in line with the MAISHA 2 reporting tool and involved engagement the service providers – HTC (HIV Testing and Counselling) counsellors, nurses and laboratory Technicians and quality assurance officers.

Committee Observations

1869. **The Committee made the following observations:**

(i) There was no evidence of expenditure trail given to the OAG for audit verification. These documents were however availed to the Committee.

(ii) Though the Human Resources manager confirmed that the rates used were obtained from MOH, correspondences between the Ministry and the KMA on the subject matter were not availed for review.

<u>Committee recommendations</u>

1870. **The Committee recommends that:**

(i) The accounting officer for the KMA should only make payments using the rates approved by the Salaries and Remuneration Committee.

(ii) The Accounting Officer for the KMA should adhere to statutory timelines on provision of documents for audit failure to which the sanctions provided in the Public Audit Act 2015 and Public Finance Management Act 2012 should ensue.

<u>Professional and Consultancy Fees</u>

1871. Note 13 to the financial statements for the year ended 30 June 2018 reflects KSh.5, 506,635 in respect of professional and consultancy fees. Included in this amount was KSh.4, 628,800, being payment for provision of consultancy services to review and develop a strategic plan and an organizational structure for Kenya Maritime Authority. The contract was awarded to a consultancy firm at a contract sum of KSh.5, 452,000, out of which KSh.4, 628,800 or 85% had been paid as at 30 June 2018. Records availed for review indicated that the services were to be offered within a period of two (2) months from 8 November 2017 when the contract was signed. However, as at the time of audit in the month of February 2019, about twelve (12) months after the expected completion date, the service provider had not finished the work.

1872. Consequently, the propriety, validity and value for money for KSh.4, 628,800 on professional and consultancy fees for the year ended 30 June 2018 could not be confirmed.

<u>Management Response</u>

1873. The Authority entered into a contract for provision of consultancy services to review the Authority's strategic plan and organization structure on 8th November, 2017. The contract was for a period of 2 months. At about 70% completion of the assignment, terms for all the independent board members had expired except one and therefore their crucial input could not be incorporated (Strategic Plan is a Board document). A total of KSh. 3,816,400/= was paid for the completed and certified assignments.

1874. The 30% of the contract price being KSh. 1,635,600 was not paid since the contract lapsed and management completed the remaining part of the strategic plan and organization structure. Evidence of the Vendor Detailed Trial Balance Report and Alpex Consulting Africa Limited Contract was provided.

Committee Observations

1875. **The Committee made the following observations:**

(i) The contractors were paid for not rendering any service. The variation between the OAG figure and the KMA was for an invoice of KSh. 812,000 not paid though disclosed as an expenditure in the financial statements. The work had not been done hence it could not be paid.

(ii) There was no evidence of the impugned strategic plan done by the contractor and shown to OAG during audit. This strategic plan was however done by KMA and presented to the Committee on 28th October 2020.

(iii) By Management of KMA confirming signing a contract without a performance bond despite the contractor indicating in clause 3.8 that it should be there, management of KMA was negligent and therefore the contract was voidable.

(iv) Considering that the contract was to be done within 8 weeks; a period the board was fully constituted, had it been implemented accordingly, an explanation of absence of board cannot be justified.

(v) The directors of Apex Consulting Africa ltd included Hellen Bosibori Okioma; Mary Okioma; Magoma Mwancha; and James Soki. Hellen has 92.5%.

(vi) **Despite the contract indicating in clause 3.8 that it can only be signed after the contractor giving a 10% performance bond, the Corporation Secretary attested it thus portraying her negligence**.

Committee Recommendations

1876. **The Committee recommends that:**

(i) The then Director General for the KMA, Cosmas Cherop, should be reprimanded for undue delay caused and signing of the contract without a performance bond.

(ii) The then Corporation Secretary should be reprimanded for attesting to the contract that that had no performance bond.

Irregular Payment of Lunch Allowances to Board of Directors

1877. The statement of financial performance for the year ended 30 June 2018 reflected KSh.39, 592,348 in respect of Board of Directors costs as disclosed in Note 10. Included in this balance was KSh.32, 011,026, being allowances and other expenses, out of which KSh.640, 000 was in respect of lunch allowances paid in addition to accommodation and subsistence allowances, contrary to Public Service Commission Human Resources Policies, 2016, Clause C.17 (1) which stated that, 'Meal allowance will only be paid to officers travelling on duty within the country but who are not required to spend a night away from the permanent duty station. Meal allowance will not be paid alongside accommodation allowance'.

1878. Consequently, the propriety of KSh.640, 000 on meal allowances for the year ended 30 June 2018 could not be confirmed.

Management Response

1879. The Authority made payment of lunch allowances to Board Members in accordance with the guidelines on Terms and Conditions of Service for Chief Executive officers, Chairmen, and Board members of State Corporations, Ref OP/CAB.9/21/2A/LII/43 of 23rd November, 2004 as affirmed by circular OP SCAC.9/21/2A of 7th December, 2009 and re-affirmed by circular no. OP/SCAC.9/21.2 VOL.1 (164).

1880. The circulars were issued by the State Corporations Advisory Committee pursuant to section 10(1) of the State Corporations Act, Cap 446 which provided that the Committee may specify scales of remunerations and sitting allowances of Chairmen and Board Members of Statutory Corporations. The circulars stipulated that where lunch was not provided, a lunch allowance of up to KSh 2,000 per day was applicable. Pursuant to the circulars abovementioned, the Authority had been paying lunch allowances to all members of the Board instead of providing lunch.

1881. There was evidence of accommodation and Subsistence Allowances for Chairmen and Board Members of State Corporations Boards Circular no. OP/SCAC.9/21.2 VOL.1 (164) Guidelines on Terms and Conditions of Service for State Corporations OP/CAB.9/21/2A/LII/43

Committee Observations

1882. **The query arose due to the conflicting interpretation of circulars between the OAG and the KMA.**

Committee Recommendation

1883. **The accounting officers should adhere to the guidelines provided by the Salaries and Remuneration Commission relating to remuneration of Board Members.**

REPAIRS AND MAINTENANCE

Motor Vehicles and Boats Repairs

1884. Note 12 to the financial statements for the year ended 30 June 2018 reflected KSh.1, 161,081 in respect of motor vehicle and boats maintenance. However, mechanical inspection reports, purchase requisitions by the user departments, motor vehicle service logbooks and post repair inspection reports were not availed for audit review.

1885. Under the circumstances, the propriety and validity of KSh.1, 161,081 on motor vehicles and boats repairs for the year ended 30 June 2018 could not be confirmed.

Management Response

1886. The Authority had been repairing and maintaining its vehicles by the dealers in line with warranty and quality assurance. Management had put measures in place to ensure that all motor vehicles were taken to state department of Public Works for pre and post inspections. Mechanical inspection reports and post repair inspection were available for the Committee's perusal.

Committee Observations

1887. **KMA management failed to submit the requested documents for audit but had since started to submit as confirmed by the OAG.**

Committee Recommendation

1888. **The accounting officer for the KMA should always adhere to statutory timelines on submission of documents for audit failure to which the sanctions provided for under the Public Audit Act 2015 ensues.**

Maintenance of Buildings

1889. Note 12 to the financial statements for the year ended 30 June 2018 reflected KSh.2, 119,554 in respect of maintenance of buildings. Audit review of maintenance of buildings documents showed that, during the period under review, the Authority requested for quotations from three firms for painting of Lamu office. The tender was awarded to one of the bidders at a cost of KSh.571, 444. However, it was established that the purchase requisition was dated 3 July 2017 while the support quotations were dated 13 March 2017, an indication that the quotations were sent five (5) months earlier than the purchase requisitions, contrary to the Kenya Maritime Authority procurement procedure manual clause 7.3 which indicated that quotations should be raised after the purchase requisition. Further, The Authority did not avail minutes of the tender evaluation committee for audit review.

1890. Under the circumstances, the propriety of KSh.571, 444 on painting of Lamu office for the year ended 30 June 2018 could not be confirmed.

Management Response

1891. The painting of Lamu office was initiated vide EDMS approval of 21st February, 2017. The works were to comprise of fixing of office blinds, painting and general repairs. The officers in Lamu were requested to carry out a market survey in a bid to identify service providers for such works who are based in Lamu and the applicable rates. These were submitted by 13th March, 2017. The purchase requisition no. 00916 was done to compliment the approved EDMS memo. This clarifies the 5 months duration between the purchase requisition and the quotations.

1892. The three firms i.e. Asah Agencies, Epikaizo Contractors and Suppliers and Major One Services were identified based on market knowledge from Lamu and included in the list of registered suppliers.

1893. Quotations used to be analysed by the procurement team, however following an assessment by PPRA, around October, 2017 the Authority was advised to ensure that all tenders and quotations are subjected to an evaluation. This has since been implemented.

Committee Observations

1894. **The Committee made the following observations**

(i) There was no evidence that the EDMAS approved the matter on 21st February 2017.

(ii) It was not clear why request for quotations was not done.

Committee Recommendation

1895. **The accounting officer and the procurement function of the KMA should always adhere to the Public Procurement and Asset Disposal Act 2015 when procuring for goods and services.**

Cash and Cash Equivalents

1896. The statement of financial position as at 30 June 2018 reflected cash and cash equivalents balance of KSh.989, 042,065. Included in this balance was KSh.747, 033,514 in respect of cash held at Kenya Commercial Bank Limited. The support bank reconciliation statement as at the same date indicated payments in bank statement not yet recorded in cashbook of KSh.4, 344,000 described as legal fees.

1897. Further, records availed for audit review indicated that, the management authorized the transfer of KSh.4,344,000 to a third party without verification of invoice by the procurement officer, provision of supporting documents, authority for preparation of payment voucher by the accountant, preparation and recording of the payment voucher, recommendation of payment by head of department, approval of payment by head of commercial shipping and authorization by the Director General for payment as required by Kenya Maritime Authority Financial Procedures Manual paragraph 9.7.1. This indicated a control weakness where funds were transferred from the Authority's bank account without any documentation, approval or authorization.

1898. Consequently, the accuracy, validity and completeness of cash and cash equivalents balance of KSh.989, 042,065 as at 30 June 2018 and the effectiveness of controls on transfers from the Authority's bank accounts to third parties could not be confirmed.

Management Response

1899. Payments was made as per the Advocates Remuneration Order. The current Finance Manual has re-emphasized the control procedures.

Committee observations

1900. **Payments were made without going through the checks and balances highlighted by the OAG thus exposing the authority to possible pilferage.**

Committee Recommendation

1901. **The Accounting officer of the KMA should put measures in place to ensure that all payments should go through the checks and balances before final release of funds.**

TRADE AND OTHER RECEIVABLES FROM EXCHANGE TRANSACTIONS

1902. The statement of financial position as at 30 June 2018 as disclosed reflected trade receivable from exchange transactions balance of KSh 207,865,016 as disclosed in Note 17. The following observations were made:

Trade Receivables

1903. Included in trade receivables from exchange transactions is KSh.12, 927,987 in respect of trade receivables, out of which KSh.6, 604,812 had been outstanding since 1 July 2015. The management did not provide a satisfactory explanation as to why these debts had not been collected nor was evidence availed to confirm that the same has been referred to an agency for collection as provided in the credit policy. The policy provided that any outstanding amount of over 45 days that has not been received should be recommended to an agency to ensure a follow up and subsequent settlement.

1904. Consequently, the accuracy, recoverability and validity of trade debtors' balance of KSh.6, 604,812 as at 30 June 2018 could not be confirmed.

Management Response

1905. The bulk of the outstanding debts were from small boat owners, most of whom had no fixed physical address and contact and hence presents a challenge of traceability. The Management was continually collecting and updating the customers' data.

1906. Management had adopted a new policy of issuing a proforma invoice which had to be settled before boat inspection is carried out. Licenses of customers with outstanding debts are not issued before the debts are cleared.

1907. Through the enforcement initiatives in the regions with the help of Kenya Police Service and Kenya Coast Guard Services, a marked improvement of the collection is expected as vessels shall be required to be compliant. Sample Proforma Invoices, Licensing Procedures, Collection reports and Enforcement and Prosecution were available to support the argument.

Committee Observations

1908. **The KMA management confirmed to the Committee that the amount had been decreasing but the OAG could not authenticate the same as it had not been submitted for audit.**

Committee Recommendations

1909. **The Committee Recommends that:**

(i) The KMA should develop and maintain data bank/records of the small boat owners.

(ii) The accounting officer for the KMA should devise a robust debt collection mechanism especially from the board owners to ensure maximum collection of debt.

Other Non-Trade Receivables

1910. Included in trade receivables from exchange transactions is KSh.143, 935,471 in respect of other non-trade receivables, out of which KSh.2, 275,749 was a claim from a supplier for non-performance of contractual obligations, being 20% of the contract sum which was payable after first project meeting, contract sign off and signing of the project charter. The payment was made in relation to a contract dated 15 December 2016 for KSh.11, 378,743 with a contract period of twelve (12) weeks for supply, review, upgrade, installation and support of Enterprise Resource Planning (ERP) system and integration with electronic data management system and other systems. Available records showed that the project stalled before reaching the second milestone and the management indicated that efforts to recover the claim was ongoing. As at the time of audit in the month of February 2019, twenty-five (25) months after the expiry of the contract period, the service provider had not completed the work.

1911. Consequently, the recoverability of other trade debtors of KSh.2, 275,749 as at 30 June 2018 could not be confirmed.

Management Response

1912. The contract was for the supply, review, upgrade, installation and support of Enterprise Resource Planning systems and integration with the EDMS and other systems, the contract was for a duration of 12 weeks. The project had a work plan which was pegged on individual deliverables. The first deliverable entailed organizing meetings, contract charter sign off and project sign off.

1913. The costs of the first deliverable at a total amount of KSh.2, 275,749 was certified as having been achieved and payment was effected. Thereafter, the Authority experienced delays from the supplier for the continuation of the project as scheduled as per the deliverable's timeline. In this respect, the Authority reached a decision to terminate the contract vide letter of 29th June, 2018. No payments were made on the outstanding deliverables. A letter of cancellation of the contract Ref: KMA.ICT/1/1 was available for perusal.

Committee Observations

1914. **The Committee made the following observations:**

(i) **There was no performance bond on this contract despite availability of clause 24 on escrow agreement thus indicating poor contract execution. This contract had not been executed by the coreTEC neither was it signed.**

(ii) **The ICT Manager confirmed that the firm had gone under.**

Committee Recommendation

1915. **The Committee recommends that:**

(i) **The accounting officer of the KMA should pursue recovery of the paid monies either from the company or its directors.**

Provision for Doubtful Debts

1916. Note 17 to the financial statements for the year ended 30 June 2018 reflected provision for doubtful debts amounting to KSh.4, 061,057 and which was the same provision as at 30th June 2017. However, the management did not provide details of how the provision was arrived at, contrary to the Authority's credit policy that required provision for bad debts to be made where chances of successful collection were minimal. The policy further stated that any debts of over 100 days qualified to be provided for and the credit committee would propose specific provisions for authorization and approval by the Director-General.

1917. Consequently, the accuracy and validity of provision for doubtful debts of KSh.4, 061,057 as at 30th June 2018 could not be confirmed.

Management Response

1918. The bulk of the doubtful debts were from small boat owners, most of whom had no fixed physical address and contact and hence presents a challenge of traceability. The Credit Committee maintained the previous year provision for doubtful debts of KSh 4,061,057 in consideration of the cost benefit analysis of involving a debt collector as stipulated in the policy to recover the debts from the small boat owners at the coast and inland waters.

1919. Management had since adopted a new policy of issuing a proforma invoice which had to be settled before boat inspection was carried out. Licenses of customers with outstanding debts were not issued before the debts are cleared

Committee Observations

1920. **The KMA management could not explain how it arrived at the provision for doubtful debts for 2017/2018 contrary to its credit policy. Some of the amounts have since been recovered.**

Committee recommendation

1921. **The accounting officer for the KMA should, always, adhere to its policy on analysis of debtors before providing for doubtful debts.**

Purchase of Land for Search and Rescue Centers

1922. As previously reported, included in property, plant and equipment balance of KSh.1,078,016,509 was a figure of KSh.39,008,847 in respect of land and building, out of which KSh.35,180,040 relating to purchase of three pieces of land for search and rescue centers during the financial year 2016/2017 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

1923. Audit verification of the procurement documents revealed the following anomalies:

1. According to the head of procurement's professional opinion for Kwale land prepared on 10 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 implies 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 that the head of procurement shall, alongside the report to the evaluation committee, review the tender evaluation 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.

2. According to a correspondence by the Ministry of Land and Physical Planning attached to draft valuation report, it referred to a letter reference KMA/PRO/41 dated 13 October 2015 by Kenya Maritime Authority requesting for valuation of the same pieces of land. It therefore implies 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. This was an indication of predetermined supplier.
3. 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 kilometers from Kisumu Port. This was 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.

1924. In the circumstances, the propriety and legality of KSh.35, 180,040 in respect of property, plant and equipment and value for money for the year ended 30 June 2018 could not be confirmed.

Management Response

1925. **The issue was addressed in the 23rd PIC Report.**

Committee recommendation

1926. **The Committee recommends that the Committee on implementation should follow up on the implementation of the PIC's 23rd Report recommendations.**

Leasehold Land

1927. The statement of financial position as at 30 June 2018 reflected property, plant and equipment balance of KSh. 1,078,016,509 as disclosed in Note 23. Included in this balance was KSh. 203,097,950 in respect of leasehold land, being plot reference Mombasa Mbaraki MSA/ XLVIII/128. A review of the certificate of lease indicated that the property was held on a ninety-nine (99) year lease from Kenya Railways starting 1 January 1971 with an annual rent of KSh. 4,800. Further, the certificate indicated that the leasehold interest was subject to the agreement and other matters contained in the registered lease. However, the registered lease was not availed for audit review.

1928. Consequently, the rights and obligations of Kenya Maritime Authority on the leasehold land valued at KSh. 203,097,950 as at 30 June 2018 could not be confirmed.

Management Response

1929. The Authority hereby avails the Sale Agreement dated 15th December 2014, the registered Transfer of lease dated 23rd December, 2014 and the Head Lease dated 14th December, 1971 all of which stipulated the rights and obligations of the Authority under the Lease Agreement.

Committee Observations

1930. **The Committee made the following observations:**

(i) **The KMA had leased the impugned land from Kenya Railways Corporation.**

(ii) **All the requisite approvals on the building had been given by the county government of Mombasa.**

(iii) **The registered lease between East African Railways Corporation and Bamburi Portland Cement indicated that there was a restriction under clause 1(g) that *the land be used for purpose of residence and not to use it (land and building) for trade of any description.* These conditions could only be waived by the Lessor (now Kenya Railways Corporation). KMA was therefore negligently ignored these conditions. The corporation averred that there has been engagement with the KRC and KMA to change the conditionalities, but the KMA proceeded to do a project before getting user changes.**

(iv) **The Kenya Railways Corporation still held the title to the impugned land.**

(v) **The KSh. 203 million paid for buying the lease from Bamburi included land and building. This building was however demolished by KMA.**

(vi) **The project was conceptualized by the then KMA management under the leadership of Nancy Karigitu following a board paper presented to the Board. The Board approved the paper, advertisements were done and purchase of land made. The KMA engaged consultant (Lins Consultant) who did the designs. However, this consultant did not declare conflict of interest having worked with the contractor- Mr. Seth Oluoch confirmed that the lead consultant sat in the tender evaluation committee but failed to declare conflict of interest contrary to Section 66(5) of the PPAD 2015.**

(vii) **This matter was investigated and several persons prosecuted. The matter was however pending in Court**

(viii) **As at the time of compiling this report, the building remained incomplete.**

<u>Committee Recommendations</u>

1931. **The Committee recommends that:**

(i) **The accounting officer for the KMA should seek for a belated approval from KRC to lift the conditions imposed on the impugned land to allow its usage for commercial purposes.**

(ii) **The accounting officer of the KMA should always ensure that the law is adhered to whenever executing contracts of such magnitude.**

(iii) **The judiciary is requested to expedite hearing and determination of the pending cases touching KMA headquarters.**

<u>CAPITAL WORK IN PROGRESS</u>

1932. Note 23 to the financial statements for the year ended 30 June 2018 reflected capital work in progress balance of KSh 706,789,275 being cumulative cost of works on Keny Maritime

Authority headquarters project being constructed on Mombasa Mbaraki MSA/XLVIII/128 at a cost of KSh 1,728,176,418. The works consisted of main building works, electrical, plumbing and drainage, air conditioning and elevator installation works. The following observations were made:

Advance Payment

1933. Note 17 to the financial statements for the year ended 30 June 2018 reflected other non-trade receivables of KSh.143,935,471, out of which KSh.139,478,752 was in respect of un-recovered advance payment for the construction of Kenya Maritime Authority Headquarters contract awarded at a corrected tender sum of KSh.1,825,239,939, The contractor's bid was KSh.1,728,176,418. Records availed for audit review indicated that the Authority had paid KSh.182,523,994, being 10% advance payment as provided in the contract based on a contract sum of KSh.1,825,239,939. The advance payment was therefore based on the corrected tender sum awarded resulting in over payment of advance by KSh. 9,706,352. However, it was not clear why the management did not recover the overpayment on the first application for payment by the contractor.

1934. Consequently, the validity and legality of the advance payment of KSh. 9,706,352 not yet recovered and the accuracy and completeness of other non-trade receivables of KSh. 143,935,471 as at 30 June 2018 could not be confirmed.

Management Response

1935. The advance payment was made in line with the third schedule of the Transitional Provisions of the PPADA, 2015, which stated that procurement proceedings commencing before the date of the Act shall be continued in accordance with the applicable law before its commencement date. Further consultations advised on compliance with the provisions of Section 82 of the PPADA, 2015. In this regard, the correction of the error as difference in advance payment of KSh 9,706,352 was recovered on 28/05/2019 during the settlement of Interim Certificate number 8. Evidence available was for payment Voucher PV2019/01987 and bank statement**.**

Committee Observations

1936. **The Committee made the following observations:**

(i) **The difference in advance payment of KSh 9,706,352 was recovered on 28/05/2019 during the settlement of Interim Certificate number 8.**

Interim Certificates

1937. Included in the capital work in progress balance of KSh.706,789,275 as at 30 June 2018 were payments for interim certificates presented and approved during the year under review amounting to KSh.539,431,019 as detailed below:

Date	PV number	Details	Amount (KSh)
9/28/2017	LEAHJV-00330	Work done Payment Block XLVIII/12 Cert No.2	161,413,223
5/21/2018	P_INV15274	Proposed development of KMA HQ office cert 03.	188,551,828
6/28/2018	P_INV15706	Proposed development of KMA HQ office cert 04	189,465,968
Total			**539,431,019**

1937. The following observations were made.

Payment of General Preliminaries

1938. Note 23 to the financial statements for the year ended 30 June 2018 reflected capital work in progress balance of KSh.706,789,275, Included in this amount was KSh.539,431,019 being payments for interims certificate numbers 2, 3 and 4. Audit review of the interim certificates indicated that, the Authority made payment for particular preliminaries (PP10) included item C of the bill of quantities, at a cost of KSh.3,500,000 which was paid in full plus 15% or KSh.525,000 profit for ground breaking ceremony. Preliminaries being provisional amounts were reimbursed on production of evidence of actual costs incurred. However, the Authority paid the contractor the full amount without evidence of the actual cost incurred. Further, general preliminaries (GP/10) of the bills of quantities provided for performance security of KSh. 6,075,000 which was also paid. However, the payment was meant to be provided by the contractor as collateral for the employer in case of default on performance by the contractor.

1939. Consequently, the propriety and validity of ground-breaking ceremony cost of KSh.3, 500,000 for the year ended 30 June 2018 could not be confirmed. Further, KSh.6, 075,000 paid to the contractor for provision of performance security was irregular.

Management Response

1940. At the time of groundbreaking the Authority procured for the services required for the event, the cost of which was to be met by the main contractor as per the contract terms. The Authority paid the suppliers and instructed the consultants to recover the full amount from the main contractor.

1941. On the performance security, it was standard practice for contractors to be informed of all the requirements at the time of bidding. They may price for those requirements separately in the preliminaries or include it in their rates. In this instance the contractor quoted KSh 7.2 million for this item (page 178 of 529 of the bid document). The payment was made against this amount. (Evidence: Page 178 of 529 of the bid documents, Instruction to Works Secretary)

Committee Observations

1942. **The Committee made the following Observations:**

(i) The response given did not address the query. Ordinarily, it is the contractor that should have paid for the performance security and not the other way round.

(ii) Spending KSh. 3.5M on groundbreaking ceremony was wasteful even though it was part of the BQs.

(iii)The contractor tendered evidence to the Committee on such an expenditure.

Committee Recommendation

1943. **The main contractor should reimburse the KMA the KSh. 6 million paid for security.**

Materials on Site

1944. Note 23 to the financial statements for the year ended 30 June 2018 reflected capital work in progress balance of KSh. 706,789,275. Included in this amount was KSh. 539,431,019, being payments for interims certificate numbers 2, 3 and 4. Audit review of these interim certificates revealed that the Authority paid the contractor KSh. 346,409,290 in respect of materials on site during the period under review. During site inspection on 7 February 2019, it was established that the construction materials were not held at the construction site nor in custody or under security of the employer, in this case Kenya Maritime Authority. However, the Authority paid for these materials despite being held in unidentified/unknown site. Further, approved reports on the quantities of materials paid for were not availed for audit review.

1945. Under the circumstances, the propriety of KSh.346, 409,290 on materials on site for the year ended 30 June 2019 could not be confirmed.

Management Response

1946. These were bulk materials requiring large storage space i.e ballast, sand, reinforcement steel, formwork and concrete blocks. The site was excavated and could not hold materials. Upon contractor's request it was agreed in the Site Meeting No. 3 item 3.6.4 those materials offsite be considered and the clerk of works was instructed to maintain a weekly record of those materials off site. In addition, the payments of such materials were interim and subject to omission was subsequent payments when measurement for work was done. Site Meeting No. 3 minutes by Clerk of works report supports this.

Committee Observations

1947. **The Committee made the following observations:**

(i) The OAG was not given any information on the where abouts of the materials hence the reason of the query.

(ii) Further, considering that the management failed to provide this information even at the management letter level, existence of the paid for materials was in doubt.

Committee Recommendations

1948. **The Committee recommends that:**

(i) **The accounting officer for the KMA should always submit documents for audit verification as per the Public Audit Act 2015and PFM Act 2012 failure to which the sanctions imposed on the said legislations ensue.**

(ii) **The judiciary is requested to expedite hearing and determination of the pending cases touching KMA headquarters.**

Payment of Rent

1949. Included in the capital work in progress balance of KSh.706,789,275 as at 30 June 2018 were payments for rent amounting to KSh.2,070,000, being cost incurred by Kenya Maritime Authority to temporarily resettle tenants of reef apartment building whose stability was compromised during excavation for the foundation of the Headquarters building. However, the capitalization of the rent expense was contrary to International Public Sector Accounting Standard No. 17 Paragraph 30 which stated that, *'The cost of an item of property, plant, and equipment comprises: (b) Any costs directly attributable to bringing the asset to the location and condition necessary for it to be capable of operating in the manner intended by management'*.

1950. Further, Paragraph 30.3 of the conditions of contract under liability and insurance provides that, *'the contractor shall provide in joint names insurance cover that should have covered loss or damage to property in connection with the contract'*. Therefore, the cost of rent should have been catered for by the cover. Also, Appendix to conditions of contract clearly provided KSh. 5,000,000 as the minimum for insurance of other property.

1951. Consequently, the accuracy and validity of KSh. 2,070,000 in respect of work in progress as at 30th June 2018 could not be confirmed.

Management Response

1952. Due to heavy rains, the embankment of excavation started shifting risking foundations of Reef Apartment. A task force including County Government, NEMA, Consultants, MOHIUD recommended relocation of tenants to mitigate the risk of loss of life. Being an emergency, the contractor was instructed to bear the cost of relocation.

1953. The Authority had advised Lins Consultant to issue recovery instruction to the main the contractor and claim under the Contractor All Risk insurance policy number 01/01/020/00291/2017. (*Evidence: Quanti Bill Letter Ref: QBC/KMA. 01/LINS-EPCO/030/2019)*

Committee Observations

1954. **The Committee made the following observations:**

(i) There was no rain as indicated in the management response.

(ii) This monies should have been born by the insurance and not the KMA. Even if KMA paid it based on emergency, this money should have been recovered from the contractor at the first instance.

(iii) Though management indicated that this money will be recovered from the next payment certificate and that the contractor was agreeable, it had however taken more than two years to recover. There was however no evidence adduced before the Committee to corroborate this. The only record available is the letter dated 30th July 2019 from the Lins Consult to EPCO asking them to acknowledge that this money should be borne by the Insurance. This letter was not replied to.

Committee Recommendation

1955. **The accounting officer of the KMA should recover the KSh 2 million paid for rent from the main contractor in the next tranche of payment certificate.**

Raft Piling

1956. Note 23 to the financial statements for the year ended 30 June 2018 reflected capital work in progress balance of KSh. 706,789,275. Included in this amount was KSh. 539,431,019, being payments for interim certificate numbers 2, 3 and 4. Records availed for audit review indicated that during site excavation, the contractor encountered a section of the plinth which did not conform to hard rock necessitating redesign of the basement raft to include tubular piling filled with reinforced concrete. The records further show that, the employer negotiated variation to works valued at KSh.128,732,528 or 7.45% of the contract sum of KSh.1,728,176,418 for raft piling. Further, the bill of quantities for the works provided for two hundred and ninety-six (296) piles to be driven down for a minimum of seven (7) meters while the actual depth was to be determined on site after completion. Interim certificate Number four (4) indicated that the Authority paid KSh. 93,650,107 for the piling works.

1957. However, measurement details of the actual piling and information regarding the number and depth of each pile were not availed for audit confirmation. Further, measurements on site were not provided to confirm whether amount paid was in line with the provision of the Bill of Quantity. In addition, payment for the certificate was 84% of the items provided in the Bill of Quantity which was not confirmed by actual measurement of piling done.

1958. Consequently, the propriety and value for money for raft piling of KSh. 93,650,107 as at 30 June 2018 could not be confirmed.

Management Response

1959. The due procedure was followed on this item as captured in Auditor report.

1960. The piling BQ provided for measurement of piles per piece as they were procured in 12 meters length. The 7 meters was a minimum requirement and had a rider of a minimum additional 1.5m in rock. These were quality assurance standards.

1961. The actual piling records have been attached for reference. The actual piles driven were 296 pieces as indicated in the report. At the time of audit, provisional payment of 84% was done as per the piling BQ pending joint re-measurement and agreement with Contractor at hand. A report of the measurement had been provided as requested *(Vertical Load Test on Piles Report, Site Instruction for piling works, Piling BQ).*

Committee Observations

1962. **The Committee made the following observations:**

(i) Measurement was belatedly done on the piling works - way after completion and other works had been done on top.

(ii) It was not clear why this work could not be done in time and why the OAG was denied this information for audit.

Committee Recommendation

1963. **The accounting officer for the KMA should always adhere to statutory timelines on provision of documents for audit failure to which the sanctions provided for in both the Public Audit Act 2015 and Public Finance Management Act 2012 should apply.**

1964. **General Committee Observations on KMA Headquarters**

A. Conceptualization and approval of doing Headquarters:

- Management of KMA needed office space and therefore made a request to KPA for the same via a request letter of 6th November 2009 after approval from the board in its meeting of 13th November 2014. KPA's response letter was negative to the KMA's request.
- Though the KMA management averred that it discussed and approved the concept of having KNA HQs, there was no document adduced placed before the Committee to support this assertion save for the board minutes discussing and authorizing the concept done in 2014.

B. Tender documents for the purchase of land for HQs:

- One of the requirements under clause 1.2 of the retendered document was to discharge the property of any incumbrancers at the seller's cost, which discharge did not happen as confirmed by Mr. Seth and Ms. Otieno – KRC had one blocking development save for residential. Efforts by the KMA in its engagement with the law firm representing the Tiles and Carpets to change the user requirements had hit a snag thereby casting doubt on the future business model of the building.

C. The minutes of the Evaluation Committee held on 15th October 2014 authorizing purchase of the land was categorical that purchase can be done subject to change of user from residential to commercial. Further, the recommendation of the evaluation committee to purchase the land at about KSh. 150 M was violated as it was finally bought at KSh. 195m excluding stump duty.

D. The lead Consult was procured as a consultant for the project. Though he denied having any conflict of interest when he appeared before the Committee, his role in the process was a subject of litigation on the possible conflict of interest having sat in the Evaluation Committee.

E. Attorney General's opinion about electrical subcontractor:

- The Attorney General advised that it was irregular for KMA to procure subcontractors
- This Advisory came after execution of the contract. Management of KMA therefore failed to seek advice from the Attorney Gneral in time.

F. In a letter dated 15th August 2019, the EACC confirmed to the Committee that it took documents relating to the KMA headquarters and therefore KMA management was correct that they were not in KMA's custody.

Construction of Headquarters Subcontracts

1965. Note 23 to the financial statements for the year ended 30 June 2018 reflected capital work in progress of KSh. 706,789,275. The capital work in progress related to a contract for construction of Kenya Maritime Authority Headquarters at a contract sum of KSh. 1,728,176,418. Included in the contract sum were prime costs and provisional sums amounting to KSh.390,452,000 or 22.6%, contrary to the guidelines provided by Public Procurement Oversight Authority, 2007 which provided under Section VII Bills of Quantities Paragraph 3.0(d)(ii) that '*Provisional Sums to cover specialized works normally carried out by Nominated Sub Contractors should be avoided and instead Bills of Quantities of the specialized Works should be included as a section of the main Bill of Quantities to be priced by the Main Contractor. The Main Contractor should be required to indicate the name (s) of the specialized firms he proposes to engage to carry out the specialized Works as his approved domestic subcontractors. Only Provisional Sums to cover specialized Works by statutory authorities should be included in the Bills of Quantities'*.

1966. Further, review of sub-contracts procurement indicated a provisional sum of KSh. 32,500,000 for installation of lift which was awarded to one of the bidding firms at a contract price of KSh. 29,183,369. However, due diligence report indicated that the company was owned by non-Kenyan citizens and no preference was provided in the bid document, contrary to Section 3(i) of the Public Procurement and Asset Disposal Act, 2015 which requires promotion of local industries, Section 155(3) b which required preference to be given to firms where Kenyans are shareholders, and Section 157(8) which required exclusive preference to be given to citizens where funding is 100% funded by National Government or a Kenyan Body and is below the prescribed threshold.

1967. Consequently, the Authority contravened the Law.

Management Response

1968. There were no manufactures of lifts in Kenya. The companies which participated with local shareholding were middlemen and were more expensive than manufactures. A Lift was a Special Service which required assurance of guaranteed maintenance services. The employer felt guaranteed by the company Kone – among the tenderers.

1969. The employer got the lifts at a cheaper price. The quoted section could not apply to this specialized service.

Committee Observations

1970. **The committee made the following observations:**

(i) The explanation offered on international tendering at the expense of the local advertisement could not be sustained and therefore in breach of the law.

(ii) Further, there was no evidence placed before the Committee to support an assertion that getting lifts from international tenderers was cheaper than local ones.

(iii)This is one of the issues that was pending before the Court.

Committee recommendations

1971. **The Committee recommends that:**

(i) The accounting officer of the KMA should always adhere to the law relating to procurement.

(ii) The judiciary expedites hearing and determination of cases touching on KMA headquarters.

2.22 KENYA RAILWAYS CORPORATION (FY 2017/2018)

EXAMINATION OF THE REPORT OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF THE KENYA RAILWAYS CORPORATION (KRC) FOR THE FINANCIAL YEAR 2017/2018

Mr. Philip Mainga, the Chief Executive Officer of the Kenya Railways Corporation, accompanied by CPA Jemimah Matu (General Finance Manager), Mr. Stanley Gitari (Ag. General Manager, Corporate and Legal) appeared before the Committee to adduce evidence on the Auditor General's Report on the Financial Statements of the Kenya Railways Corporation for the FY 2017/2018.

Non-Disclosure of Material Uncertainty Related to Going Concern

1972. The Committee heard that Note 17.5 (c) to financial statements on critical accounting estimates and judgments- indicated that financial statements for the Year had been prepared on a going concern basis. However, the statement of financial position as at 30th June 2018 reflected current liabilities balance of KSh. 182,008,328,365 (2017-KSh.111, 999,219,078) which exceeded the current assets balance of KSh. 55,738,371,368, (2017- KSh. 69,551,570) by KSh. 126,269,956,997(2017-42,447,752,508) resulting in negative working capital. Further, the statement of comprehensive income for the Year reflected an operating loss of KSh. 5,562,892,452 deterioration from 2017 operating profit of KSh. 273,676,747.

1973. The statement of financial position also reflected payables and accrued charges balance of KSh. 34,094,795,493 (2017-KSh. 2,063,344,342) and as disclosed under Note 32 to the financial statements. This increase was significant amounting to KSh. 32,031,451,151 and representing a 1552% change from the prior Year. Management hadn't rendered explanation for non-payment. The conditions were indicative that material uncertainty existed that could cast significant doubt on Corporation's ability to continue as a going concern unless satisfactory measures were taken to reverse the trend.

Management Response

1974. Management informed the Committee that the higher current liabilities than the current assets: The current ratio of approximately 1:3 was attributable to Deferred Income which was Ksh 147,913,532,872. The deferred income was mainly due to cash received that could not be recognized as revenue in the year it was received but as revenue when earned and in case it was an asset, amortized in the year the benefits accrue.

1975. As per note 35 of the financial statements, the main item was SGR Deferred income Ksh 141.4 billion. This related to amounts received as government grant towards the SGR project from the Railway Levy Development Fund (RDLF). Once the asset was recognized, the deferred income would be amortized annually over the life of the asset.

1976. For trade creditors - the main creditors were SGR Operator and Contractor costs at Ksh 10 billion and Ksh 21 billion respectively, the same were funded by the National Treasury but accruals had been done at the end of the financial year.

1977. Therefore, with SGR Operations and Construction, the Current Assets: Current Liabilities ratio as a yardstick required to have a rider to the ratio due to the unique nature of the project and operations discussed above. The Corporations undertaking had current liability (grants) growth accelerating faster than the current assets generated.

1978. On deterioration of operating results from an operating profit of KSh. 273,676,747 in 2016/17 to an operating loss of KSh. 5,562,892,452 in 2017/18, the KRC's response was as follows:

1979. The rail operations fall in two categories; passenger and freight services. World over, passenger services were a social service to enhance movement of people to create an enabling environment to spur economic growth.

1980. Freight service was the compensating business that could drive the break-even of the rail operations. Based on this fact, the Corporations was embarking on a drive to increase the freight tonnage which were low in the first year of operations due to market entry for SGR and re-entry for MGR.

1981. MGR freight services had been adversely affected after the reverting of the services to KR after the termination of the concession with RVR in September 2017. The track required rehabilitation, building back business relations with suppliers and transporters which KR is seeking budget and winning back the shippers.

1982. SGR freight services being in the first year of operations had only operated for 6 months (Jan-June 2018) at subsidized tariffs. Of the freight, 99% was containerized cargo. KR was putting in place mechanisms to deal with conventional cargo like clinker, grains and fertilizer. This has a higher tonnage and profit margins once exploited. KR also wanted to build partnership relationships with shippers and bulk cargo handlers. Also envisaged was to synchronize operations with other government agencies like KRA and KPA who are an integral cog to the successful movement of cargo. KR also had aligned its human resource establishment to meet its new business model by having a new organizational structure in place.

1983. The SGR project was partially complete with Phase One and 2A complete while 2B and 2C pending. KR was therefore putting in place mechanisms to increase its freight tonnage by linking the SGR to Metre Gauge Railway line as it awaited implementation of Phase 2B and 2C which would help capture transit cargo to other East African nations.

1984. On increased payables and accrued charges, there was significant growth in the payables and accrued charges. This was mainly due to the following:

1. **SGR Contractor Liability** - Ksh 12,729,781,987/-This related to SGR Phase 2A for Interim Payment Certificate no. 2 (Foreign Portion) which had been raised but payment not made as at 30.06.2018 by EXIM Bank.

2. **SGR Land Compensation** - Ksh 8,307,857,507.00 of uncleared land compensation liabilities payable to Project Affected Persons (PAPs). This was to be cleared through the RDLF once budgetary allocation towards the same.

3. **SGR Operator Liability** - Ksh 9,526,419,171/- of operations costs relating to SGR operations and maintenance fees for the period June 2017 to June 2018. However, a liability of Ksh 5 billion had been offset during the period. The operator will be paid through exchequer and escrow revenue account collections.

Committee Observations.

1985. **The Committee made the following observations:**

(i) **On the operator of SGR, Contract and who signed it: there was a phased takeover of operations and maintenance of SGR. KRC had since taken over more than 50% (Security services, fuel management, ticketing) operation services having built internal capacity.**

(ii) **The contract for operation and maintenance of SGR was signed by KRC in 2017 for a renewable period of five years. The income from SGR goes to escrow account operated by the National Treasury.**

(iii) **The losses were attributable to huge investments in maintenance of railways that were left dilapilitated by RVR. KRC was in court with RVR seeking a decree that RVR should bear liabilities as assets remain with KRC. Though there was a performance bond between RVR and KRC at the time when KRC was suing RVR for liquidation, KRC's failure to recall the said performance pointed towards KRC management's negligence in securing the corporation's assets.**

(iv) **Further, KRC's attribution of losses to deferred income from government such as RDL was far-fetched. Loses arose due to half-rate charged/ concessional rates of transporting cargo to Mombasa. These rates were agreed with the Mother Ministry**

(v) **Delayed payments to the operator would attract interest as per the contract.**

(vi) **On the pending land compensation of KSh. 8.3 billion, KRC had paid 1.2 billion to NLC. The 7.1 billion was pending as at 6th July 2021.**

(vii) **KRC was still valuing her assets (529 acres), an exercise that was expected to end in January 2022. It was however not clear whether this exercise was complete at the time of compiling this report**

Committee Recommendation

1986. **The Committee requests the judiciary to expedite hearing and determination of the case between the KRC and RVR.**

Property, Plant and Equipment

1987. The statement of financial position as at 30 June 2018 reflected Property, Plant and Equipment balance of KSh. 24,941,511,520 and disclosed under Note 15 to the financial statements. However, the following concerns that cast doubt on the accuracy and validity of the balances were noted:

Illegal Allocations of Land

1988. As reported in the previous Year, various parcels of land were allocated private developers without the consent of the Corporation by either the Commissioner of lands or the defunct local authorities. For instance, land within Limuru Railway station constituting 9 industrial plots No. 7882/2-10 and measuring approximately 3 pieces within Kikuyu railways station measuring approximately 2 acres: and parcels of land adjacent to Mombasa railways station measuring approximately 0.75 to 1 acre had been allocated to private developers irregularly with some having been developed. Further, another 529 parcels of land had been illegally allocated across the country. However, management had sought court intervention to repossess only 27 parcels.

1989. From the foregoing, it was not possible to confirm the accuracy and the validity of property, plant and equipment balance of KSh. 24,941,511,520 as at June 2018.

Management Response

1990. The Corporation was in the process of carrying out Survey and Registration of all its operational land and Marshalling Yards for purposes of acquiring ownership documents. It was working closely with the National Land Commission to speed up the process of registration to obtain title deeds and official communication had been forwarded.

1991. To achieve this, the Corporation had engaged four surveying consultants to undertake countrywide surveys and registration of all operational land. This would see the survey of a total of 150 Railway Stations and marshalling yards measuring 2700 acres approximately finalized.

1992. This would ensure that all land irregularly allocated to third parties were identified, illegal surveys cancelled and titles revoked and the same registered under the Corporation. This exercise was expected to be completed by the end of the year (2021).

1993. The corporation was also working closely with the Ethics and Anti-Corruption Commission in conducting investigations into land irregularly allocated to third parties with an aim of recovering the same.

1994. The Kenya Railway Corporation had identified around 500 cases countrywide of parcels irregularly and illegally acquired and the same submitted to the Ethics and Anti-Corruption Commission for further investigations. It also requested the Ministry of Lands to revoke titles of all the land that were irregularly allocated by the Commissioner of Lands.

Committee Observations

1995. **The Committee made the following observations:**

(i) **The committee noted with concern that this was the same response that the Management gave the Committee in 2018 in which it indicated that the survey of the property was to be concluded by June 2019, which has not been done to date.**

(ii) **Further, the Committee noted that there was misrepresentation of the fact considering that the land in Mombasa (Tudor and Ganchoni) was still under the hands of the grabbers.**

Committee Recommendation

1996. **The accounting officer for the Kenya Railways Corporation should ensure completion of valuation of the KRC assets within the 2021/2022 financial year.**

Current Assets (Short Term Investments)

1997. As previously reported, the statement of financial position reflected short term investments balance of KSh. 2,172,135,077 as at 30th June 2018 and disclosed under Note 21 to the financial statements. Included in the amount was KSh. 818,575,979 that was held under fixed deposit with the chase Bank Ltd in Receivership (CBLIR) and subsequently sold to SBM Bank. As part of the takeover arrangements 75% of the value of deposits was taken over by SBM Bank to be available over a 3-year period. The balance value of deposit of 25% amounting to KSh. 204,643,995 remained under moratorium consequently, its accessibility remained uncertain.

Management Response

1998. Central Bank of Kenya (CBK) and Kenya Deposit Insurance Corporation (KDIC) signed an agreement between SBM Bank (Kenya) Limited (SBM Kenya), and KDIC for the acquisition by SBM Kenya of certain assets and assumption of certain deposits with respect to Chase Bank (Kenya) Limited (In Receivership) (CBLR). The agreement provided a transfer of 75 percent of the value of deposits that was under moratorium at CBLR, and the transfer of most staff and branches of the existing CBLR operations. 25 percent of the value of moratorium deposits would remain in CBLR.

1999. So far, the Corporation had accessed KSh .520,951,550.75/- from the funds transferred to SBM Bank. The balance of KSh 100,382,173/- was received in August 2021.

2000. The Corporation was following up on the 25% deposit amounting to KSh. 204,643,995 that remained in Chase Bank (Kenya) Limited (In Receivership) (CBLR).

Committee Observations

2001. **The Committee made the following observations:**

(i) KSh 2014,643,995 deposit was still held by the Chase Bank whose status was unclear considering that Chase Bank's liquidation process had not commenced.

(ii) Further, the latest correspondence between KRC and the Chase Bank was dated 22nd July 2020 implying that the KRC management had not engaged Chase Bank.

(iii)Further, it was not clear on the amount held at Chase Bank because the Chase Bank indicated that it held KSh 200M while KRC indicated it was KSh 204m.

Committee Recommendations

2002. **The accounting officer for the KRC should ensure that all the KRC deposits at Chase Bank are recovered.**

Inventories

2003. The statement of financial position reflected stores inventories balance of KSh. 3,616,531,816 as at 30th June 2018(2017-KSh. 3,610,264,866). Management was unable to support the balance by the way of requisite documents such as stock take sheet and reports.

In the circumstances it was not possible to confirm the validity of inventories valued at KSh. 3,616,531,816 as at 30 June 2018.

Management Response

2004. Management concurred with the Audit observation on the Corporation's inability to carry out stock-takes because of cash flow constraints and staff inadequacies vis-à-vis the complexity and expansiveness of the Corporation's stores system.

2005. The Corporation therefore adjust the stock values at the end of each financial year to consider the movements within the year. KRC has however undertaken a 100% stock take for its capital stores in the financial year 2019/2020.

Committee Observations

2006. **The Committee made the following observations:**

(i) The audit query was that there was no evidence (stock take sheets, report) to show that stock was taken but the management response did not address this.

(ii) Information on stock was in the form of a soft copy.

Committee Recommendation

2007. **The Committee recommends that the accounting officer for the KRC should always ensure timely stock take is done and proper records kept**

Trade and other Receivables

2008. The statement of financial position as at 30 June 2018 reflected trade and receivables balance of KSh. 38,553,285,640 (2017-KSh. 54,740,819,906). However, the following inconsistencies were noted:

2009. No aging analysis was provided for audit review, consequently the adequacy of provisions that could arise from impairment losses could not be established

Management Response

2010. The aging analysis was provided to the Office of the Auditor General.

Committee Observations

2011. **The Committee made the following observations:**

(i) **The said aging analysis was belatedly given to the OAG and therefore in violation of the audit timelines provided under the Public Audit Act 2015.**

(ii) **The aging analysis provided to the OAG and PIC on 14th December 2021 was verified and therefore the matter resolved.**

Committee Recommendation

2012. **The Committee recommends that the accounting officer for the KRC should always provide documents for audit within the statutory timelines provided under the Public Audit Act 2015.**

Included in the balance was the other debtors' balance of KSh.1, 189,220,372 owed to the Corporation by Kenya Ports Authority (KPA). Confirmation received from KPA indicated KSh. 651,978,000 as owed to the Corporation as of financial statement date resulting in unexplained and unreconciled balance of KSh. 537,242,372.

Management Response

2013. Kenya Railways Corporation figure of debtors was based on the actual tonnage of freight hauled. Being the first 6 months of operations, the mode of operations was subject to challenges which required reconciliations between the KR and KPA teams. A joint reconciliation was being carried out every quarter between the two organizations to avoid such disputes going forward.

Committee Observation

2014. **The management could not explicitly confirm whether reconciliation of the impugned amount had been done to date pointing to the possible loss of KSh 537,242,371.**

Committee Recommendations

2015. **The Committee recommends that:**

(i) **The accounting officers for the KRC and the KPA should constitute a team to reconcile the impugned figures and address them matter.**

(ii) **Going forward, the accounting officers for the KPA and KRC should ensure that there is immediate reconciliation of the amounts owing between the two entities.**

2016. Included in the balance is receivables amount of KSh. 10,000,000 from National Land Commission without supporting documents.

Management response

2017. On the 19th January 2018 vide a letter ref: VAL 1451/Phase2A to KR, NLC requested for Ksh 10 million administrative charges for site inspection and sensitization programmes. Accountability was expected from NLC since the amount was an advance. The same was yet to be accounted for by the Commission. KR had however written reminders to NLC to account for the same.

2018. The receivable was therefore rightly recognized until NLC accounts for the money advanced.

Committee Recommendation

2019. **The Committee recommends that the accounting officer for the National Land Commission should provide the necessary documents required by the KRC to enable accounting for the said receivables within the next audit cycle.**

2020. KSh. 194,845,459 included in the balance and described as RVR Transition Revenue had no supporting documents.

Management Response

2021. The RVR transition account related to Meter Gauge operation debtors. Due to the abrupt termination of the concession as KR continued to offer freight services to the transporters there was maintained a single control account in Navision for debtors' management to control billing and receipt payments. However, now the individual debtor accounts have been created in the Navision ERP System.

Committee Observations

2022. **The committee made the following observations:**

(i) **In KRC management's admittance of absence of these records due to abrupt leaving of RVR indicated that there was a possible loss of revenue during this transition that had since been addressed.**

(ii) **The said debtors/companies were invoiced by the KRC and were making their payments without promptly thus substantially reducing the debtor's figure.**

Committee Recommendation

2023. **The Committee recommends that the accounting officer for the KRC should ensure that all the debts have been paid for as per the repayment plan**.

Land Compensation

2024. Audit of Standard Gauge Railway (SGR) land compensations effected by the management between December 2014 and October 2016 4 revealed the following inconsistencies: -

Unsupported Payments

2025. Included the capital Work-in-Progress balance of KSh. 523,946,281,114 was KSh. 12 billion incurred on land compensation under SGR Phase 1. Of this amount, KSh.1,043,439,897 was paid out to Project Affected Persons (PAPS) without the requisite supporting beneficiary documents i.e copies of National Identity Cards, Kenya Revenue Authority Personal Identification Number (PIN) certificates and title deed surrender from the National Land Commission.

Overpayments

2026. Compensation amounting to KSh.15,752,406 was paid to Project Affected Persons (PAPS) who were entitled to only KSh. 1,082,658 resulting into an overpayment of KSh.14,669,748. Although Management subsequently recovered KSh. 5,698,770 from the overpayment, the balance of KSh. 8,970,978 remained outstanding as at 30 June 2018. In the Circumstances, the probity of the land compensation expenditure amounting to KSh. 1,052,410,875 could not be ascertained.

Management Response

Background information on land compensation

2027. The SGR Phase 1 Mombasa Nairobi was mooted in the year 2009. The commercial contracts were signed in the year 2012 and financial close was reached on 11th of May 2014 when the Premier of the Peoples Republic of China H.E Li Keqiang and Kenyan Government alongside other Heads of States from East Africa witnessed the signing of the agreement between the Cabinet Secretary to the National Treasury and the President of the China Exim Bank at State House in Nairobi.

2028. During this meeting, Kenya Railways was to ensure that the project was completed and ready for handover by 1st June 2017. The contract period envisaged contractually between KR and China Road & Bridge Corporation (CRBC) was 60 months (December 2019).

2029. To enable achievement of the deadlines given, KR and NLC embarked on land acquisition process to ensure that the as much land acquired was provided to CRBC (the contractor) who also increased their level of mobilization.

2030. KR & NLC were directed to ensure that the whole corridor of 472 kms between Mombasa and Nairobi had been handled over to the contractor by 1st December 2014 if the target completion date of June 2017 was to be achieved. The corridor was handed over on 12th December 2014.

2031. At the time, NLC was at the initial stages of setting up and had not been adequately staffed to undertake a project of this magnitude within the timelines given by the Government. NLC therefore requested KR to undertake on its behalf the disbursement function given that KR had a manpower capacity in its Finance Department and also had online banking services with major banks who would be able to disburse compensation monies to the project persons expeditiously and without undue delay as required under the Constitution and the Land Act 2012.

2032. The disbursement process to the project affected persons (PAPS) began in December 2014. Kenya Railways (KR) received letters from the National Land Commission (NLC) which had compensations schedules attached. In the letter were instructions that "*due to the urgency of the project, the Commission hereby delegates the role of dispensing payments to Kenya Railways under direct supervision by the Commission*".

2033. Based on the above instructions, the role of KR was limited to disbursement of funds which is at the tail end of the process of the overall land valuation and compensation exercise. The role of valuation and further awarding of project affected persons (PAPs) rested solely with the NLC as per their Constitutional mandate. All records for the undertaking were to be kept by NLC including the letters of award.

2034. The controls deployed by KR in the disbursement process were to ensure that the PAPs names and amounts compensated for land and developments acquired matched compensation schedules provided by NLC. KR also followed a Standard Operating Procedure (SOP) which required NLC to approve all payments before KR released the same to PAPs bank accounts. This ensured that the Commission had direct supervision over the paying process in the land acquisition process.

2035. The above figures of Ksh1.3billion are award letter copies in custody of the NLC as originals are provided to PAPs. KR will request for the copies of the awards for purposes of verification and records as KR had used the beneficiary details forms filled by the PAPs provided to KR by NLC

Management Response on Unsupported Payments

2036. Based on the above background explained in (i) above the payments related to the 1st payment processed in the compensation exercise. KR roles were mainly disbursement upon confirmation that the names of the PAPs appeared in the NLC compensation schedules. Notable is that after the first schedule, the support documents were availed in subsequent payments as an enhancement of the governance framework of the disbursement role by KR.

2037. **For National ID cards numbers**, the ID numbers were picked from the beneficiary forms filled by the PAPs and submitted through NLC. The same were cross checked on the e-citizen platform which was utilized to confirm the ID card names and numbers match.

2038. **PIN Certificates**. -The support document relied upon were the NLC forms provided to the PAPs to fill their personal details and remitted through the NLC to KR. Through the KRA website https://itax.kra.go.ke/KRA-Portal/pinChecker the PINs were checked for authenticity.

2039. **Copies of Title Deeds-** A title deed being a document of ownership is presented to the NLC at the point of enquiry to determine ownership. However, there were exceptions where a copy of title would not be available, this was where the squatters were occupiers in good faith and where developments were involved where private developer was not the landowner. NLC was the custodian of any proof of ownership documents. However, KR was in the process of vesting and eventually tilting all land acquired under Phase 1 of the SGR project to acquire a title deed and safeguard the fenced corridor.

Management Response on Overpayments

2040. Of the total payments reported above, Ksh 741,970 was repeated and Ksh 4,536,750 was not erroneously paid.

2041. For Ksh 3,316,996/- which NLC wrote to KR after payments had been dispatched but were in the compensation schedules, KR was to request an update from NLC on the status of recovery of the same. However, KR had not provided additional funds to NLC for the said erroneous payments. NLC was by law mandated to recover such overpayments alongside other remedies.

Committee Observations

2042. **The Committee made the following observations:**

(i) It was not illegal for NLC to delegate to KRC of payments to beneficiaries (PAPS) of compulsory acquired land on the understanding of the capacity KRC had on the matter.

(ii) KRC was therefore required to do due diligence on availability of all requisite documents before payments were made, which it did from the evidence tendered.

(iii)However, all the documents regarding compensation were in the custody of NLC.

2043. **Recovery of the overpaid money had been instituted way before the OAG started auditing and that KSh 5.6 million had already been recovered leaving a balance of KSh 8.9 million outstanding. The overpayments were stopped by the NLC upon realizing the errors.**

Committee Recommendation

2044. **The Committee recommends that the accounting officer for the KRC should ensure that the balance of overpayments (KSh 8.9 million) was fully recovered within three months of adoption of this report.**

2.23 BOMAS OF KENYA (FY 2017/2018 AND 2018/2019)

EXAMINATION OF THE REPORT OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF THE BOMAS OF KENYA FOR THE FINANCIAL YEAR 2017/2018 AND FINANCIAL YEAR 2018/2019

Mr. Peter Gitaa, Chief Executive Officer of the Bomas of Kenya, accompanied by Nexon Mugilwa (General Finance Manager appeared before the Committee to adduce evidence on the Auditor General's Report on the Financial Statements of the Bomas of Kenya Railways for the FYs 2017/2018 and 2018/2019.

<u>Trade and Other Receivables FY 2017/2018 and 2018/2019</u>

2045. Note 15 (a) to the financial statements reflected trade and other receivables balance of KSh.57,201,472 which included KSh.39,974,796 disclosed as Little Theatre and Ushanga Kenya receivable. However, verification of records maintained at the company revealed the following matters:

a) Little Theatre Club

2046. Little Theatre Club, situated on a land referenced LR.No. MSA/BLOCKX/VI/24 along Mbaraki Road in Mombasa Municipality, was declared a national monument through a Gazette Notice dated 24th October, 2001.

2047. The Ministry of Tourism, in a letter referenced MOT/3/17 dated 23rd November, 2016, requested Bomas of Kenya Limited to undertake funding for infrastructure to improve Little Theatre Club at a cost not exceeding KSh. 50 million with the Ministry pledging to reimburse Bomas of Kenya Limited the same amount from Tourism Recovery Funds.

2048. Subsequently. Bomas of Kenya Limited procured extreme Engineering Ltd vide Tender No.BOK/LTC/08/2017 to carry out the works at a contract sum of KSh. 48,739,204. The following anomalies were however noted:

(i) No reimbursement had been made to Bomas of Kenya Limited from the Ministry despite numerous requests and commitment of KSh. 36,208,770.

(ii) The Memorandum of Understanding between Little Theatre Club and Bomas of Kenya Limited had not been signed.

(iii) The contract had been extended twice: 1st by 12 weeks and later by 3 weeks but no letter of request for extension from contractor was availed for audit review.

(iv) The latest status report of the project dated 22 October 2018, included a proposed variation of works amounting to KSh. 18,163,134 which equated to 37% of the original contract contrary to the provisions of the Public Procurement and Asset Disposal Act 2015.

(v) Contracted works were not completed as at the date of the audit.

Management response

2049. Office of the Cabinet Secretary, Ministry of Tourism through a letter referenced MOT/3/17, dated 23rd November 2016 requested for funds from the General Manager Bomas of Kenya Ksh. 50 million for improvement of Little Theatre Club in Mombasa. After the completion and handing over of the intended work, the General Manager wrote a letter ref. BOK/GM/LTC/01 dated 6/12/2019 to the Principal Secretary, State Department of Tourism requesting for reimbursement of KSh.50million which was utilized for the project. The General Manager of Bomas of Kenya sent a reminder for reimbursement to the Principal Secretary, State Department of Tourism ref. BOK/GM/MOTW/2020-05 dated, 6th May 2020.

2050. The Chief Architect through a letter dated 27/03/2018 ref. D118/10187A/43 made a request to the General Manager for an extension of 8 weeks. Certificate of practical completion Ref. D118/10187A/90 dated 10th September, 2018 on completion of improvement at Little Theatre Club was issued by the State Department of Public Works Architectural Department.

Committee Observations

2051. **The Committee made the following observations:**

(i) As at the time of appearance before the Committee, the monies expended on improvement of the Little Theatre Club had not been reimbursed by the Ministry despite several requests from the Bomas of Kenya Limited. Considering that the Mother Ministry had not undertaken to refund the said monies, their recoverability remained doubtful.

(ii) **On variation, management failed to explain the circumstances leading to the violation of the Public Procurement and Asset Disposal Act 2015 in varying the contract sum by 37% and absence of a request for extension of time indicated that the accounting officer for Bomas of Kenya was in breach of the law.**

Committee Recommendations

2052. **The Committee recommends that in the financial year 2022/2023, the Ministry of Sports and Culture should reimburse the Bomas of Kenya the KSh 50 million expended in infrastructure improvement.**

b) Ushanga Initiative

FY 2017/2018

2053. The Ministry of Tourism through a letter reference MOT/CONF/1/61/01 Vol (1) B), requested Bomas of Kenya Limited to allocate space for Ushanga Kenya Centre following Presidential directive and Bomas of Kenya assented to the request. Records maintained at Company indicated that the management in a letter date 25th May 2018 requested the Ministry of Tourism to reimburse KSh. 3,766,026 incurred in respect of operationalization of Ushanga Kenya Initiative. The amount had not been reimbursed as at the close of year and now disclosed under Note 15(a) as Little Theatre Club and Ushanga Kenya receivable.

2054. Consequently, failure by Ministry to reimburse Bomas of Kenya Limited the amounts incurred may have impacted negatively on its financial affairs.

FY 2018/2019

2055. The trade and other receivables balance totalling KSh. 72,652,794 disclose in Note 13(a) to the financial statements includes a sum of KSh. 12,864,831 due from Ushanga Kenya Initiative that promotes traditional bead making among women in pastoralist communities. Available records indicated that the debts owed by the initiative as at 30 June 2018 amounted to KSh. 3,766,026 and increased by KSh. 9,098,805 in the year under review. However, supporting schedules for the new debts totalling KSh. 9,098,805 were not presented for audit.

2056. Other records indicated that the Ministry of Tourism and Wildlife had in June, 2018 requested the initiative's Coordinator to reimburse the Bomas of Kenya Limited KSh. 14,315,363 spent to operationalize the initiative. The reimbursement had neither been made as at 30 June, 2019 nor indication given whether the debt was still due for payment. Therefore, the total debts owed to Bomas of Kenya Limited by the initiative as at 30 June, 2018 May have amounted to KSh. 14,315,363 and not KSh. 3,766,026 as reported in the financial statements for the year then ended. In view of these issues, the accuracy and completeness of the trade and other receivables balance totalling KSh. 72,652,794 reflected in the statement of financial position as at 30 June, 2019 has not been confirmed.

Management Response

2057. The Ministry of Tourism requested Bomas of Kenya Limited to allocate space for Ushanga Kenya Centre following a presidential directive. Ref. MOT/CONF:1/61/01 VOL (1) B. Bomas of Kenya, in a letter ref. BOK/GM/UKI/01 dated 25th May 2018, made the 1st reimbursement request on the expenses incurred to the Ministry of Tourism and Wildlife. A second request for reimbursement was done to the Ministry of Tourism and Wildlife ref. BOK/GM/UKI/01 letter dated 22nd November 2018. Further, Bomas of Kenya sent a third reminder to the State Department of Tourism ref BOK/FA/AUDIT/01 in a letter dated 13th February 2019. A follow up of the same by Bomas of Kenya to the State Department of Tourism ref. BOK /GM/MOTW/2020-03 letter dated 27th March 2020.

2058. The Ministry of Tourism and Wildlife sent a response through a letter ref MOT/3/11 and dated 11th June, 2020 informing Bomas that the request on Ushanga Kenya could not materialize because Ushanga Kenya was unable to settle the claims due to financial crisis. Hence, the Principal Secretary advised the General Manager of BOK to follow up the debt with the State Department for Culture and Heritage the General Manager of Bomas of Kenya, in response to the Principal Secretary, wrote to the Principal Secretary State Department for Culture and Heritage ref. BOK/GM/MOSCH/2020-01 dated 26th August 2020.

Committee Observations

2059. **The Committee made the following observations:**

(i) **The Committee could not establish the legal status / ownership of Little club and Ushanga and the Bomas that necessitated expenditure of public money.**

(ii) **Recoverability of monies expended was doubtful since no state department had undertaken to refund.**

Committee Recommendation

2060. **The Ministry of Sports and Culture should reimburse the Bomas of Kenya the KSh 3.7 million expended on Ushanga Initiative.**

PRIOR YEAR ISSUES FY 2017/2018

Trade and Other Receivables FY 2017/2018 and 2018/2019

2061. As reported in previous years, trade and other receivables balance of KSh.57,201,472 as at 30 June 2018 was net of KSh.5,844,308 which had been outstanding for over 12 years which was fully provided for. Despite the Public Investments Committee having recommended to the Board to regulate the debts, the matter was yet to be resolved. As a result, it was not possible to confirm that trade and other receivables balance of KSh.57,201,472 in the financial statements was fairly stated.

Management response

2062. The matter had been outstanding for long, but it should be noted that the board had approved for write off and currently Bomas of Kenya was awaiting the approval of the national treasury for writing off the debts from the books of accounts.

Committee Observation

2063. **The Committee noted that implementation of the PIC's recommendations on the matter had taken inordinately long to crystalize thus indicating executive laxity or in contempt of parliament.**

Committee Recommendation

2064. **The Committee recommends that the Implementation Committee of the National Assembly should follow-up and ensure implementation of the PIC recommendations once approved by the House.**

Valuation of Assets FY 2017/2018 and 2018/2019

2065. The statement of financial position reflected a balance of KSh. 2,310,728,998 under property, plant and equipment as at 30 June 2018. However, and as similarly reported in the previous year, the last revaluation for the assets was conducted in 1996. Consequently, the Company has not revalued its assets in the last 22 (twenty-two) years to take cognizance of the drastic change in value of its assets contrary to the International Accounting Standard No.16 which stipulates the property, plant and equipment should be revalued after every five years.

2066. Further, the Company did not possess ownership documents for the land on which it operated. Although the original title, L.R. No.12066 (L.R No.26510) was released by Tourism Finance Corporation to the Ministry of Tourism on 28 September 2017, the Ministry had not yet forwarded the title to Bomas of Kenya Limited. This had hindered execution of planned activities such as boundary re-alignment and valuation of land.

2067. Consequently, it was not possible to ascertain the accuracy and ownership of the property, plant and equipment balance of KSh. 2,310,728,998 as at 30 June 2018.

Management response-

2068. Bomas of Kenya wrote to the Principal Secretary of Land and Physical Planning via the letter dated 12/09/2018 ref. BOK/FA/AUDIT/01, requesting for the valuation of the property LR. No. 12066**.** A reminder of the same was done, ref. letter BOK/FA/AUDIT/01, dated 13/02/2019 Bomas management had not received the communication from the land's ministry.

2069. The Institution would provide for in the valuation of the Asset i.e Land in the supplementary II so as to have a fair value of the Land. It should be noted that this had taken twenty-two years since last valuation. Valuation was expected to be done not later than 25th January, 2022.

Committee Observations

2070. **The Committee made the following observations:**

(i) **Revaluation of Assets had not been done due to budgetary constraints. There were however averments from the management that the requested funds would be factored in the supplementary budget of 2021/2022.**

(ii) **Despite indicating that the Title Deed was in the custody of the Mother Ministry and that there were efforts to request the same by Bomas, it was not clear why the mother Ministry was reluctant to surrender the said title to Bomas of Kenya.**

Committee Recommendations

2071. **The Committee recommends:**

(i) **The accounting officer for the Bomas of Kenya should ensure valuation of the Bomas of Kenya assets within the 2022/2023 Financial Year.**

(ii) **The Ministry of Sports and Culture should surrender the title to Bomas of Kenya within three months of adoption of this report**

Unpaid Compensation for Compulsory Acquisition of Land FY 2017/2018 and 2018/19

2072. Kenya Urban Roads Authority compulsorily acquired 0.8055 hectares (2acres) on L.R.No. 12066 vide gazette notice No.11155 of 8 August 2013 for the purpose of rehabilitating and upgrading the section of Langata road lying between the Kenya Wildlife Service (KWS) head of and Bomas of Kenya Limited. The Company was to be paid KSh. 85 million as compensation for the acquisition based on valuation done by a local valuation company. However, available records indicated that the compensation had not been done. No plausible explanation was provided for the failure to compensate the Company for the land it surrendered for public use several years ago.

Management Response

2073. There was Reference letter KURA/SUR/14/2. VOL3 (56) dated 7/02/2013 from (KURA KENYA URBAN ROAD AUTHORITY) in which the authority agreed to pay Bomas upon completion of valuation and awards. Valuation of the said land was done by value zone limited. Bomas of Kenya issued several demand letters and reminders to the Chairman, National Land Commission requesting for the compensation for the compulsory acquisitions of 0.805 hectares on LR no. 12066, this was after all conditions had been met i.e Valuation of the parcel of Land. This compensation did not materialize.

2074. A communication via the Ministry of Tourism and Wildlife, State Department for Tourism was done through letter ref MOT/1/2/1 dated 19/11/2019 on the claim for compulsory compensation on acquisitions of land indicated that, the office of the attorney general advised that legally public land was not subject to compulsory acquisition and compensation and thus the matter should be withdrawn from the court.

2075. The Management, through the office of the Attorney General, was making up a follow up to have the loss compensated to the institution in the financial year 2021/2022.

Committee Observations

2076. **The Committee noted with concern the inconsistent treatment of the matter of compensation by the Office of the Attorney General on compulsory acquired land. On one hand, the Kenya Wildlife was compensated for its land while Bomas of Kenya was denied.**

Committee Recommendation

2077. **The Attorney General should issue a policy guideline to all government agencies regarding compensation of compulsory acquired public land.**

Delinking of the company from Tourism Finance Corporation FY 2017/2018 and 2019/2019

2078. As previously reported in 2016/2017 and as indicated under note 18 to the financial statements, the Company was fully (100%) owned by Tourism Finance Corporation (formerly Kenya Tourist Development Corporation) through some 254,000 shares of KSh. 20 each with a book value of KSh. 5,080,000

2079. Available records indicated that, the process to delink the Company from Tourism Finance Corporation so that it could become an independent parastatal was mooted in 1992 to enable the Company institute proper management and investment policies that would turn it to a self-sustaining organization. Following the request by the management, the Board of the then Kenya Tourist Development Corporation in its meeting of 17th June 1992 resolved to delink the Company from the Corporation.

2080. In 1994, the public Investment Committee and the Parliamentary Accounts Committee, with Treasury's agreement, recommended the commencement of the delinking process. In 2002, the Office of the Attorney-General had in its legal interpretation and in reference to the State Corporation Act Cap, 446 also concluded that one Government parastatal could own another. However, despite these interventions, very minimal progress appeared to have been made on the delinking process. As a result, the Company continued to face operational and legal challenges in meeting its obligations through the Tourism Finance Corporation.

Management Response

2081. Through Letter dated 30th July, 2021, Bomas of Kenya was pursuing the Matter for indulgence of the Head of Civil Service via Letter Ref BOK/GM/PSC/2021-03 by the Chairman of the Board. Further, it should be noted as follows:

2082. The nineteenth report of the public investment committee on the audited financial statements of state corporations' volume I dated March 2015 recommended that Bomas of Kenya should be delinked from Kenya Development Corporations as recommended in previous public investment committee reports**.**

2083. The Principal Secretary, National Treasury and Ministry of Planning in a letter ref. CONF.268/03/A dated 11th April 2018 wrote to the General Manager of Bomas of Kenya requesting for the implementation status of the report

2084. A letter reference TDC/C/3/1 dated 15th April 1993, from KTDC to the Permanent Secretary Ministry of Tourism & Wildlife, the Bomas of Kenya Board considered the matter carefully and concluded that given the special circumstances, it would be better to delink the company from this corporation.

2085. The Management was awaiting response from the head of Civil Service and a follow up through the parliament Committee on Sports and Culture to have autonomy in discharging its mandate.

Committee Observations

2086. **The Committee noted that that this matter had been handled in the previous PIC reports and recommendations made to that effect. However, these recommendations remain unimplemented.**

Committee recommendation

2087. **The Committee recommends that the Committee on Implementation should follow up implementation of PIC recommendations and report to the House accordingly.**

Lack of Risk Management Framework FY 2017/2018

2088. Risk Management Framework Initiative is informed by good corporate governance practice and need to be proactive as opposed to reactive in managing risks. Apparently, as at the time of audit the company had not developed and implemented a risk management framework. This was contrary to the Section 165 (1) of Public Finance Management Regulations 2015 which required that an accounting officer of a national Government entity developed a risk management strategy which included fraud prevention mechanism. In circumstances, the risks pertinent to the company may not be appropriately addressed unless risk management processes for identifying and responding to the risks are properly documented.

Management Response

2089. A risk management framework was developed containing the required risk control mechanisms which were deemed necessary to protect the organisations assets, its employees, as well as its operations and was fully in operation.

Committee Observation and recommendation

2090. **The Committee notes that though the Bomas of Kenya had since operationalized a risk management policy, this had taken inordinately long to achieve.**

Unreconciled Sales and Other Income FY 2018/2019

2091. Notes 6(a) and 9 to the financial statements reflected sales and other income totalling KSh.137,184,282. This figure included credit sales of KSh.119,752,375 and cash sales KSh.11,277,901.98 among others. However, a recast of revenue receipts for the year revealed cash collection totalling KSh.14,149,043, but the banking slips provided for audit were for KSh.3,327,220 only and therefore revenue totalling to KSh. KSh.10,821,823 was not accounted for. As a result, the accuracy and completeness of the sales and other income balance totaling KSh. 137,184,282 reflected in the financial statements could not be confirmed.

Management Response

2092. The board of Directors appointed an ad hoc committee and the Management received a report on the findings of the variance in revenue. Through the report, the board recommended recovery of the revenue.

2093. As at 5th October, 2021, the Management was pursuing recovery of the funds on affected staff as per recommendations of the board on monthly basis.

Committee Observations

2094. **The Committee made the following recommendations:**

(i) The amount in question of KSh.10,821,823 had not been recovered. Only KSh 2 million had been recovered through the payroll (three officers). The balance of KSh 9 million was attributable to the former finance manager (david Rono).

(ii) The Bomas of Kenya Board dismissed the officer involved in the fraud (finance Manager- Rono) who failed to bank collections). The said officer had since taken the Board to Court.

(iii)Management had since introduced a PDQ system, Mpesa, micro fiderial sale system; which is cashless.

Committee Recommendation

2095. **The Committee requests the judiciary to expedite hearing and determination of the matter relating to Mr. David Rono**

Unsatisfactory Implementation of Enterprise Resource Planning System FY 2018/2019

2096. An Enterprise Resource Planning (ERP) information system integrated various software applications to manage designated activities in some or all Departments and functions of an organization. Available records indicated that the company procured an Enterprise Resource Planning (ERP) system in 2017 at a cost of KSh.1,985,990. According to the user requirements issued for the contract, various modules were to be included in the system. Although available records indicated that implementation of the system was ongoing, Management did not provide the following information for audit verification:

- Status report on the implementation of the system.

- Documentation on the system
- Inspection and acceptance certificates to confirm whether user requirements were met.
- Users and user access rights on the system and confirmation that rights granted were in line with the user responsibilities.
- Evidence of training provided to users.

2097. In addition, Management did not provide an explanation on the slow pace of implementing the system. In the absence of sufficient evidence, it was not possible to confirm that the system procured met the user requirements and whether Company will obtain value for money on the expenditure and achieve the objectives set for the system.

Management Response

a) Status report on the implementation of the system.

2098. The Board tasked the Management on the user requirements and training needs regarding operationalisation of the system. The system requirement and tests were done to meet the needs.

b) Documentation on the system

2099. Documentation for the system involved assessment of the user requirements, methodology, and test for various modules set in phase as per provisions.

c) Inspection and acceptance certificates to confirm whether user requirements were met.

2100. Each module deployed was tested and the report produced per individual module.

d) Users and user access rights on the system and confirmation that rights granted were in line with the user responsibilities.

2101. At the initial stage 1 of the phase, users were mainly drawn from the Human Resource department, Finance and accounts department, Food and Beverage and the Marketing department. Extracts of the trained user as of financial year was availed.

e) Evidence of training provided to users.

2102. The users who were trained in the relevant department actively use the system as per the provided extract of users in the relevant department as at 28th November, 2021. The Enterprise resource planning system was in place and embedded with an operational point of sale for ticketing at the entrance of Auditorium and restaurant.

Committee Observation

2103. **The Bomas of Kenya Management belatedly provided all the requested documents which were verified by the OAG and therefore resolving the matter.**

Committee Recommendation

2104. **The accounting officer for the Bomas of Kenya should always submit documents for audit within the statutory timelines**

Irregular Payment of Leave Allowance 2018/2019

2105. Section 4.7.1 and 4.7.2 of the Company's Human Resource Policies and Regulations manual stated that leave allowance equivalent to one month's basic salary shall be payable to employees once in each year provided that an employee proceeds for more than (1/2) of the leave entitlement. However, a review of January, 2019 payroll revealed that one employee was paid leave allowance amounting to KSh.68,467 instead of the basic salary of KSh.30,976. Similarly, three employees were paid leave allowance more than once during the financial year ended 30th June, 2019 totalling KSh.179,101.

2106. The payments therefore contravened the company's regulations and were, as a result, irregular.

Management Response

2107. Section 4.7.1 of the Institution's Human Resource Policies and Regulations manual states that "Leave allowance shall be payable to all employees once a year provided that an employee proceeds for more than half (½) of the leave entitlement. The allowance shall be paid on or before the commencement of the leave".

2108. During the audit, it was established that an officer PR no. 5418 had been paid leave allowance amounting to ksh.68,467. The payment above his leave entitlement was noted as an error of omission. Recovery of the amount paid above the staff's leave allowance entitlement was effected in October 2019 and cleared in January 2020. Records of recovery have been made available for ease of reference.

2109. The three employees cited in the report had proceeded on their annual leave at different intervals during the calendar year 2018 and 2019, as per approved leave schedules issued at the beginning of the calendar years. Administration of their leave allowance was effected in the months the workers proceeded on leave. Based on the industry in which the institution was and the dynamism of the activities/operation involved, at times it could require review of leave schedules one year after the other and as such, staff may end up proceeding on their annual leave as planned, however, changes do not subject them to double payment of leave allowance. An analysis of the payroll for the last four (4) years was carried out and issued to the Internal Auditor for verification. The analysis never revealed the occurrence of double payment of leave allowance in different months as had been raised. However, Management resolved to administer leave allowance ones in a financial year as opposed to monthly administration which has a high probability of omissions.

2110. The Management had fully recovered the irregular leave and was currently providing for leave once in every financial year.

Committee observations and Recommendations

2111. **The matter was adequately responded to and therefore resolved.**

Information and Communication Technology Control Environment FY 2018/2019

2112. Audit review of the Information Technology (IT) function of the Company further revealed that management had not established controls on use of information technology. These include governance as well as physical and logical access controls. In addition, there were no documented policies on program change management and on service continuity in the event of unexpected system failures. As a result, there was risk of disruption of operations on occurrence of such events.

Management Response

2113. The Management had since established an ICT policy relevant for the establishment of controls on the efficient use of the Information technology to ensure effectiveness of the existing processes. The policy covers, use of electronic mails, internet passwords, network security, back-up plan, risk management, information protection and data sensitivity.

Committee Observation

2114. **The Committee notes that though the impugned ICT Policy had since been put in place, management was negligent in delaying to put the said policy in place in time.**

Committee Recommendation

2115. **The matter was resolved**

2.24 NATIONAL SOCIAL SECURITY FUND (NSSF - FY 2018/2019)

EXAMINATION OF THE REPORT OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF THE NATIONAL SOCIAL SECURITY FUND (NSSF) FOR THE FINANCIAL YEAR 2018/2019

Mr. Anthony Omerikwa, the Managing Trustee of the National Social Security Fund accompanied by Ms. Marrieta Mutinda (Manager, Finance) appeared before the Committee to adduce evidence on the report of the Auditor General on the financial statements of the Fund for the financial year 2018/2019.

Unaccounted for Members Contributions - Contributions in Transit

2116. The statement of changes in net assets available for benefits reflected a net surplus from dealings with members' amount of KSh.10, 163,269,208. In compliance with the Retirement Benefits Act, 1997, NSSF maintained employer contribution clearing accounts where total contributions were posted from the employers' accounts. It was from these clearing accounts that members' accounts were credited for benefits payment upon qualification. A review of Note 41 to the financial statements revealed that in the year under review, the contributions in transit representing contributions which had not been posted to individual members' accounts reduced from 663,000,000 as at 30 June, 2018 to 290,000,000 as at 30 June, 2019 being a net change by KSh.373, 000,000. Management had not provided explanations for failure to reconcile and post the amounts to the respective member's accounts.

2117. Consequently, the accuracy, completeness and validity of the statement of changes in net assets available for benefits for the year ended 30 June, 2019 could not be confirmed

Management Response

2118. Contributions in transit amounting to **KSh. 762 million** was under reconciliation. This was a continuous exercise to update member accounts that was undertaken by a dedicated team in every Branch office and at the Head office.

2119. The **KSh**. **290 million** mentioned in the auditor's report represented **0.2%** of the cumulative mandatory contributions collected which stood at **KSh**. **144,350,436,306.93** as at 30th June, 2019. There were various causes of Contributions in Transit, key of which are indicated below:

(i) Recovery of longstanding arrears from employers where member numbers could not be traced immediately.

(ii) Failure of employers to ensure their employees get NSSF registration.

(iii) Erroneous submission of member numbers by employers when submitting monthly contributions and returns e.g. writing an "o" instead of a "zero".

2120. The Contribution amounts in Transit accrued interest just like any other member contribution and was transferred to member accounts once their details were updated. The following key strategies had been put in place to halt the growth of the Contributions in Transit:

(i) All Compliance Officers across the Fund had been enabled to resolve member number issues in the system.

(ii) Field offices were conducting targeted member registrations at County Governments within their jurisdictions and ensuring that member accounts are updated

(iii) Reduction of the Contributions in Transit by 50% by 30th June 2022 had been factored as a key performance indicator for the 2021/2022 financial year score card.

(iv) The Fund was encouraging the usage of the E-services and mobile application to reduce errors in submission and enhance efficiency in contribution payments.

Committee Observations

2121. **The committee made the following observations:**

(i) This matter had been addressed in the previous PIC Reports starting from the 19th Report up to the 23rd Report with recommendation that the Fund liaises with employees to identify un-accounted for contributors.

(ii) The strategies put in place by the NSSF have seen reduction in the un-accounted for funds over the years.

Committee Recommendation

2122. **The Committee recommends that the Management of the NSSF should expedite reconciliation and be up to date with members' contributions.**

Unreconciled Cash and Bank Balances

2123. The statement of net assets available for benefits reflects cash and bank balance of KSh.419, 376,662. A review of the Fund's bank balances held by various financial institutions indicated a negative balance of KSh.268,049,312 in respect of the National Bank of Kenya while as the bank reconciliation statement reflected a positive balance of KSh. 198,407,296

2124. Further, an analysis of the Fund's bank reconciliation statements revealed the following unsatisfactory matters:

Unrecorded Receipts in Bank Statements and Cashbook

2125. The bank reconciliation statements reflected receipts in the bank totalling KSh.2, 063,448,078.76 on 30 June 2019, which was at variance with the amount reflected in the cashbook of KSh. 1,658,301,341

Unrecorded Payments in Bank Statement and Cashbook

2126. The bank reconciliation statements reflected payments in the bank not recorded in the cashbook amounting to KSh.498, 906,547.62 as at 30 June 2019, which was at variance with amount reflected in the cashbook of KSh.1, 751, 322,101.39. Further, included in this amount were payments amounting to KSh.1, 745, 080,309.24, which had not been reconciled.

2127. Management had explained that the above balances were held for prolonged periods without being cleared due to the inability of the accounting systems to clear the old balances.

2128. In the circumstances, the accuracy and completeness of the cash and bank balance of KSh.419, 376,662 reflected in the statement of net assets available for benefits as at 30th June 2019 could not be confirmed.

Management Response

2129. The bank balance for NBK rent account was a credit of KSh 198,407,296 as per the certificate of balance from NBK as at 30 June 2019**.** However, due to timing differences, contributions from various Government Ministries took time to identify and receipt as they had been erroneously wired into the rent account instead of the contributions account. These un-receipted amounts therefore understated the cashbook balance. The amounts were subsequently receipted and the cashbook reflected a positive balance of KSh. 34,285,840.59 as at 30th November, 2020.

2130. The variances observed as at 30 June 2019 were sorted out during the July 2019 reconciliation. The reconciliation of the revenue accounts, especially account 1107110270 in which the bulk of member contributions was deposited, was reconciled afresh in the month of July 2019 after posting of outstanding receipts in the cashbook.

2131. The variances observed in the 30th June 2019 reconciliations were updated during the 30 July 2019 reconciliations after majority of the outstanding items were subsequently posted to the cashbook.

2132. Clearing of outstanding items in the bank reconciliation was a continuous process given the high volume of our daily transactions.

Committee Observation Recommendation

2133. **The Committee recommends that reconciliation was done and therefore the matter resolved.**

Unsupported Returned Benefits

2134. The statement of net assets available for benefits reflected payables and accruals balance of KSh. 1, 959,062,448 and as disclosed under Note 32 to the financial statements. The amount included an amount of KSh.269, 378,392 in respect of returned benefits payable to members. It was not clear why the returned benefits had been outstanding for a long period without being investigated or beneficiaries identified, paid and cleared from the system.

2135. Consequently, the accuracy, completeness and validity of payables and accruals balance of KSh.1,959,062,448 reflected in the statement of net assets available for benefits as at 30 June, 2019 could not be confirmed

Management Response

2136. The NSSF is mandated to register members, collect and invest contributions received and ultimately pay benefits when they fall due. Before the automation of benefit payments process, some of the payments processed were returned uncollected due to a number of reasons culminating into the figure pointed out by the auditor. The reconciliation of uncollected benefits had since been done and the figure reduced from KSh. 269,378,392.00 to KSh. 178,757,540.48 as of 12th October 2021.

2137. Furthermore, NSSF had structured ways of uniting members to their benefits which included the following strategies:

- Strategic partnership with all Regional Commissioners to leverage on their elaborate administrative structures to reach out to the targeted NSSF members. Management had so far cascaded this strategy to all Regions, enabling Regional and Branch Managers to participate in the Regional and County Commissioners' public meetings and sensitize the public on NSSF contributions and benefits while at the same time try to locate the members/beneficiaries to their home areas.

- Partnership with Trade Unions to sensitize members and help in tracing them. The NSSF Branch network had played a key role in co-ordination, sharing data and monitoring. This was ongoing and hads yielded positive results.

2138. The Fund had also run adverts in the major dailies encouraging qualified members to come for their dues.

Committee Observations

2139. **Management's interventions had yielded commendable results. However, reconciliation of the returned benefits was ongoing but due to un-updated data of beneficiaries, it was hard to locate beneficiaries.**

Committee Recommendation

2140. **The accounting officer for the NSSF should ensure data of its employees is always updated to ensure easier location and identification of beneficiaries**

Investments in Doubtful Bonds

2141. As was reported in the previous year the financial statements reflected KSh.7,807,297,038 on corporate bonds out of which a provision for doubtful investments of KSh.666,900,000 was deducted, leaving net balance of KSh.7,140,397,038.

2142. A review of the status of investment in corporate bonds confirmed that the Fund entered into contractual agreements with four (4) Fund Managers namely; Old Mutual Investment Group Ltd, Genesis Kenya Investment Management Limited (GenAfrica Asset Managers), British American Assets Managers Limited and Stanlib Kenya Limited in February, 2018 in line with Retirement Benefits (Managers and Custodians) Regulations. The Fund Managers were to have full control and unrestricted power to invest Fund's money as per the investment policy for maximum returns to Trustees.

2143. Information and explanations provided by the Fund Managers was that both Imperial Bank and Chase banks were cleared and approved by the Capital Markets Authority as the mandated regulators and supervised by the Central Bank of Kenya as legally viable investment vehicles in which Fund's money can be committed. However, approval to invest in the two Banks by The National Treasury was not availed for audit verification.

2144. A five year, three months (5.25 years) fixed bond worth KSh.132, 200,000 was held by Imperial Bank but the Bank was placed under statutory management by the Central Bank of Kenya on 13 October, 2015. At the time, the Fund held corporate bonds totaling KSh.666, 900,000 through its Fund Managers. A provision for the entire amount has been made in the financial statements as tabulated below:

CORPORATE BONDS HOLDING AT IMPERIAL AND CHASE BANK					
Corporate Bond Position as at 30 June, 2019					
ID Number	**Text ID Number**	**Portfolio**	**Nominal Amount (KSh)**	**Price (KSh)**	**Market Value (KSh)**
Imperial_FXD	Imperial 5.25YR FXD BOND	Britam	90,000,000	100	90,000,000

Imperial FXD	Imperial 5.25YR FXD Bond	Old Mutual	42,200,000	100	42,200,000
KE5000002104	FXDCHASE2015	Britam	100,000,000	100	100,000,000
KE5000002104	FXDCHASE2015	GenAfrica	160,000,000	100	160,000,000
KE5000002104	FXDCHASE2015	Old Mutual	174,700,000	100	174,700,000
KE5000002104	FXDCHASE2015	STANLIB	100,000,000	100	100,000,000
Total			**666,900,000**		**666,900,000**

2145. Investment in Corporate Bonds amounting to KSh.666, 900,000 invested by the Fund Managers could not be ascertained and members' contributions were at risk of being lost.

Management Response

2146. In compliance with NSSF Act No 45 of 2013, Section 49 (2), The Fund was required to invest any of its funds which were not for the time being required to be applied for the purposes of the Fund in accordance with the provisions of the Retirement Benefits Act. The Retirement Benefits Act No 3 of 1997 Section 37 on investment of scheme funds, required the Fund to have a prudent investment policy, as well as consider regulations issued by the Minister in consultation with the Retirements Benefits Authority. From the foregoing, the investment in these assets was therefore allowable under the NSSF Act of 2013 and Retirements Benefits Act of 1997 and further reference to National Treasury was not required.

2147. The Fund had exposure of **KES 666.9 Million** corporate bonds in Imperial and Chase Bank as detailed table 1 below: -

Fund’s Corporate Bond exposure in Imperial and Chase Bank

Bank	Fund Manager	Nominal Amount	Investment Date	Maturity Date	Recovery

Corporate Bond					
Imperial Bank	Britam Asset Managers Ltd	90,000,000.00	28/09/2015	22/09/2020	-
	Old Mutual Investments Group	42,200,000.00	28/09/2015	22/09/2020	-
Chase Bank	GenAfrica Asset Managers Ltd	160,000,000.00	06/10/2015	06/02/2022	-
	Old Mutual Investments Group	174,700,000.00	06/10/2015	06/02/2022	-
	Britam Asset Managers Ltd	100,000,000.00	06/10/2015	06/02/2022	-
	Stanlib Kenya Ltd	100,000,000.00	06/10/2015	06/02/2022	-
Total		**666,900,000.00**			**-**

2148. There were no recoveries to date from the corporate bond invested in both Chase and Imperial banks. However, on 16th April, 2021 CBK, sent out a circular authorizing Kenya Deposit Insurance Corporation (KDIC) to liquidate the bond holding that remained with Chase Bank after the SBM deal. Additionally, on 10th May 2021, KDIC issued a notice on commencement of payment of liquidation proceeds in accordance with section 33 of the KDI Act, 2012.

2149. The Fund had lodged the claims with KDIC through the contracted custodians on the outstanding corporate bond amount in Chase Bank and follow up was being done to ensure that payment was received.

<u>Committee Observations</u>

2150. **The Committee made the following observations:**

(i) Despite efforts from the Fund, there was no recovery of the monies invested in Chase Bank. It was further noted that the NSSF was not obligated to seek Treasury approval on investments as the NSSF Act 2013 and Retirement Benefits Authority Act 2007 exempted NSSF from such a requirement. Hence the explanation of the management was satisfactory.

(ii) Considering that other state corporations have been paid, it was unclear why the NSSF was treated differently. It was further noted that the two banks in which the NSSF invested in were offering high returns and that they had been approved by both the CMA and the CBK immediately before they collapsed.

<u>Committee Recommendation</u>

2151. **The Committee recommends that the National Assembly, through the Departmental Committee on Finance and National Planning should develop a requirement / a regulation demanding that the regulators consult/ share information on areas of investments to enable state enterprises invest from a point of information.**

<u>Budget Control and Performance</u>

2152. The statement of comparative budget and actual amounts reflects final revenue budget and actual on comparable basis of KSh.33,995,631 ,000 and KSh.19,549,069,192 respectively resulting to an under-funding of KSh.14,446,561,808 or 42% of the budget. Similarly, the statement reflected final expenditure budget and actual on comparable basis of KSh.6,722,064,000 and KSh.6,171,467,974 respectively resulting to under-utilisation of KSh.550,596,026 or 9% of the budget.

2153. Management explained this fall to have arisen from investment management expenses of KSh.235, 393,947 occasioned by poor portfolio performance leading to lower amounts claimable. Further, the assets whose titles were revoked caused the variance of KSh.40, 431, 395 or 41% on provisions

<u>Management Response</u>

2154. These disparities were majorly caused by three factors: the performance of Nairobi Securities Exchange and staff costs.

(i) Fund had planned to generate revenue of KSh. 33,995,631,000 but only managed KSh.19, 549,069,192 due to a poor season at the Nairobi Securities Exchange which resulted into a paper loss of KSh.13, 208,223,568. This contributed to the 42% under-funding of the budget.

(ii) On the other hand, the investment management fees paid to fund managers was pegged on the performance of the investment portfolio they hold. Therefore, the underutilization of KSh. 550,596,026 of the budgeted expenditure resulted partly from lower investment fees paid to Fund managers that left KSh. 235,393,947 underutilized and the planned salary increment of KSh. 168,048,751 for that year which did not materialize.

2155. The variance on provisions of KSh 40, 431, 395 was occasioned by the revocation of title L.R.209/11642 of a plot in Upper Hill.

Committee Observations and Recommendations

2156. **The matter was adequately responded to and therefore resolved.**

Unresolved Prior Year Audit Matters

Irregular Disposal of Undeveloped Land – Mavoko

2157. As previously reported, undeveloped land in Mavoko Municipality measuring 69.16 acres was subdivided into seven (7) plots of 9.88 acres and disposed-off at KSh. 18,000,000 each. The plots were sold to AMS Properties Limited on the basis of an agreement dated 21 November, 2011 at a total cost of However, only KSh.12,600,000 or 10% was paid vide Miscellaneous Receipt MOI 0022315 dated 23 August, 2011. The balance of KSh.113,400,000, which was to be paid within 90 days from the date of execution of the agreement, had not been settled to date.

2158. The Management had explained that the contract had not been terminated since the delay in completing the conveyancing process was caused by a dispute over physical location of the plots involving the Fund and other parties who claimed to have ownership documents of the land. The Fund Management had not adequately explained why it had taken a long time to resolve the disputes on the plot and what legal action had been taken to resolve the matter.

Management Response

2159. The delay in completing the conveyance process was caused by the Director of Survey's delay in cancelling Grant IR. No. 91466 (L.R. No. 26817) which overlapped with NSSF's L.R. No. 20181, 20183, 20184 and 20185. Because of this frustration, on 3rd July 2020, the Fund terminated the agreement with AMS Properties Limited for sale of the properties and refunded them the KSh. 12,600,000 deposit they had paid. They acknowledged receipt of the amount on 10th September 2020.

2160. The termination on account of frustration, refund and acknowledgment of receipt of the amount brought the matter to a close.

Committee Observation and Recommendation

2161. **The matter was adequately responded to and therefore resolved.**

Kisumu Milimani Upmarket Houses

2162. As previously reported, land LR.KlSUMU/MUN/8/258 measuring 0.7740 Ha. situated in Milimani Estate, Kisumu County was on 26 November, 2012 swapped to offset a debt of KSh.158,969,145.00 owed to the Fund by the then Municipal Council of Kisumu. The land is currently valued at 220,000,000. At the point of the swap in 2012 the land had been valued at KSh 95,000,000 and KSh 100,000,000 by Value Zone Limited and Tysons Limited respectively. Currently the National Social Security Fund did not have a policy on write-offs of penalties and swaps of property for contributions owed

Management Response

2163. The Finance policy (6.5.4), signed on 18th November 2020 gave a policy framework that guided accounting treatment for contributions, while the Cash Management Policy (7.6), which came into effect on 17th November 2020 provided thresholds and authorities of cash write-offs in case or irrecoverable losses.

2164. Further, the Fund was in the process of revising its policies to accommodate contribution debtors who wanted to swap property against longstanding contribution arrears. This would particularly be helpful in making settlements with County governments about contribution liabilities of the defunct local authorities.

Committee Observations

2165. **The committee made the following observations:**

(i) The Fund was developing a policy to address the matter.

(ii) Considering that the County government of Kisumu had not indicated acceptance of a swap, it was not clear whether this matter could be addressed through a debt swap as proposed by the NSSF management.

Committee recommendation

2166. **The Managing Trustee for the NSSF should ensure that there is a debt swap policy within NSSF in the 2021/2022 financial year and persuade the County Government of Kisumu to agree to its use on the property in question.**

Tassia I and Tassia II Scheme

2167. As previously reported, the Fund held titles for Block 97, 21190 and 21189 in Tassia along Outering Road measuring 350 Acres. The land was acquired at a cost of KSh.2.2 billion from Tassia Coffee Estate Ltd and Nokin Investment Ltd and in 2005. The Fund sold 5,500 plots to informal settlers as un-serviced plots. Further, there were contributions made by the plot owners for infrastructure development to service the plots.

2168. However, at the time of audit in June, 2020, the title deeds had not been processed and neither had the infrastructure development been carried out as expected.

2169. Consequently, the delay in resolving the issue on titles and laying of infrastructure could attract claims and prolong disputes from the plot owners.

Management Response

2170. The process of title issuance was ongoing with **130** titles already issued and **2,000** leases processed to date. Several others were in the process and given the nature of Tassia plots, the process entailed verification to ensure that titles were given for the correct parcels and to the right owners.

2171. The NSSF was in the process of refunding the infrastructure contributions received. Out of the **KSh 494,029,961.00** total contributions collected, **KSh 230,047,161.00** was refunded and **KSh 263,982,800.00** was outstanding as at 30th September 2021. The refund of outstanding amount was progressive as the claimants continue to support their claims with proper documentation.

Committee Observations

2172. **The Committee notes that the exercise of refunding the tenants was ongoing with confirmed balance as at 30/09/2021 being KSh. 263,982,800.00. However, there were 48 cases being handled on ownership.**

Committee Recommendations

2173. **The Committee recommends that:**

(i) The managing Trustee for the NSSF should make an application in court stopping any developments on the contested land until the matter is heard and determined.

(ii) The Managing Trustee for the NSSF should ensure that all the land related issues have been resolved by isolating those with problems and having them addressed.

Fixed Deposits held to Maturity

2174. Note 17(b) to the financial statements reflected KSh.6, 104,878,400 in relation to fixed deposits (held to Maturity) as at 30 June, 2019 and which was net of provision for doubtful deposits held in Chase Bank and Imperial Bank at KSh 70,000,000 and KSh 259,000,000 respectively. These deposits were invested between 08 September 2015 and 03 March 2016 and were expected to mature between December 2015 and May 2016. This however, and as previously reported, did not materialize since both Chase Bank and Imperial Bank were placed under Statutory Management by the Central Bank of Kenya on 07 April, 2016 and 13 October, 2015 respectively.

2175. A review of the matter during the year ending 30 June, 2019 revealed that KSh.53,373,740.10 and KSh.52,970,671.10 were recovered from Imperial Bank and Chase Bank respectively both totalling KSh.106,344,411.20 as illustrated in the table below:

	Imperial/Chase Bank Ltd Redemptions as at 30 June, 2019					
		Deposits		Corporate Bonds		
Bank		**Imperial Bank (KSh)**	**Chase Bank (KSh)**	**Imperial Bank (KSh)**	**Chase Bank (KSh)**	**Total (KSh)**
Holding		259,000,000	70,000,000	132,000,000	534,700,000	996,400,000
Received	2018/2019	26,691,232	52,970,671	-	-	79,661 ,903
	2017/2018	26,682,508	-	-	-	26,682,508
Balance		**206,126,260**	**17,029,329**	**132,200,000**	**534,700,000**	**890,055,589**

2176. In the circumstances, the recoverability of the balance of KSh.666, 900,000 on Investments in Corporate Bonds from Imperial Bank and Chase Bank as at 30 June, 2019 was doubtful.

Management Response

2177. Fund's Fixed Deposit exposure in Imperial and Chase Bank was as below table:

Bank	Fund Manager	Nominal Amount	Investment Date	Maturity Date	Recovery
Fixed Deposits					
Imperial Bank	GenAfrica Asset Managers Ltd	30,000,000	22/09/2015	21/12/2015	6,705,071
	GenAfrica Asset Managers Ltd	20,000,000	08/09/2015	04/01/2016	2,245,008

	GenAfrica Asset Managers Ltd	8,500,000	11/09/2015	04/01/2016	954,128
	Old Mutual Investments Group	201,000,000	30/09/2015	30/11/2015	44,923,973
Chase Bank	Britam Asset Managers Ltd	70,000,000	03/03/2016	09/05/2016	53,189,081
Sub Total		**329,500,000**			**108,017,262**

2178. The Fund had the exposure of **KES 329,500,000** in Fixed Deposits of which **KES 108,017,262.04** deposits had since been recovered from Imperial Bank and Chase Bank. Further payments were expected from KCB following their acquisition of Imperial bank assets and liabilities based on circular dated 22nd May 2020.

2179. As for the outstanding deposits in Chase Bank, CBK authorized KDIC through their circular dated 16th April 2021 to liquidate the 25% of assets that remained in Chase Bank after the SBM deal.

2180. The Fund had lodged the claims with KDIC through the contracted custodians on the outstanding deposits in Chase Bank and follow up is ongoing to ensure payment is received.

Committee Observation

2181. **The Committee noted that the process of recovery of the amount was ongoing**

Committee Recommendation

2182. **The Committee recommends that the NSSF should aggressively follow-up of the full recovery of its funds.**

Delay in Construction of Hazina Trade Centre

2183. Included in the assets under construction balance of KSh.3,213,440,907 was an amount of KSh.2,480,782,310 in respect of Hazina Trade Centre whose construction was ongoing as at the time of audit. The contract was awarded at an initial contract sum of KSh.6,715,218,188 for construction of thirty-six (36) floors tower which was subsequently scaled down to 15 floors at a reduced contract sum of KSh.4,095,862,434. The project had a number of extensions, the last authorized one being 31 December, 2019.

2184. As at the time of audit in May, 2020, eleven (11) certificates had been paid totaling KSh.3,406,865,723.11 representing eighty-three percent (83%) of the total project cost. A physical inspection of the building on 07 May, 2020 indicated that the construction was approximately seventy percent (70%) done. During the exercise, the contractor was at early stages of laying floor tiles and roofing, with major interior works still outstanding.

2185. The Management explained that Covid-19 pandemic and the resultant restrictions had adversely affected the contractors supply chain and hence the slow pace at which the project was being implemented. The completion date for the project had earlier been extended to 31 December, 2019. That period had since lapsed with the construction still in progress without an extension.

2186. In addition, perusal of other relevant project documents revealed a claim of KSh.871, 697, 124 by the contractor arising from idle stoppage of works. The financial claim remained outstanding as at the time of audit as Management and the Board of Trustees held the view that it was an independent process separate from completion of the construction works which would be dealt with as a final account issue. Further, the claim was going through various stages of vetting and approval before payment could be processed. In the circumstances, it was not clear when the project would be completed and whether the public would get value for money on the investment.

Management Response

2187. Hazina Trade Centre was completed in September 2021 and was being rented out to prospective tenants.

Committee Observations

2188. **The Committee made the following observations:**

(i) The Fund had been issued with a certificate of practical completion dated 24/09/2021; by the Architectural Association of Kenya (AAK) despite the delay in completion.

(ii) It was further not clear to the Committee whether the Fund paid the amounts sought on idle equipment and why construction proceeded without approval of extension of time.

(iii) Further, it was not clear on the total amount of money the Fund expended on the project, extent of variation and whether they were within the law.

__**Committee Recommendation**__

2189. **The Committee recommends that the Committee on Implementation should follow up implementation of the 23rd PIC Report on the matter of Hazina Trade Centre pursuant to its mandate.**

__**Delay in Sale of Milimani Executive Apartments in Nairobi**__

2190. Included under Note 29 to the financial statements on Investment Property are additions during the year amounting to KSh.3, 881, 755,189 in respect of Milimani apartments project. The project comprises of one hundred and four (104) spacious apartments on Five Blocks A-E with initial estimated cost of KSh.1, 550,000,000. The contractor completed the project at a pre-measured works value of KSh.1, 692,262,919 and handed over the project on 9 April, 2019.

2191. The Board approved the sale of the apartments categorized into 3-bedroom unit with a DSQ and a 3 bedroom without DSQ at KSh.35, 000,000 and KSh.31 respectively. The expected total sales amounted to KSh.3, 600,000,000 at the time of hand-over. However, as at the time of the audit in April, 2020, total sales were KSh.831246,302 as follows:

Type	No. of Units	Initial Deposit of 10% (KSh.)	Expected Amount (KSh.)
House with DSQ	94	828,046,302	3,290,000,000
House Without	10	3,200,000	310,000,000

DSQ			
Total	**104**	**831,246,302**	**3,600,000,000**

2192. Further, documentation and records provided revealed that nine (9) prospective house owners partially paid minimum ten percent (10%) amounting to KSh.5,092,000 of the cost required. Besides, most of the houses were fully booked and the requisite deposit of ten percent (10%) of the selling price paid for at the completion date except the aforementioned prospective buyers. This was in contravention of the sale agreement which required payment of 10% deposit. Further, the partial payment may also have affected the Fund's cash flows and thus negatively impacted on service delivery.

2193. It was however, noted that the progress in occupancy of the houses had been low with only twelve (12) or eleven percent (1 1%) buyers having fully paid and sixty-eight (68) or sixty-five percent (65%) having made partial payments. Out of the buyers who had paid the ten (10%) deposit at the completion date, seventeen (17) prospective buyers withdrew their interest and were refunded their deposit amounting to KSh.94,950,000.

2194. Management had indicated measures taken to enable prospective buyers to finance the remainder and vacant units at favourable terms, including advertisement in print media besides partnering with commercial banks on financing loans.

2195. In the circumstances, it was not clear when the public will get value for money on the investment.

Management Response

2196. The Fund had so far sold **60** units on Tenant Purchase Scheme (TPS) worth **KSh 1.11 billion**. An additional **10** units were at different stages of sale completion, while buyers who had bought **34** units withdrew from the transaction due to economic challenges.

2197. The Fund was cognizant of the slow uptake of the executive apartments occasioned by the impact of the pandemic and the general economic downturn that had changed consumer priorities. The Fund was therefore in the process of carrying out a rent survey with a view to rent out outstanding houses to prospective tenants and enhance returns.

Committee Observations

2198. **The Committee notes that this matter was handled in the PIC's 23rd Report with a recommendation to the Management of NSSF to consider revaluing the apartments and sell them at market rates to free up capital for use in other needy sectors.**

Committee Recommendation

2199. **The Committee recommends that the Committee on Implementation should follow-up implementation of the PIC's 23rd Report Recommendations.**

Unremitted Members Contributions

2200. Review of the members contributions status as at 30 June, 2019 revealed that contributions receivable estimated at KSh.5,702,745,355.40 had been included in the financial statements under contingent assets. This comprised of mandatory contributions of KSh 580,759,618.45 and penalties of KSh.5,121,985,736.95

2201. Although the Management had indicated that recovery efforts were in progress, as at the time of audit in April, 2020, the contributions receivable of KSh.5, 813,336,648.95 was still outstanding and no satisfactory explanation was provided for non-recovery. This was an indication of weak controls over recovery of unremitted contributions.

Management Response

2202. Management made every effort to ensure that all contributions were remitted as and when they fall due. Contribution debts that were owed as at **30th June 2019** stood at **Kes 5,813,336,648.95**, comprising of contribution arrears and penalties. A total of **Kes 346,369,505** had been recovered as at 31st August 2021 leaving a balance of **Kes 5,466,967,143.95**. The analysis of the contribution arrears and penalties, including action taken by management was as follows:

Contributions Arrears

SNO	DESCRIPTION	AMOUNT	ACTION TAKEN

		(KES)	
1	Instalment Undertaking	31,960,159	Being recovered through formal instalment undertaking arrangements; repayment plans are closely monitored and evaluated on a quarterly basis.
2	Court Action	28,703,398	Pursued through court action through The Office of Director of Public Prosecutions.
3	Demand Notices/ADRs	206,761,927	Pursued via formal demand notices and Alternative Dispute Resolutions (ADRs). Follow ups for payments by branch offices are continuously being undertaken and monitored monthly.
4	Defunct Local Authorities	241,679,597	Efforts to recover the outstanding obligations through court had not been successful due to court rulings, for example, Judicial Review No. 81 of 2013 at the High Court of Nairobi and Application 24 of case number 240 of 2012. The matter had been referred to the Intergovernmental Relations Technical Committee (IGRTC), Council of Governors and Ministry of Labour for direction on recovery of the contribution debts.
5	Closed and Liquidation / Receivership	10,684,690	Employers closed down.
Sub Total		**519,789,771**	

Penalties

SNO	DESCRIPTION	AMOUNT (KES)	ACTION TAKEN

1	Instalment Undertaking	55,469,432	Being recovered through formal instalment undertaking arrangements; repayment plans were closely monitored and evaluated on a quarterly basis.
2	Court Action	120,017,937	Pursued through court action through the Office of Director of Public Prosecutions.
3	Demand Notices/ADRs	4,468,527,009	Pursued via formal demand notices and Alternative Dispute Resolutions (ADRs). Follow ups for payments by branch offices were continuously being undertaken and monitored monthly.
4	Penalties under Reconciliation	89,700,901	Follow ups for reconciliation with employers using ADR strategy.
5	Dormant Employers	464,399	Employers not currently operating. Under observation for subsequent follow up.
6	Defunct Local Authorities	210,363,700	Efforts to recover the outstanding obligations through court had not been successful due to court rulings, for example, Judicial Review No. 81 of 2013 at the High Court of Nairobi and Application 24 of case number 240 of 2012. The matter had been referred to the Intergovernmental Relations Technical Committee (IGRTC), Council of Governors and Ministry of Labour for direction on recovery of the contribution debts.
7	Closed	2,633,995	Employers closed down.

	Employers		
	Sub Total	**4,947,177,373**	

2203. The following challenges had been encountered in recovery of contribution arrears and penalties:

(i) A total of **KSh 452,043,297** was owed in contribution arrears and penalties by defunct Local Authorities. These amounts were undergoing reconciliation, owing to unavailability of records mainly occasioned by the transition to County Governments. Management was engaging the Intergovernmental Relations Technical Committee (IGRTC) for purposes of recovering of the contribution debts. The Fund had further engaged the Ministry of Labour and Social Protection, and Council of Governors on recovery of these outstanding dues.

(ii) Several government institutions owed substantial amounts in contribution debts, for example, Kenya Wildlife Service (KWS), Employer Registration Number 00027413. This employer owed **KSh 146,047,120** in contribution arrears and **KSh 845,398.55** in penalties, the amounts of which were included in the report. KWS sought the Attorney General's opinion on their eligibility to pay NSSF contributions. Management was engaging this employer through Alternative Dispute Resolution (ADR) to recover the contribution debts.

(iii) The emergence of the Covid-19 pandemic negatively affected the economy and employers' ability to pay. Movement was also restricted hence negatively affecting efforts to enforce compliance.

Committee Observations

2204. **The Committee made the following observations:**

(i) The exercise of recovering the outstanding amount was ongoing.

(ii) The KWS accounts did not have liabilities in its books regarding NSSF.

Committee Recommendation

2205. **The Committee recommends that the Managing Trustee of the NSSF should ensure recovery of the outstanding amounts through aggressive follow-ups.**

Ineffective Systems

2206. Note 29 to the financial statements reflected KSh.3,177,088,287 in respect of assets under construction out of which KSh.167,945,837, KSh.64,998,224 and KSh.29,914,248 were for Social Security and Pensions Administration System (SSPAS) Reimplementation, Electronic Document and Records Management System (EDRMS) System and the SAP Additional modules respectively. The modules were meant for production of financial statements by the Fund. However, the system could not generate financial statements as expected of an end-to-end system. Failure by the system to independently generate financial statements had occasioned interventions through manually preparing the financial statements leading to numerous errors in the presented financial statements.

2207. In addition, analysis of the expenditure schedules produced using the SAP system revealed that they did not include payee names making it difficult to relate the schedules generated against payment vouchers or files availed for audit verification.

2208. In the circumstances, the reliance of the systems to conclusively generate results without manual interventions was in doubt.

Management Response

2209. The system had since been customized to generate the financial statements as required for reporting. The payment schedules could show the payee's name as pointed out by the auditor.

Committee Observation and Recommendation

2210. **The matter was adequately responded to and therefore resolved.**

2.25 KENYA MARINE AND FISHERIES INSTITUTE (FY 2012/2013 TO FY 2018/2019)

EXAMINATION OF THE REPORT OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF THE KENYA MARINE AND FISHERIES INSTITUTE (KEMFRI) FOR THE FINANCIAL YEAR 2012/2013 TO FINANCIAL YEAR 2018/2019

James Njiru, the Managing Director of the Kenya Marine and Fisheries Institute appeared before the Committee to adduce evidence on the report of the Auditor General on the financial statements of the Institute for the financial year 2012/2013 to financial year 2018/2019.

Property, Plant and Equipment (FY 2012/2013 to 2018/2019)

2211. As previously reported, the institute owned four (4) parcels of unsurveyed land located in Turkana, Baringo, Sangoro and Mtwapa which had not been valued nor included in the property, plant, and equipment figure of KSh. 403,430,401 as at 30 June 2013. The institute did not have titles for land measuring 1.8 and 6.0 hectares in Sangoro and Shimoni respectively. Further, the property plant and equipment balance of KSh. 403,430,401 as at 30 June 2013 had not been reconciled with the amounts reflected in fixed assets register.

Management Response

2212. The Institute was in possession of four parcels of land located in Turkana, Baringo, Sangoro and Mtwapa and had been seeking to obtain ownership documents from the respective government agencies. Below please find the status for each parcel of land:

1) Turkana station was built on land belonging to State Department for Fisheries and therefore the Institute did not own the land,
2) The Institute was allocated a parcel of land in Baringo plot No. P.D.P R/B/355/97/4 to set up a research station adjacent to the lake but was not issued with ownership documents by the area county council. The Institute had made several attempts to acquire ownership documents from the local government offices but had not succeeded.
3) Sangoro land was donated by seven local landowners for establishment of a river line research station. The Institute had since obtained four title deeds as demonstrated .The

Institute had since valued the remaining three parcels of land was negotiating with the families to give consent for the transfer.

4) The Mtwapa land was registered in the name of Kenya Agricultural Research Institute (KARI) which ceded 10 acres adjacent to the ocean to KMFRI for establishment of a research station. Before transfer was done, the land was grabbed by private developers. The matter had been reported to the Ethics and Anti-corruption Authority and investigations were on-going.

5) Shimoni land was donated by local community school and the Institute had since obtained the title deed and commenced development of the land.

2213. For the parcels of land where the Institute had obtained ownership documents, the land had been valued and incorporated in the Institute fixed assets register.

<u>Committee Observations</u>

2214. **The Committee made the following observations:**

(i) The matter on these said properties of land had been handled in the PIC 19th report with recommendations that KEMFRI secures ownership documents; EACC investigates the allocation of public land to private entities; and NLC revokes titles to third parties. It had however taken inordinately long to address all the land ownership disputes especially on the grabbed ones. It was further not clear whether the EACC had completed investigations and preferred charges against any person.

(ii) Judgment on Baringo land was provided – cause No 30 of 2020 in favour of institution July 2021 in which the encroacher was given till end of 2021 to vacate the land. The institute had since issued an eviction notice, albeit late (October 2021).

<u>Committee Recommendation</u>

2215. **The Committee recommends that the Committee on Implementation should follow-up on implementation of PIC's 19th Report Recommendations on the matter**.

<u>Undervaluation of Kongowea Parcel of Land L.R No. 6034/1/MN by KSh. 7,780,000 and Failure by the conveyancing lawyers to remit an amount of KSh.1,575,077 to KEMFRI. (FY 2012/2013 to 2018/2019)</u>

Management Response

2216. Kongowea land was acquired in 1991 at a cost of KSh 10 million for development of staff houses. However, the Government changed the policy of housing staff by introducing house allowances. The land was therefore considered a non-core asset and recommended for disposal by the KMFRI Board of Management.

2217. Following the decision to sell the land, the necessary approvals were obtained from the Ministry of Finance-Treasury and the Parent Ministry and the Board of Management resolution to dispose the Kongowea Land (such approvals were provided).

2218. Kongowea land was advertised for sale as per Public Procurement and Disposal Act, 2005 and was sold for KSh. 15,020,000 to Kongowea Properties Limited. At the time of sale, the land LR No. 6034/1/MN was valued at KSh. 14,820,000 as per the valuation certificate from Ministry of Lands**.** The land was located adjacent to the Kongowea 'wakulima' market and prior to the sale, the land was carried at a book value of KSh. 22.8 million which could not be realized due to invasion by squatters and hawkers as observed by the KMFRI Tender Committee.

2219. The sale process of Kongowea Land was handled through the institute lawyers and the land was transferred upon payment of full price as per letter from the Lawyer**.** Before conveyance of the sales amount to KMFRI, the lawyers utilized KSh. 1,175,077 to settle municipal land rates and Rates Clearance Certificate**.** The process of settlement of the land rates took some time and there were no prior express instructions to the lawyer to invest the money in an interest earning account while the funds were in their custody. The balance of the Ksh. 400,000 paid as tender deposit from the bidder was offset from the sales price.

Committee Observations

2220. The Committee made the following observations:

(i) **The matter was addressed in the 19th PIC report that observed that the process of selling of the property was fraudulent and that EACC.**

(ii) **It was not clear to the Committee whether such investigations were ever done or concluded and the outcome.**

Committee Recommendation

2221. **The Committee on Implementation should follow-up on implementation of PIC's 19th Report Recommendations on the matter.**

<u>Grabbed Institutes Land (FY 2012/2013 to FY 2018/2019)</u>

<u>Land at Mtwapa</u>

2222. The institute owned land measuring 13.42 acres in Mtwapa Information available indicated that the land had been encroached by a private developer. No documentary evidence to show that there were adequate follow ups to evict the private developer from the land or to repossess that land.

<u>Land at Baringo</u>

2223. The Institute records indicated that it owned 2.35 hectares of land in Baringo through an allotment letter reference (plot number PDP R/B/355/97/4). No documentary evidence was provided to show that there was adequate follow up by the management to acquire ownership documents from the ministry of lands.

<u>Management Response</u>

<u>Land at Mtwapa</u>

2224. The Mtwapa land ceded to KMFRI was later grabbed by private developers before it could be developed. The matter was reported to the Ethics and Anti-corruption Authority and investigations was on-going.

<u>Land at Baringo</u>

2225. The Institute was allocated Baringo land No. P.D.P R/B/355/97/4 located at Kambi ya Samaki was grabbed by a private developer. The Institute filed a court case seeking to evict the land grabber and the matter was taken to court. The Institute made several attempts to acquire ownership documents from the local government offices without success.

<u>Committee Observations and Recommendations</u>

2226. **This matter was reported in the PIC's 19th Report whose recommendations the Committee on Implementation should follow-up to ensure full implementation.**

<u>Trade and Other Payables (FY 2012/2013)</u>

Unreconciled Supplier Balances

2227. Amounts of KSh. 143,630 and KSh. 1,151,880 owed to Kaayim Stationers and Boma Travel Ltd respectively, but whose confirmed balances were KSh. 70,333 and KSh. 987,240. The difference of KSh. 73,297 and KSh. 164,640 had not been reconciled or explained.

Unexplained Adjustments to Other Liabilities

2228. Statutory deductions amounting to KSh. 1,385,285 were not supported with documentary evidence.

Management Response

Unreconciled Supplier Balances

2229. The balances from the two suppliers Boma Travel and Kaayim Stationers were confirmed, ledgers reconciled and the financial statements updated.

Unexplained Adjustments to Other Liabilities

2230. The other liabilities included statutory deductions of KSh. 1,385,285 made in the month of June 2014 were remitted in July 2014 before 9th as per statutes.

Committee Observations and Recommendations

2231. **The OAG confirmed that the ledgers were reconciled and therefore the audit reservation satisfactorily explained. It was further confirmed that KSh. 1,385,285 were statutory deduction and were remitted in the subsequent year thereby resolving the matter.**

Donor Grants (FY 2012/2013)

2232. Variance between cashbook balance and the financial statements balance of KSh.543,748 for CAMARV and Micro Projects was not reconciled. The total variance of KSh. 4,285,286 was not explained.

Management Response

2233. The variance of Ksh. 543,748 for CAMARV and Micro projects was part of the total donor projects variance of KSh. 4,285,286 which was reconciled, and ledgers updated. The financing agreements grants from International Organizations amounting to KSh. 74,652,048 were subsequently availed.

2234. A schedule showing the breakdown of 'other donor funded projects' was availed and captured on note 17 of the adjusted financial statements.

Committee Observations

2235. **Reconciliations were belatedly done and verified by the Office of the Audit General thereby resolving the query.**

Committee Recommendation

2236. **The accounting officer for Kenya Marine and Fisheries Institute should ensure that timely reconciliations are done in the Institute**.

Long Outstanding Staff Imprest (FY 2012/2013 to FY 2014/2015)

2237. Long outstanding staff imprest of KSh. 221,215 related to former staff of the institute. There was no documentary evidence availed to support efforts to recover these amounts. Any provision that would have been necessary in relation to this uncertainty had not been incorporated in the financial statements.

Management Response

2238. The Institute had an outstanding staff imprest balance of KSh. 809,444 which included KSh. 221,215 owed by former staff. The Institute was pursuing the former employees to clear their balances. The amount was disclosed in the financial statement as a contingent receivable.

Committee Observation

2239. **The accounting officer's failure to recover the impugned monies to date was a breach of the Public Finance Management Act 2012 on recovery of imprest.**

Committee Recommendation

2240. **The Committee recommends that the accounting officer for KEMFRI should recover the said monies from either the salary or terminal dues of the officers involved in the 2022/2023 financial year.**

Interest Income FY 2012/2013

2241. The Institute's statement of comprehensive income included a balance of interest income on fixed deposit account amounting to KSh. 503,098 that was not supported with information on the recorded interest.

Management Response

2242. The Ksh. 503,098 was realised as interest income from the investment of the proceeds relating to the sale of Kongowea land. This amount was credited directly to the Institute recurrent account and a certificate of the interest earned was subsequently availed for audit.

Committee Observation

2243. **This amount was belatedly explained.**

Committee Recommendation

2244. **The Committee recommends that accounting officer for the KEMFRI should always provide documents for audit within the statutory timelines failure to which the sanctions provided for under the Public Audit Act 2015 ensues.**

Donated vessel (FY 2013/2014 to 2014/2015)

2245. During the year, the Institute received a donation in form of a research vessel (RV Mtafiti) from the Government of Belgium. However, no value had been attached to this vessel in the accounting records.

Management Response

2246. The institute received a donation of an oceanographic research vessel - RV Mtafiti from the Government of Belgium to the Government of Kenya (to State Department for Fisheries). The vessel was commissioned into KMFRI by His Excellence the President on the 27th January, 2014.

2247. The vessel was later professionally valued by Kenya Maritime Authority recommended valuers, the fixed assets register updated and amounts incorporated in the Institute financial statements.

Committee Observations and Recommendation

2248. **The explanation offered was satisfactory as the donated vessel could not be captured in the books before commissioning and valued. The matter was resolved.**

Land at Kisumu FY 2014/2015

2249. Information and records availed for audit indicated that the Institute owned land L.R. 25762 measuring 3.45 acres in Kanyakwar area of Kisumu County valued at KSh. 8,000,000 on 5 July 2013 by the Government District Valuer, Kisumu. However, the valuation report indicated that the land had permanent residential houses, developed by unknown persons without the authority of the Institute. Although, the Institute had the title deed to the property, there was no evidence that the institute had made efforts to evict the occupiers of the property.

Management Response

2250. KMFRI owned Kanyakwar land L.R. 25762 measuring approximately 3.45 acres which had permanent residential houses on the upper part developed by the Ministry of Public works. The Institute wrote a letter to the Permanent Secretary, Ministry of Public works seeking removal of the houses and had since been waiting for response.

2251. The lower part of the land was also grabbed by a private developer and the Institute filed a court case seeking eviction of the grabber. The initial grabber was evicted by other developers and the matter reported to the Nyanza Provincial administration and the Ethics and Anti Corruption Commission. The case was still on going.

Committee Observations

2252. **The Committee made the following observations:**

(i) This matter had taken inordinately long to be concluded.

(ii) Save for the letter KEMFRI wrote to the Ministry of Public Works seeking eviction of the grabbers and reporting of the matter to police, there were no further actions from the management of KEMFRI to secure the property thus indicating dereliction of duty by the accounting officer.

Committee Recommendation

2253. **The accounting officer for the KEMFRI should sue the grabbers with a view to having them evicted from the Institute's property.**

Cash and Cash Equivalents (FY 2013/2014)

2254. Direct banking amounting to KSh. 31,798,648 and bank charges totaling KSh. 214,535 which dates to February 2014 had not been processed in the cash book and no satisfactory explanations were provided for this anomaly.

2255. Additionally, bank reconciliation errors totalling KSh. 5,059,263 and stale cheques amounting to KSh. 560,177 which were included in the bank reconciliation statements for various bank accounts that had not been written back to the cash books.

Management Response

2256. The cashbook reflected direct bankings of Ksh. 31,798,648. The amount included unprocessed for bank charges - KSh. 214,535, stale cheques - KSh. 560,177 and other casting errors - KSh. 5,059,263 which were reconciled and adjusted and the financial statements updated.

Management Response

2257. Response given was satisfactory as reconciliations were done and matter resolved.

Committee Recommendation

2258. **The accounting officer for KEMRI should ensure timely reconciliations of the Institute's accounts.**

Government Grants FY 2013/2014

2259. Counterpart funding received from the Government of Kenya in respect of Kenya Coastal Development Project amounting to KSh. 76,800,000 accounted for as capital reserves even though it was utilized in the normal operations of the Institute. No Evidence of approval from the parent Ministry and the National Treasury for this reallocation was availed for audit.

Management Response

2260. The Institute received government grants amounting to KSh. 654,600,000 comprising of grants for recurrent expenditure amounting to KSh 651,900,000 and an additional transfer of KSh 2,700,000 from Parent Ministry for commissioning of RV Mtafiti.

2261. In addition, the Institute also received from the Government Ksh. 76,800,000 in Counterpart funds for the Kenya Coastal Development Project (KCDP) as per the printed estimates. The Kenya Coastal Development Project (KCDP) was a World Bank funded project which became effective on 30th June 2011. As part of the financing and disbursement arrangement, the World Bank and Global Environment Facility (GEF) would contribute 96.4% of the total project cost amounting to USD 40 million which translated at KSh 85/USD amounts to Ksh 3.4 billion disbursable over six years project period. The Government contribution of the balance of 3.6% of the total project costs amounting to USD 1.47 million which at KSh 85/USD translates to approximately KSh 124,950,000 was made up of goods, equipment, salaries and allowances for staff required to spend time on project activities.

2262. The Ksh. 76,800,000 was part of the 3.6% Government contribution in Counterpart funding and was accounted for under development expenditure to fund establishment expenses – mainly equipment to operationalize the project.

Committee Observations and recommendation

2263. The response given was satisfactory (approvals were obtained, shared with the Office of the Auditor General and verified). The project has since been concluded.

Motor Vehicles (FY 2014/2015 to FY 2017/2018)

2264. Procurement of seven (7) motor vehicles at a cost KSh. 35,652,051 was done without a procurement plan. In addition, out of the KSh. 35,652,051 spent on acquisition of motor vehicles, KSh. 28,357,049 was reallocated from the Government of Kenya counterpart funds for Kenya Coastal Development Project without approvals to reallocate. Further, the vehicles were distributed to locations where the projects activities were not undertaken.

Management Response

2265. The Property, Plant and Eqsuipment included additions of KSh. 35,652,051 utilised to purchase seven (7) motor vehicles. The amount included one vehicle costing KSh. 2,600,000 for the foton utility van for KCDP which was reflected under the project procurement plan for the year. The other six (6) vehicles costing KSh. 28,357,049 were funded from the Government Counterpart fund for KCDP which was reflected under the KMFRI budget and procurement plan for the year.

2266. As earlier reported, the project Counterpart fund formed the Government contribution of 3.6% for procurement of goods, equipment, salaries and allowances for staff required to spend time on project activities. The vehicles were procured under the project equipment vote. In accordance to the KCDP Project Appraisal Document, KMFRI was responsible for:

i) Project supervision;

ii) Provision of working space for the project coordination secretariat;

iii) Provision of security services;

iv) Payment for utilities;

v) Facilitation of KMFRI staff seconded to the project in terms of equipment and furniture;

vi) Provision of vehicles for the senior management involved in project supervision;

vii) Computerization to build capacity and enable the project to link up with the KMFRI computerized system's platform.

2267. The project was coordinated from KMFRI headquarters Mombasa where the Institute already had a fleet of research vehicles to support implementation of the project. The new vehicles were therefore substituted with existing fleet and donated to support research in other KMFRI stations which did not have operational research vehicles.

Committee Observation and Recommendation

2268. **The explanation offered was satisfactory and therefore the matter resolved.**

Medical Advance (FY 2014/2015)

2269. It was not clear how the institute expected to recover KSh. 2,753,692 owing from deceased staff.

Management Response

2270. The medical advance balance included KSh.2, 753,692 owed by a deceased research officer, the late Dr. Michael Nguli, who passed away while in service. The Institute sought the necessary approvals from the Board of Management as per minutes extracts to write off the irrecoverable amount in accordance with the Financial Management Regulations.

Committee Observation

2271. **Though the stated board approval for write off was obtained and therefore dispensing off the query, it had not been availed to OAG for audit verification.**

Committee Recommendations

2272. **The Committee recommends:**

i) **The accounting officer should always provide documents for audit within the statutory timelines failure to which the sanctions provided for under the Public Audit Act 2015 ensues.**

ii) **The Office of the Auditor General should audit the circumstances under which the Board of KEMFRI approved write off of khs 3.1 billion against the requested figure of KSh 2.75 million due from Dr. Michael Nguli and report on the same in the 2022/2023 financial year's audit report.**

Employee Costs (FY 2014/2015)

2273. Excluded allowances amounting to KSh. 5,651,231.25 paid to the staff during the period under review.

Management Response

2274. The employee cost balance of KSh. 168,059,701.60 excluded KSh. 5,651,231.25 in respect of allowances paid during the year. The allowances were broken down as follows:

- Leave Allowance: KSh. 19,288.00
- House Allowance: KSh. 301,544.30
- Transfer Allowance: KSh. 80,938.00

- Special Duty Allowance: KSh. 3,177,032.50
- Entertainment Allowance: KSh. 6,000.00
- Responsibility Allowance: KSh. 1,706,036.10
- Commuter Allowance: KSh. 234,000.00
- Other allowances – Acting: KSh. 126,392.65

2275. Necessary adjustments were passed in the journal entry to reconcile the accounts and the financial statement subsequently adjusted to reflect the same.

Committee Observation

2276. **Management owned the omission and passed the necessary journal.**

Committee Recommendation

2277. **Management of KEMFRI should adhere to Public Sector Accounting Standards to avoid unnecessary queries.**

Budgetary Control and Performance (FY 2014/2015 and 2015/2016)

2278. According to the statement of comparison of budget and actual amounts, the Institute had an approved budget estimates of KSh. 1,321,011,803 for the financial year 2014/2015. Budget analysis revealed the following over expenditure by KSh. 11,991,578 or 174%.

Item	Budget	Actual	Over expenditure	%
Special duty allowance	1,063,809	3,907,058	2,843,249	267
Internet connection	3,548,332	7,699,987	4,151,655	117
Catering services	2,298,536	4,670,984	2,372,448	103
Conference,	-	2,624,226	2,624,226	

seminar & workshops				
Total	**6,910,677**	**18,902,255**	**11,991,578**	**174**

Management Response

2279. It was true that the financial statements reflected variances of budget versus actual expenditure. The variances were analysed as follows:

i) The extra Special Duty Allowance amounting to Ksh. 2,843,249 was paid to KMFRI staff seconded to support implementation of the KCDP project.

ii) The extra Internet Connection of Ksh.4,151,655 was incurred after contracting Kenya Education Net Work (KENET) to provide increased bandwidth for the project

iii) The extra Catering expenditure of Ksh. 2,372,448 was incurred for project meetings.

iv) The Conference, Seminars & Workshops expenditure of Ksh 2,624,226 was incurred for the Project seminars and workshops.

2280. The Ksh. 11,991,578 was regularized through the government supplementary estimates I for 2014/2015 financial year, the institute prepared a revised recurrent and development budget for 2014/2015 financial year.

2281. The overall expenditure for the financial year was within the budget allocated for the Institute and KCDP project.

Committee Observations

2282. **The explanation offered was satisfactory and therefore the query was resolved. It arose due to failure to provide required documents for audit.**

Committee Recommendation

2283. **The accounting officer for the KEMFRI should always adhere to statutory timelines on submission of documents for audit failure to which the sanctions provided in the Public Audit Act 2015 on the breach ensues.**

Cash and Cash Equivalents (FY 2015/2016)

2284. There was unreconciled and unexplained variance of KSh. 185,025. In addition, bank charges amounting to KSh. 7,425 shown as a reconciling figure were excluded from these financial statements. Further, stale cheques totaling KSh. 90,225 had not been reversed in the cash book as at 30 June 2016.

Management Response

2285. It was true the financial statements reflected a cash and cash equivalent balance of KSh. 426,650,902. Necessary adjustments were passed to reconcile the KCDP figure of KSh. 29,744,997, the bank charges of KSh. 7,425 were captured and reflected in the financial statements as indicated in the journal voucher. Further adjustments on the financial statements were made to reverse the stale cheques amounting to Ksh. 90,225 as indicated in journal entry.

Committee Observations and Recommendation

2286. **This was a reconciliation matter that the management had not done in time but had since been done and therefore the query resolved.**

Receivables from Non-Exchange Transactions (FY 2015/2016)

2287. The medical advance balance of KSh. 1,244,348 that had been owing from three former staff of the Institute had not been recovered. It was not clear how the Institute expected to recover the debt from its former employees.

Management Response

2288. It was true the financial statements included the medical advance balance of KSh. 1,244,348 incurred to pay medical bill for KMFRI research scientist Ms. Miriam Wainaina at Aga Khan Hospital. As at the end of the period the institute was operating a cost sharing medical scheme in which the employee contributed 25% and the employer 75% of the bill. The officer was still in service, and the recoveries were on-going**.**

Committee Observation and recommendation

2289. **The matter was satisfactorily addressed.**

Presentation of financial statements (FY 2016/2017)

2290. The financial statements presented for audit review for the year ended 30 June 2017 were not approved by the Board. This is contrary to Section 15(1) of State Corporations Act Cap 446 which stated that "the Board shall be responsible for the proper management of the affairs of a state corporation and shall be accountable for the moneys the financial business and the management of a state corporation".

Management Response

2291. It was true that as at the end of the financial year the Institute did not have a Board of Management following the expiry of the term of the previous board members. The financial statements were therefore signed by the Principal Secretary, who was doing oversight of the Institute activities pending appointment of the Board.

Committee Observations

2292. **The Board was not in force and that is why the Principal Secretary (PS) approved the financial statements. However, it was noted that the law did not explicitly provide that the PS signs the accounts as was in this case.**

Committee Recommendation

2293. **The matter was resolved.**

CASH AND CASH EQUIVALENT (FY 2016/2017)

Unsupported Project Accounts Balances

2294. Unexplained and un-reconciled variance of KSh. 1,094,092.

Management Response

2295. It was true that the reported cash and cash equivalent for the project accounts in the year ended 30 June 2017 was 219,570,643. The balances were reconciled and the variance of KSh. 1,094,092 adjusted in the books and adjustments passed in the financial statements.

Committee Observation

2296. Variance has since been resolved and book of accounts adjusted.

Committee Recommendation

2297. **The matter was resolved**

Sagana Recurrent Account (FY 2016/2017)

2298. Sagana recurrent Account indicated a balance of KSh. 551,822, however, bank reconciliation statements of the Sagana recurrent account reflected cashbook balance of KSh. 108,633 which results to an unreconciled variance of KSh. 443,189.

Management Response

2299. It was true that the reported balance of Ksh. 565,521,957 included Ksh. 551,822 for KMFRI Sagana station. The station account was fully reconciled and adjustments passed in the financial statements as per attached annex 41 journal entry.

Committee Observation

2300. **This was a reconciliation issue that had since been reconciled.**

Committee Recommendation

2301. **The accounting officer for KEMFRI should always ensure that reconciliations are done in time.**

Donor Project Costs (FY 2016/2017)

2302. The general expenses balance of KSh. 1,224,143,394 included a balance of KSh. 1,063,250,881 in respect to research programs. This included World Bank Donor projects costs which was indicated as KSh. 880,290,146. However, examination of certified financial statements for the two World Bank projects for the year ended 30 June 2017, revealed that Kenya Coast Development Projects Credit number 4801 had expenditure of KSh. 781,995,33 while Project Grant Number TF 97578 had expenditure of KSh. 102,386,674 all totaling to KSh. 884,382,007.

2303. This resulted to unreconciled variance of KSh. 4,091,861 between the certified accounts for the two Donor projects and the schedules availed for audit to support the Donor projects costs. Consequently, the accuracy, validity and completeness of research program expense balance of KSh. 1,224,143,394 for the year ended 30 June 2017 could not be confirmed.

Management Response

2304. It was true that the balance of Ksh. 1,063,250,881 included Ksh. 880,290,146 KCDP Project. The actual expenditure for KCDP – IDA Credit number 4801 was KSh. 781,995,33 and GEF Grant Number TF 97578 was KSh. 102,386,674 totaling to KSh. 884,382,007. The unreconciled variance of KSh. 4,091,861 was adjusted in the financial statements as the journal entry.

Committee Observations

2305. **The adjustment was carried out in the subsequent year through a journal. The explanation given was therefore satisfactory.**

Committee Recommendation

2306. **The accounting officer for KEMFRI should ensure that the Institute's books are always reconciled.**

Cruise Expenditure (FY 2016/2017)

2307. Included in the research program is an amount of KSh. 57,730,325.65 in respect to RV Mtafiti expenses where KSh. 35,294,412 was paid out as nights outs to staff while on expedition cruises through temporary imprests. However, the basis of night out payments to the cruise staff was not clear since all the cruise expenditure was catered for by the Institute. Consequently, the accuracy, propriety and completeness of the MV Mtafiti night out expenses of KSh. 35,294,412 could not be confirmed.

Management Response

2308. It was true that the Institute incurred Ksh. 35,294,412 paid as night out facilitation for the sea going staff. The incurred expenditure included payment to Kenya Navy crew engaged to operate the vessel since KMFRI did not have capacity to operate a research vessel. Kenya Navy assisted to operate the vessel based on the MOU signed between the Parent Ministry of Agriculture, the State department for Fisheries (SDF) and the Ministry of Defense.

2309. The Institute sought guidance from Salaries and Remuneration Commission (SRC) and was advised on the appropriate rate payable to sea going staff in writing the basis upon which the said payments were made.

Committee Observations

2310. The Committee made the following observations:

(i) The letters to and from SRC was dated 5th March 2018 and 26th March 2018 respectively were way after the impugned expense was incurred and that SRC did not prescribe the rates in the said letter.

(ii) Further, considering that there was no evidence that the mother Ministry ever approved such payments, the Committee was unable to conclude whether such expenditure was lawfully sanctioned.

Committee Recommendation

2311. **The accounting officer for KEMFRI should provide the OAG with the approvals granted from the mother Ministry on the expenditure for audit and report in the 2022/2023 audit cycle.**

Unaccounted for Expenditure on Fuel (FY 2016/2017)

2312. The amount of KSh. 57,730,326 in respect of RV Mtafiti expenses also included an amount of KSh. 11,880,000 related to fuel supplied by National Oil for Mtafiti Research Vessel. However, documents showing how the fuel was utilized were not availed for audit review. In the circumstances, the accuracy, completeness and propriety of MV Mtafiti fuel expenditure of KSh. 11,880,000 could not be confirmed.

Management Response

2313. It was true that the RV Mtafiti expenditure of KSh. 57,730,326 included KSh. 11,880,000 utilized for fueling the vessel. The supporting documents were subsequently availed.

Committee Observations

2314. **This query arose due to the management's failure to submit documents for audit. The supporting documents were later availed for audit review, verified and cleared.**

Committee Recommendation

2315. **The accounting officer for the KEMFRI should always provide documents for audit within the statutory timelines failure to which the sanctions provided for in the Public Audit Act 2015 ensues.**

Government Grants (FY 2016/2017)

2316. The statement of financial performance for the year ended 30 June 2017 reflected government grants of KSh. 1,275,500,000 from the parent ministry. However, records at the State Department of Fisheries and Blue economy reflected a transfer of KSh. 1,356,730,476 to Kenya Marine and Fisheries Research Institute, resulting to an unreconciled variance of KSh. 81,230,476.

2317. In the circumstances, the accuracy and completeness of the government grants figure of KSh. 1,275,500,000 could not be confirmed.

Management Response

2318. It was true that as at the time of audit, the Institute records reflected government grants of KSh. 1,275,500,000. The inter entity transfers from the Ministry to KMFRI were reconciled and the two entities financial statements amended to reflect the correct amount.

2319. The Institute had since adopted the Inter entity transfer reconciliation system as per the revised financial statements reporting format requiring the head of finance to sign the reconciled transfer statements with the Principal Account Controller based at the parent Ministry.

Committee Observation and Recommendation

2320. **This was a reconciliation issue that had since been done and therefore resolving the query.**

Budget Control and Performance (FY 2016/2017)

2321. The management did not provide authority for the over expenditure of KSh. 450,261,378 or 29%. Regularity of this over expenditure could not be confirmed. Further, the Authority under spent on some items by KSh. 148,079,546 or 9% thus affecting delivery of goods and services to the citizens.

Item	Budget KSh.	Actual KSh.	Under Expenditure KSh.	Over Expenditure KSh.	% Variance
Basic Salaries	309,265,621	294,777,626	14,487,995		4.7%
Personal Allowances	206,053,741	204,245,748	1,807,993		0.9%
Personal Allowances-Reimbursement	6,914,000	4,926,082	1,987,918		28.8%
Employers Pension Contribution	72,850,717	51,024,204	21,826,513		30.0%
Utilities Supplies & Services	11,290,000	11,344,903		(54,903)	0.5%
Communication, Supplies & Services	9,970,050	11,469,120		(1,499,070)	15.0%
Domestic Travel and Subsistence	30,000,000	37,358,636		(7,358,636)	24.5%
Foreign Travel And Subsistence	3,000,000	1,908,502	1,091,498		36.4%
Printing & Publishing	8,150,000	7,372,894	777,106		9.5%

Information					
Rental Of Produced Assets	7,520,000	5,549,094	1,970,906		26.2%
Training Expenses	11,010,000	8,705,875	2,304,125		20.9%
Hospitality Supplies Service	20,158,125	22,949,655		(2,971,530)	13.8%
Insurance Costs	79,113,433	34,020,143	45,093,290		57.0%
Research Programmes	668,970,232	1,063,416,450		(394,446,218)	59.0%
Specialized Materials & Supplies	3,778,340	7,154,760		(3,376,420)	89.4%
General Office Suppliers	8,420,682	10,374,199		(1,953,517)	23.2%
Fuel, Oil And Lubricants	3,505,000	3,652,968		(147,968)	4.2%
Other Operating	30,637,007	68,623,001		(37,985,994)	

Expenses					
Routines Maintenance Vehicle	11,461,756	8,767,976	2,693,780		
Routine Maintenance Other Ass	26,302,000	13,698,579	12,603,421		47.9%
Purchase of Furniture	11,435,000		11,435,000		100.0%
Purchase of Specialized Plant , Equip.	30,000,000		30,000,000		100.0%
Purchase of Coffins / Rel. Expense	249,987	897,109		(647,122)	258.9%
Total	**1,570,055,691**	**1,872,237,524**	**148,079,546**	**(450,261,378)**	

Management Response

a) The basic salaries expenditure was contained within allocated budget.

b) The personnel allowances expenditure was contained within allocated budget.

c) The personnel allowances reimbursement expenditure was contained within allocated budget.

d) The employer pension contribution expenditure was contained within allocated budget.

e) The utilities expenditure was contained within the budgetary allocation.

f) The extra communication expenditure of Ksh. 1,499,070 expanded internet connectivity for research & administrative purposes.

g) The extra DSA expenditure of Ksh. 7,358,636 increased external collaborative meetings with donors and other stakeholders

h) The under expenditure on foreign DSA expenditure of Ksh. 1,091,498 reduced due to the GOK cost cutting measures on external travel.

i) The printing expenditure was contained within the budgetary allocation.

j) The rental of produced assets expenditure was contained within the budgetary allocation.

k) The training expenditure was contained within the budgetary allocation.

l) The extra hospitality expenditure of Ksh. 2,971,530 increased internal meetings and workshops with donors and other stakeholders

m) The insurance expenditure was contained within the budgetary allocation.

n) The extra research programs expenditure of Ksh. 85,470,207 was in respect of the increased donor funding and activities.

o) The extra specialize materials supplies expenditure of Ksh. 85,470,207 was in respect of the increased purchase of laboratory materials for samples analysis

p) The extra general office supplies expenditure of Ksh. 1,953,517 was in respect of the increased institute sanitation

q) The extra fuel expenditure of Ksh. 147,968 was in respect of the increased fuel pump cost

r) The extra other operating expenditure of Ksh. 37,985,994 was in respect of the increased depreciation of assets.

s) The routine maintenance of vehicles expenditure was contained within the budgetary allocation.

t) The routine maintenance of other assets expenditure was contained within the budgetary allocation.

u) There was no expenditure for purchase of furniture following austerity measures by management.

v) Specialized equipment were not purchased due to delayed cashflows.

w) The other operating expenditure of Ksh. 647,122 was with respect to bereavement on staff and their family unit.

2322. The overall expenditure for the financial year was within the allocated budget for the financial year.

Committee Observations and Recommendation

2323. **This matter was adequately addressed and query resolved.**

Presentation of the Financial Statements (FY 2017/2018)

2324. The financial statements presented for audit had missing details of date of birth and term expiry dates for four members of the Board contrary to the Public Sector Accounting Standards Boards Circular No PSASB 1/1/VOL.1/108 dated 19 June 2018 on revised annual financial reporting templates for national and county entities where section 2.2.5 stated that other amendments include elaborate details under corporate governance. In addition, instructions in the revised financial reporting template under the Board of Directors subheading state that, "*Provide a concise description of each Directors date of birth, key qualifications and work experience*"

2325. As result, the financial statements presented did not conform to the recommended template issued by the Public Sector Accounting Standards Board.

Management Response

2326. It was true that the financial statements did not include details of date of birth and term expiry dates four members of the Board. The details were obtained, and the information was subsequently updated in the financial statements as per extract of financial statement.

Committee Observations

2327. **The Committee made the following observations:**

(i) Management was negligent in failing to present financial statements as per the templates set by the Public Sector Accounting Standards.

(ii) **This was however rectified and subsequent financial statements conformed accordingly**.

Committee Recommendation

2328. **The accounting officer for the KEMRI should always ensure that financial statements are prepared and presented as per the guidelines issued by the Public Sector Accounting Standard.**

Cash and Cash Equivalent (FY 2017/2018)

Cash Count Certificate

2329. Note 12 to the financial statements for the year ended 30 June 2018 reflected cash and cash equivalents balance of KSh. 462,034,276. However, included in the bank balance of KSh. 462,034,271 were cash balances at Mombasa revenue office and Baringo station of KSh. 12,000 and KSh. 165,112 which were not supported with cash count certificates. As a result, it was not possible to verify the balances.

2330. In the foregoing, the accuracy and completeness of the bank balance of KSh. 462,034,276 as at 30 June 2018 could not be confirmed.

Management Response

2331. The reported balance of Ksh. 462,034,271 for cash and cash equivalents included cash of Ksh. 12,000 for KMFRI Mombasa station and Ksh.165,112 for KMFRI Baringo station. The amount of Ksh. 12,000 was a cheque in transit from the KMFRI Naivasha station that was received at the headquarters and was banked in Mombasa on 13th July 2018.

2332. The cash count certificate for Baringo Station cash balance was subsequently availed for review.

Committee Observations

2333. **This matter arose due to failure to submit documents for audit within the statutory timelines. Such documents were belatedly provided, verified and confirmed.**

Committee Recommendation

2334. **The accounting officer for the KEMFRI should adhere to statutory timelines on submission of documents for audit.**

Unsupported Project Account Balances

2335. As reported previously, note 12 to the financial statements for the year ended 30 June 2018 reflected comparative cash and cash equivalents balance of KSh. 882,964,824 as at 30 June 2017. Included in this amount was a balance of KSh. 219,570,643 in respect of Project Accounts. However, bank reconciliation statements certificate of balances and bank statements availed for audit supported KSh. 218,476,551 resulting to unexplained nor reconciled variance of KSh. 1,094,092.

2336. Consequently, the accuracy and completeness comparative cash and cash equivalent balance of KSh. 882,964,824 as at 30 June 2018 could not be confirmed.

Management Response

2337. The reported comparative cash and cash equivalent for the project accounts as of 30 June 2017 was 219,570,643. The balances were reconciled and the variance of KSh. 1,094,092 adjusted in the books and adjustments passed in the financial statements.

Committee Observation

2338. **This was a reconciliation matter that had since been done and verified by the Office of the auditor General.**

Committee Recommendation

2339. **The accounting officer for KEMFRI should ensure that the Institute's books are reconciled.**

Government Grants (FY 2017/2018)

2340. Statement of financial performance reflects government grants of KSh. 1,325,558,242 for the year ended 30 June 2018. According to note 3 to the financial statements, government grants comprise of KSh. 960,600,000 for recurrent, KSh. 309,856,300 for M.V Mtafiti and KSh. 55,101,942 for other grants. However, according to the financial statements of the

State Department of Fisheries and Blue Economy, a total of KSh. 1,340,352,400 was disbursed to Kenya Marine and Fisheries Research Institute during the period under review resulting to unexplained nor unreconciled variance of KSh. 14,794,158.

2341. In the circumstances, the accuracy and completeness of government grants balance of KSh. 1,325,558,242 for the year ended 30 June 2018 could not be confirmed.

Management Response

2342. As at the time of audit, the Institute records reflected government grants of KSh. 1,325,558,242. The inter entity transfers from the Ministry to KMFRI were reconciled and the two entities financial statements amended to reflect the correct amount.

2343. The Institute had since adopted the Inter entity transfer reconciliation system as per the revised financial statements reporting format requiring the head of finance to sign the reconciled transfer statements with the Principal Account Controller based at the parent Ministry.

Committee Observation

2344. **This was a reconciliation matter that had since been done and verified by the Office of the auditor General.**

Committee Recommendation

2345. **The accounting officer for KEMFRI should ensure that the Institute's books are reconciled.**

Donor Grants (FY 2017/2018)

2346. Note 4 to the financial statements for the year ended 30 June 2018 reflected donor grants of KSh. 103,459,146. Included in this was a figure of KSh. 38,877,594 in respect of Kenya Coastal Development Project –IDA. However, according to the financial statements of the Kenya Coastal Development Project- IDA, the project did not receive donor funds but refunded a total of KSh. 37,017,612 to the World Bank. In addition, the audit examination revealed that while Kenya Coastal Development Project –IDA reported a receipt of KSh. 81,312,962 as funds in transit year 2016/2017, the institute has recognized the revenue of KSh. 81,312,962 in 2017/2018. This did not conform to IPSAS 9 which provided that revenue is recognized when it is probable that future economic benefits or service potential will flow to the entity and these benefits can be measured reliably. Therefore, the funds in transit were supposed to have been recognized in the year 2016/2017.

2347. In the circumstances, the accuracy, validity and completeness of donor grants of KSh. 103,459,146 for the year ended 30 June 2018 could not be confirmed**.**

Management Response

2348. The balance donor grants of Ksh. 103,459,146 included Ksh. 38,877,594 with respect to KCDP Project. Recognition of the donor grants of KSh. 81, 312,962 was recognized as a receipt in the year under review.

2349. The refund of KSh. 37,017,612 was premised on the expiry of the Donor Project period and the amount could not been spent outside the project period as it would be an ineligible expenditure. The amount was a saving due to restructuring and merging of the activities. The project cost was USD 35 Million, and the project absorbed 99% of the funding and was rated the among best implemented projects by the World Bank.

Committee Observations

2350. **The Committee made the following observations:**

(i) Management failed to adequately respond on why revenue was not recognized in the year 2016/2017.

(ii) It was not clear to the Committee that the returned monies to World Bank had been budgeted for.

(iii) There was no evidence adduced before the Committee to indicate that there was a saving in the cost. In the absence of this, the Committee was unable to conclude on this matter.

Committee Recommendations

2351. **The EACC should investigate implementation of this project including the budgeting, expenditure and refund of the alleged excess funds with a view to preferring charges against persons that may have broken the law.**

General Expenses (FY 2017/2018)

2352. Note 9 to the financial statements for the year ended 30 June 2018 reflected general expenses balance of KSh. 564,202,447. Included in this balance was KSh. 385,977,690 in respect of research programs which included two world bank donor projects. The total cost for these two projects was indicated as KSh. 197,642,643. However, examination of the financial statements for the two World Bank projects for the year ended 30 June 2018, revealed that Kenya Coastal Development Project Credit Number 4801 had expenditure of KSh. 207,377,244 while Project Grant Number TF 97578 HAD EXPENDITURE OF KSh. 21,414,619 all totaling to KSh, 228,791,863. This resulted to unexplained nor reconciled variance of KSh. 31,149,220 between the accounts for the Donor projects and the figures reported in these financial statements.

2353. In addition, audit verifications revealed that the institute did not maintain project fund accounts for donor funds received and expenditure for each project except the World Bank funded projects. It was therefore not possible to confirm expenditure per project/ research program.

2354. Consequently, the accuracy, validity and completeness of research program expense balance of KSh. 385,977,690 for the year ended 30 Jun e 2018 could not be confirmed.

Management Response

2355. The research programs expenditure of Ksh. 564,202,447 included Ksh. 385,977,690 in respect of KCDP Project. The actual expenditure for KCDP – IDA Credit number 4801 was KSh. 207,377,244 and GEF Grant Number TF 97578 was KSh. 21,414,619 totaling to KSh. 228,791,863. The variance of KSh. 31,149,220 was reconciled as the cumulative expenditure incurred by the project on behalf of the other partner government implementing agencies: Kenya Wildlife Service (KWS) and State Department of Fisheries.

Committee Observations

2356. **The Committee made the following observations:**

(i) Though the explanation offered was satisfactory, there was no evidence of the mother ministry's approval on such over expenditure.

(ii) As such, the Committee could not determine the accuracy of management's response.

Committee Recommendation

2357. **The Committee recommends that the accounting officer for the KEMFRI should submit all the approvals it obtained from the mother ministry and the reconciliations done to the Office of the auditor General for Audit in the 2022/2023 audit cycle.**

Budget Analysis (FY 2017/2018)

2358. According to the statement of comparison of budget and actual amounts, the institute had an approved budget of KSh. 1,138,392,826 for the financial year 2017/2018 against actual expenditure of KSh. 1,279,900,644 resulting to an overall over expenditure of KSh. 141,507,818 as detailed below:

Item	Budget KSh.	Actual KSh.	Under Expenditure KSh.	Over Expenditure KSh.	% Variance
Basic Salaries	305,916,799	298,578,241	7,338,558	0	2%
Personal Allowances	225,901,329	218,303,906	7,597,423	0	3%
Personal Allowances-Reimbursement	1,300,000	14,906	1,285,091	0	99%
Employers Pension Contribution	61,358,455	42,653,909	18,704,546	0	31%
Utilities Supplies & Services	10,936,649	14,493,687		(3,557,038)	-25%
Communication, Supplies & Services	9,144,109	11,144,850		(2,000,741)	-18%
Domestic Travel and	30,021,110	37,489,917		(7,468,807)	-20%

Subsistence					
Foreign Travel And Subsistence	1,962,585	2,748,646		(786,061)	-29%
Printing & PublishinInformation	10,783,230	11,712,893		(929,663)	-8%
Rental Of Produced Assets	4,570,072	7,501,996		(2,931,954)	-39%
Training Expenses	17,227,350	22,248,426		(5,021,076)	-23%
Hospitality Supplies Service	15,609,361	17,609,396		(2,000,035)	-13%
Insurance Costs	41,682,584	18,543,822	23,138,762	0	56%
Research Programmes	300,507,483	385,977,690		(85,470,207)	-22%
Specialized Materials & Supplies	15,552,293	7,866,245	7,686,048	0	49%
General Office Suppliers	10,961,011	14,408,847		(3,447,836)	-24%
Fuel, Oil and Lubricants	3,592,468	5,350,454		(1,757,986)	-33%
Other Operating Expenses	28,217,010	114,719,629		(86,502,619)	-307%

Routines Maintenance Vehicle	9,700,994	8,718,876	982,118	0	10%
Routine Maintenance Other Assets	33,447,964	39,814,308		(6,366,344)	-19%
Total	**1,138,392,826**	**1,279,900,644**	**66,732,549**	**(208,240,367)**	

Management Response

2359. The approved budget for the Institute was Ksh. 1,138,392,826 for the financial year 2017/2018 with actual expenditure for the same period being KSh. 1,279,900,644.

(i) The under expenditure on basic salaries, personnel allowances and employer pension contribution was funds that had been provided for promotions to be undertaken during the FY.

(ii) The extra utilities expenditure of Ksh. 3,557,038 was in respect of the increased cost of electricity

(iii) The extra communication expenditure of Ksh. 2,000,741 was in respect of the increased internet connection to KMFRI stations increasing the bandwidth to 20 from 3.

(iv) The extra DSA expenditure of Ksh. 7,468,807 was in respect of the increased research collaborative activities

(v) The extra DSA expenditure of Ksh. 786,061 was in respect of the increased international collaborative meetings.

(vi) The extra printing expenditure of Ksh. 929,663 was in respect of the increased institutional publicity and branding

(vii) The extra rental for produced assets expenditure of Ksh. 2,931,954 was in respect of the increased cost of hire of transport services

(viii) The extra training expenditure of Ksh. 5,021,076 was in respect of the increased training to enhance staff capacity

(ix) The extra hospitality supplies expenditure of Ksh. 2,000,035 was in respect of the increased internal meetings and conferences

(x) The extra research programs expenditure of Ksh. 85,470,207 was in respect of the increased donor funding and activities.

(xi) The extra general office supplies expenditure of Ksh. 3,447,836 was in respect of the institute sanitation.

(xii) The extra fuel expenditure of Ksh. 1,757,986 was in respect of the increased research activities.

(xiii) The extra other operating expenditure of Ksh. 86,502,619 was in respect of the increased depreciation of assets.

(xiv) The extra fuel expenditure of Ksh. 6,366,344 was in respect of the increased institute equipment and buildings.

Committee Observations

2360. **Management of KEMFRI could not produce any evidence of approvals from both the Board and the Mother Ministry and as such, was in breach of the Public Finance Management Act 2012 unauthorized expenditure.**

Committee Recommendation

2361. **The EACC should investigate the circumstances under which the management overspent without the requisite authority from the mother ministry with a view to preferring charges against those found culpable.**

Construction of Shimoni Office and Laboratory Block (FY 2017/2018)

Use of Force Account

2362. Note 16 to the financial statements for the year ended 30 June 2018 reflected additional work in progress of KSh. 34,405,403. This included KSh. 12,058,463 incurred on the construction of shimoni office and laboratory through force account method. However, records availed for audit indicate that the institute tendered and awarded the works to a contractor which was cancelled and the management decided to execute the works using casuals.

2363. This was contrary to Section 109(1&2) of the Public Procurement and Assets Disposal Act 2015 which states *that procuring entity may use force account by making recourse to the state or public officers and using public assets, equipment and labor which are competitive and where quantities of work involved are small and scattered or in remote locations for which qualified construction firms are unlikely to tender at reasonable price and the quantities of works cannot be defined in advance*. There was no justification for use of force account as Shimoni was not a remote area and several firms had responded to the advertisement and therefore willing to work in the area. Although the management had indicated that the contract was cancelled because the quotes received were high, the above conditions were not met including supervision of the work by the Engineers from the Public Works Department.

2364. Consequently, the management was in breach of the law.

Management Response

2365. It was true that included in the work in progress of KSh. 34,405,403 was an amount of KSh. 12,058,463 in respect to the construction of Shimoni office and laboratory. To secure the land from grabbers, urgent measures were taken by constructing a perimeter fence and a small office structure to deter the invaders. The Institute Management's decision to use force account was informed by the following provisions of the Public Procurement and Assets Disposal Act, 2015 (PPADA, 2015). S. 109(2) States that ***"a procuring entity may use force account by making recourse to the state or public officers and using public assets, equipment and labor which are competitive.***

2366. The Institute engaged its masons, supported by casual laborer's to complete the project which had since attracted approximate funding of Ksh. 1bn for the National Mariculture Research Training Center and Ksh. 350 million from the KEMSFED World bank funded project. The work was supervised by the Institutions Resident Engineer.

Committee Observations

2367. **It was erroneous in the audit to indicate that there was a tender when it was a Force account that was used. It was however not justified for management to use Force Account in a project that cost KSh 12 million.**

Committee Recommendation

2368. **The accounting officer for the KEMFRI should adhere to the Public Procurement and Asset Act 2015 when procuring for goods and services and desist from using Force Account when the cost of the project is high.**

Delayed Completion

2369. Records availed for audit indicated that the project period was 3 months, from September 2017. However, as at the time of audit inspection in October,2018 being more than twelve months since commencement, the project was incomplete with electrical works, plumbing, doors, soak pit and landscaping not completed. The management had attributed the delay to process of procuring construction materials and end of financial year closing procedures.

2370. Delayed completion of the project might have led to further rise in project cost due to price escalation and the intended objective may have taken long to be realized.

Management Response

2371. The project was completed and handed over.

Committee Observations

2372. **Management failed to appreciate that the query wanted a response on delayed completion and attendant costs. Considering that this was not a tender, there may have been no cost escalation.**

Committee Recommendation

2373. **The accounting offer for KEMFRI should always ensure that conceived projects are implemented within the specified timelines.**

M.V Mtafiti Vessel- Procurement of Laboratory Equipment (FY 2017/2018)

2374. The statement of financial position as at 30 June 2018 reflected property, plant and equipment balance of KSh. 1,499,113,280. Included in this amount were laboratory equipment bought during the year at a total cost of KSh. 52,995,646. However, a review of the procurement documents revealed the following anomalies:

Tender Evaluation Committee Sittings Held in Kilifi

2375. The Institute incurred total expenditure of KSh. 3,604,800 being payment of daily subsistence allowance to 52 persons for tender evaluation of laboratory equipment held in Kilifi whereas there were several board rooms and conference facility at the Institute's headquarters. The Management had argued that the choice of Kilifi was to afford the team maximum concentration. However, the Institute had in the past successfully held such meetings within the Institute. As a result, payment of daily subsistence allowance was not applied in an effective and lawful manner. This was contrary to Section 92 (4-a) of the Public Finance Management (National Government) Regulations 2015 which provides that before issuing temporary imprests, the accounting officer shall ensure that the main objective of the journey cannot be achieved by other cheaper means. The Management was in breach of the law.

Idle Equipment

2376. Audit inspection undertaken in the month of October 2018 on the procured equipment revealed that the equipment procured for MV. Mtafiti vessel were still lying in a store at the Institute headquarters more than 6 months after delivery. The equipment had neither been fitted nor moved to the vessel at Kenya Navy. Although the management had indicated that the suppliers delivered the items before renovation of laboratories was completed, this implies lack of proper planning before committing funds and tendering. It may also imply impulse purchases and committing public funds on non- priority items at the expense of more demanding areas which was against Section 53 (3) of the Public Procurement and Assets Disposal Act, 2015 which provides that any public officer who knowingly recommends to the accounting officer excessive procurement of items beyond a reasonable consumption of the procuring entity commits an offence under this Act.

2377. In addition, audit inspection of Mv. Mtafiti vessel revealed that the vessel was not sailing due to a fault despite the Government disbursing a total of KSh.309,856,300 for the operation of the vessel as per note 3B to the financial statements.

2378. In the circumstances, the public had not realized value for money from a total of KSh. 309,856,300 for the year ended 30 June 2018.

Management Response

2379. The Accounting Officer approved facilitation for procurement committees where there was a likelihood that the evaluations could not be completed within the stipulated time of 30 days as per the Public Procurement and Assets Disposal Act, 2015 (PPADA, 2015). Within this period, the Act requires that the bidders be informed of the outcome of the evaluations.

2380. The Institute procured equipment that was meant to be fitted in the RV Mtafiti at Kenya Navy. At the time of delivery of the equipment, the vessel was undergoing repair services which subsequently delayed the fitting of the procured equipment. The vessel had since been repaired and the equipment tested and fitted accordingly.

2381. The Institute had also initiated renovation works of its laboratories to accommodate the state of art equipment that was being imported to support the research activities of the Institute. The contract schedule for the laboratory works was to be completed by the time of delivery of the equipment. However, the suppliers delivered the equipment ahead of schedule necessitating the need of placing them in the storehouse while awaiting completion of the renovation works. The renovation had since been completed and equipment tested and fitted accordingly.

Committee Observations

2382. **The Committee made the following observations**

(i) Having sittings in Kilifi was not justified and therefore the accounting officer was in breach of Section 92 of the Public Finance Management (National Government) Regulations, 2015 for authorizing wasteful expenditure.

(ii) Considering that the impugned equipment was donated, it was prudent for it to be repaired and made usable as was done in this case.

Committee Recommendation

2383. **The accounting officer for KEMFRI should recover the Daily subsistence allowances paid to officers that facilitated tender evaluation sittings in Kilifi within the 2022/2023 financial year.**

Procurement Plan (FY 2017/2018)

2384. Note 15 to the financial statements for the year ended 30 June 2018 reflected assets purchases of KSh. 342,240,374. Included in this were various items of property, plant and equipment valued at KSh. 292,250,775 which were not included in annual procurement plan for the year 2017/2018. Although the Management argued that the items were combined as block figures, this contravened Section 53(2) of Public Procurement and Assets Disposal Act,2015 which states that *an accounting officer shall prepare an annual procurement plan which is realistic in a format set out in the regulations within the approved budget prior to commencement of each financial year as part of the annual budget preparation process.*

2385. Consequently, the funds could have been allocated to non- priority items at the expense of more demanding areas and the Management was in breach of the law.

Management Response

2386. The amount of Ksh. 292,250,775 included various items of property, plant and equipment procured in the financial year 2017/2018. The items were captured as a block figure in the Institutes procurement plan. The Institute has since been preparing an itemized procurement plan as per the format of the PPADA.

Committee Observations

2387. **Management was in breach of the law for procuring without a procurement plan.**

Committee recommendation

2388. **The accounting officer for KEMFRI should be reprimanded for approving procurement without a procurement plan.**

Blue Economy Grants (FY 2017/2018)

2389. Note 3C to the financial statements for the year ended 30 June 2018 indicated that Government grants of KSh. 12,866,940 disbursed to KMFRI to harness potential of the sea under the Blue Economy for seaweed value addition interventions to support seaweed

No.	**Item**	**Budget KSh.**
1	Electrical Requirements	508,000
2	Plumbing Works	858,940
3	Construction of Drying racks	2,500,000
4	Non-Motorized Harvest Boat	1,000,000
5	Marketing and Promotion	2,500,000
6	Branding and Certification	2,500,000
7	Administration Costs	3,000,000
	Total	**12,866,940**

farmers in Kwale County. The funds were to undertake the following activities

However, the following was noted:

2390. Out of the total disbursement of KSh. 12,866,940, a total of KSh. 10,057,889 being 78% of the funds had been spent. However, audit inspection of the project in the month of October 2018 revealed that there was no production of seaweed soap as envisioned under the blue economy intervention.

2391. Electrical and Plumbing works costing KSh.1,768,581 and KSh. 2,188,350 respectively were undertaken through imprest instead of engaging a contractor for the works without proper justification as per Section 109 (2-a) of the Public Procurement and Assets Disposal Act 2015 which states that procuring entity may use force account by making recourse to the state or public officers and using public assets , equipment and labour which are competitive and where quantities of work involved are small and scattered or in remote locations for which qualified construction firms are unlikely to tender at reasonable price and the quantities of work cannot be defined in advance. The bill of quantities was also not availed for audit verification.

2392. By the end of the financial year 2017/2018, a balance of KSh.2,809,051 had not been spent. However, seaweed drying racks, non-motorized and marketing activities boats which were allocated KSh. 2,500,000, KSh. 1,000,000 and KSh. 5,000,000 respectively all totaling KSh. 8,500,000 had not been implemented. It was not clear how the activities will be financed.

2393. Consequently, the intended objective of the grant of KSh. 12,866,940 for harnessing potential of seaweed was not achieved and the public may have not realized value for money.

2394. The Institute received KSh. 12,866,940 in advancing research in the blue economy sector. The seaweed value addition intervention was a collaborative exercise that involved institutions based in Nairobi including NEMA, KEPHIS, KMFRI, SDF&BE and the Public Works Engineers. The project experienced unforeseen challenges such as delays of power supply to the site, delays in delivery of materials and technical setbacks. The project had since been completed and the community was involved in seaweed soap production. The interventions involved new technology transfer that involved critical on-site consultations and verifications. It was therefore necessary for the participating institutions to make field trips in undertaking the various assignments.

2395. The pending activities were to be undertaken in the subsequent financial year following the Institute's requests for additional funding.

<u>Committee Observations</u>

2396. **The Committee made the following observations:**

(i) The management failed to response to the issues raised in the audit to wit: no seaweed soap production at the time of audit; irregular use of imprest instead of contracting; failure to provide Bill of Quantities and exhaustion of the monies meant to achieve certain milestones without such milestones being realized.

(ii) In the absence of a proper response, the Committee could not clear the query.

Committee Recommendation

2397. **The EACC should investigate implementation of the whole project with a view to preferring charges against persons found culpable.**

Acting Positions (FY 2017/2018)

2398. Audit verification of staff files and payrolls revealed that four staff had been appointed to acting positions at the Institute for a period beyond the stipulated six (6) months as detailed below:

S/No.	Designation	Acting position	Acting period
1	Senior ICT Officer	Acting Chief ICT officer	From 01 December, 2013
2	Principal Accountant	Acting Chief Accountant	From 01 October,2010
3	Personal Secretary I	Acting Chief Executive	From 01 April,2015
4	Principal Research Officer	Acting Deputy Director-Aquaculture	From 01 January, 2018

2399. This was in contravention of the Section C. 14(1) of Public Service Commission Human Resource Policies and Procedures Manual for the Public Service, which prohibits an officer from acting to a position for more than 6 (six) months. It was not clear why the positions were not filled by either confirming the acting staff or advertising the vacancies. As a result, the management was in breach of the laws. Consequently, the Institute was not constituted as per the law.

Management Response

2400. The Institute had four officers serving in acting capacity for a period beyond six (6) months. Here below please find the status for each position:

i. The acting position was stopped with effect from 1st September 2019

ii. Acting position stopped with effect from 31st March 2020

iii. Acting position stopped with effect from 31st March 2020

iv. Acting position stopped with effect from June 2020

2401. The institute had since been replacing exiting staff annually in accordance with approved KMFRI staff establishment, the HR management policies and procedures manual and staff career guidelines.

Committee Observations

2402. **The Committee made the following observations:**

(i) Though management had owned up to violating the law in having staff in acting for more than six months, it did not explain the circumstances for such a violation.

(ii) Further, it was noted with satisfaction that, management had since complied with the Employment Act 2007 regarding acting positions.

Committee Recommendation

2403. **The accounting officer should always adhere to the Employment Act 2007 and Public Service Regulations on employment.**

Lack of Board of Directors (FY 2017/2018)

2404. The term of office for six (6) board members and the chair expired in January 2018 and April 2018 respectively and therefore by the close of the financial year, the Institute had no Board in place. Although a new Chairman was appointed in September 2018, however other board members have not yet been appointed. Therefore, there was no properly constituted Board in place to transact Board matters. This was contrary to Section 15 (1) of State Corporations Act Cap 446 which states that the Board shall be responsible for the proper management of the affairs of a state corporation and shall be accountable for the moneys, the financial business and the management of State Corporation. Consequently, the Institute was not constituted as per the law.

Management Response

2405. The Institute only had the Board Chairman during the audit. However, the Government had since appointed the other Board of Management members as per Gazette notice of 2018.

Committee Observation

2406. **Failure by the appointing authority to ensure fully constituted Boards affects operations of the Institute in terms of oversight and strategic policy directions.**

Committee Recommendation

2407. **The appointing authorities should ensure that the Boards of state Corporations are always fully constituted.**

Inaccuracies in the Financial Statements (FY 2018/2019)

2408. The financial statements for the year ended 30th June, 2019, availed for audit review contained the following inaccuracies:

Statement of Cash Flows

2409. The statement of cash flows for the year ended 30th June, 2019 reflected a decrease in trade and other payables from non-exchange transactions of KSh.28,565,644 while the recomputed amount was KSh. 28,771,904, resulting to a variance of KSh. 206,260. Although Management explained that the variance related to outstanding medical bill written off, no documentary evidence was provided.

2410. Consequently, the accuracy and completeness of the statement of cash flows could not be confirmed.

Statement of Financial Position- Accumulated surplus

2411. The statement of financial position as at 30 June, 2019 reflected an accumulated surplus of KSh. 924,581,510 while the corresponding Note 29 to the financial statements reflected an accumulated surplus of KSh. 926,931,510, resulting to a variance of KSh. 2,350,000 which had not been explained or reconciled.

2412. Consequently, the accuracy and completeness of the statement of financial position as at 30 June, 2019 could not be confirmed.

Management Response

2413. The amount of Ksh. 206,260 was excluded from the balance of trade and other payables from non-exchange transactions of KSh.28,565,644. This was a medical bill from Agha Khan hospital in respect of Mr. Peter Muthui, a KMFRI employee. The Institute medical scheme at the time involved the co-sharing of medical bills at the ratio of 75:25 between KMFRI and employees. Upon receipt of the bill, KMFRI recognized the entire amount as a payable in its books by expensing Ksh. 206,260 as a medical expense and recognized Ksh. 1,011,400 as a debt from Mr. Peter Muthui.

2414. During the 2018-2019 financial year, the Institute sought confirmation from the Aga Khan University on the long outstanding medical bill. The hospital responded by stating that KMFRI did not have any liability with them**.** Based on this confirmation, the institute reconciled the account with the hospital and passed a journal to reflect the status of no liability.

2415. The accumulated surplus of KSh. 924,581,510 in the statement of financial position differed with the accumulated surplus of Ksh. 926,931,510 in the Notes to the financial statements. The variance of Ksh. 2,350,000 was reconciled and the financial statements adjusted.

Committee Observation

2416. **The explanation offered was satisfactory. However, the KEMFRI management had a lot of challenges relating to reconciliation which points to possible capacity inadequacies.**

Committee recommendation

2417. **The Committee recommends that the accounting officer for the KEMFRI should ensure that reconciliations are timely done.**

Loss of Deep-Sea Observatory Rover (FY 2018/2019)

2418. As disclosed in Note 20 to the financial statements, included in the reported property, plant and equipment balance of KSh. 1,734,161,109 weare asset additions (purchases) of KSh. 386,552,403 which further included an amount of KSh. 281,613,777 in respect of research vessels. The research vessel purchases of KSh. 281,613,777 included an amount of KSh. 13,242,599 being the cost of deep-sea observatory rover. However, the equipment was not physically verified as it was reportedly lost in deep sea and the loss reported at a police station on 16 July, 2019. As at the time of audit in the month of January, 2020, the equipment had not been traced. Further, the equipment was not insured raising doubts to whether the institute would be compensated for the loss.

2419. In view of the foregoing matters, the existence, accuracy and completeness of the reported property, plant and equipment balance of KSh. 1,734,161,109 could not be confirmed as fairly stated.

Management Response

2420. The amount of KSh. 281,613,777 in respect of research vessels purchases included 13,242,599 being the cost of deep-sea observatory rover which got lost during research work at sea occasioned by strong sea waves. A search and recovery operation jointly by KMFRI, BMUs and KWS divers in the area where the equipment was lost. However, the water visibility was poor and the search team could not locate the ROV. All the BMUs in Kwale, Mombasa up to Kilifi were informed of the missing equipment including a picture of the equipment.

2421. The incident was reported to Nyali Police (OB number OB. No. 51/3/7). The Institute had since insured all its research vessels and equipment.

Committee Observation

2422. **It was negligent of management in failing to insure the lost rover**

Committee recommendation

2423. **The then accounting officer for the KEMFRI should be reprimanded for not insuring the lost rover that could have compensated the Institute in the event of loss.**

Cash and Cash Equivalents – Stolen Cash in Hand (FY 2018/2019)

2424. The statement of financial position reflected cash and cash equivalents balance of KSh. 486,455,555 which, as disclosed under Note 17 to the financial statements, included cash in hand of KSh. 266,577. However, the cash in hand balance included KSh. 165,112 being cash held at Baringo station which differed with the NIL balance reflected in the cash count certificate. Although Management explained that the money was stolen from the station's cash office, no evidence of the action taken against the officer responsible or that the incident was reported to the Police was provided for audit verification.

Management Response

2425. The matter was reported to the police and a suspect was arrested and later arraigned in court. The case was heard by the Principal Magistrate's Court Kabarnet. The case file number was: CRIMINAL CASE NO. 45 OF 2016, it was determined, and a ruling made on 18 August 2016 and the accused was acquitted.

Committee Observations

2426. **The Committee made the following observations:**

(i) Though the matter was reported to the police and prosecuted, the cash lost could not be recovered as the suspect was acquitted. This meant that the institute lost the money in question.

(ii) Further, the management failed to embrace the cashless transactions hence occasioning holding cash in office.

Committee Recommendations

2427. **The Committee recommends that:**

(i) The accounting officer should ensure implementation of cashless transactions beginning the 2022/2023 financial year.

(ii) Management should consider writing off the stolen cash if it cannot be recovered.

Doubtful Receivables from Former Staff (FY 2018/2019)

2428. The statement of financial position reflects KSh 12,014,930 in respect of receivables from non-exchange transactions which, as disclosed in Note 18 to the financial statements, includes staff debtors amounting to KSh 5,713,246. However, the staff debtors included an amount of KSh. 1,251,116 in respect of advances to staff who have since left the Institute and could not be traced. Although the Management indicated intention to seek legal advice on how to recover the receivables, no recoveries had been made as at 30 June, 2019.

2429. Consequently, full recoverability of the receivables from non-exchange transactions balance of KSh. 1,251,116 from former staff could not be confirmed.

Management Response

2430. The amount was disclosed in the financial statement as a contingent receivable. The breakdown of the debtors was as follows:

No	Name	Amount	Status
1.	Jacob Ojuok	121,117	Deceased
2.	Ngisigha Sowene	1,017,451	Deceased
3.	David Musembi	16,596	Resigned
4.	Nicholas Kalundu	1,670	Deceased
5.	William Atuga	36,565	Deceased
6.	Gerald Okumu	57,717	Deceased
7.		**1,251,116**	

2431. The Institute has initiated the process of writing off the debts by writing to the Permanent Secretary.

2432. The balance of Ksh. 4,462,130 was in relation to medical advance of staff who were still in services and deductions were ongoing as per medical advance deductions schedule. The Institute had undertaken efforts to recover the outstanding debts as evidenced Ksh. 1,670 received in respect to Nicolas Kalundu and Letter written to David Musembi.

Committee Observations and Recommendation

2433. **The explanation offered was satisfactory and therefore the matter resolved.**

Budgetary Control and Performance (FY 2018/2019)

2434. The statement of comparison of budget and actual amounts reflected a final budget and actual revenue on comparable basis of KSh. 1,687,424,889 and KSh. 1,285,115,265 respectively resulting to an under funding of KSh. 402,309,624 or 24% of the budget. Similarly, the Institute had an approved expenditure budget of KSh. 1,437,432,512 against an actual expenditure of KSh. 1,140,897,654, resulting to an overall under expenditure of KSh. 296,534,858 or 21%. The under-funding and under-expenditure affected the planned activities and may have impacted negatively on service delivery to the public.

Management Response

2435. The underfunding was a result of reduced GoK budgetary allocation to KMFRI while the under-expenditure arose from cash and bank balances carried forward in respect of donor funded projects that receive funds which are to be utilized for several years as per the signed financing agreement. This arrangement resulted into some project funds being carried forward for spending in subsequent years.

Committee Observation and Recommendation

2436. **The explanation offered was satisfactory**

PV Doria Operationalization (FY 2018/2019)

2437. Records availed for audit review indicated that in the financial year 2018/2019, the Institute had a budget of KSh. 627,597,545 for research programmes, out of which a total of KSh. 116,594,000 was budgeted for PV Doria operationalization expenses. However, KSh. 37,886,770 of the funds were transferred to the State Department for Fisheries under unclear circumstances and expenditure returns from the State Department of Fisheries were not provided for audit verification.

2438. Consequently, the propriety of the expenditure and compliance with Section 54(1) of the Public Finance Management (National Government) Regulations ,2015, which prohibits payments made out of funds earmarked for specific activities for purposes other than those activities, could not be confirmed.

Management Response

2439. The Institute transferred an amount of Ksh. 37,886,770 to the State Department for Fisheries & the Blue Economy (SDF&BE) as instructed by the Principal Secretary, (SDF&BE). The amount was to facilitate the commissioning activity that was organized by the Parent Ministry since there was no allocation in the Ministry budget as PV Doria was delivered with the government budget process had been concluded.

Committee Observations

2440. **The Committee made the following observations:**

(i) It was irregular for the parent Ministry to utilize the funds meant for KEMFRI without seeking for reallocations through the supplementary budget approved by the National Assembly.

(ii) Further, the said expenditure was not audited and therefore the Committee could not determine whether the said funds were lawfully and efficiently applied.

Committee Recommendation

2441. **The Committee recommends that:**

(i) The accounting officer for KEMFRI should always adhere to the PFM Act 2012 on application of funds.

(ii) The Office of the Auditor General should audit expenditure relating to PV Doria in the 2022/2023 audit cycle.

Procurement of Research Vessels Equipment FY 2018/2019

2442. The statement of financial position reflects property, plant and equipment balance of KSh. 1,734,161,109 which, as disclosed in Note 20 to the financial statements, includes an amount of KSh. 281,613,777 in respect of research vessels equipment bought during the year. However, a review of the procurement documents revealed the following anomalies:

Use of Wrong Tender Documents

2443. The Institute issued International Competitive Bidding (ICB) tender document instead of National Competitive Bidding (NCB) as per the advertisement placed in a local daily newspaper dated 16 January,2019 and the Kenya Marine Fisheries Research Institute website, contrary to Section58(1) of the Public Procurement and Asset Disposal Act,2015 which requires public entities to use the standard documents from the Public Procurement Regulatory Authority.

Omission of Confidential Business Questionnaire Form

2444. The Confidential Business Questionnaire Form as per the standard documents issued by the Public Procurement Regulatory Authority was missing in the tender documents. Instead, the Management used a form titled 'bidders' information form' which does not provide information on the nature of business, registration certificate, value of business, names of directors and their nationalities.

Excess Payments on Inland Transportation

2445. Instructions to bidders Clause 15.7 (Price Schedule) included cost of inland transportation and other services required in the purchaser's country to convey the goods to their destination. However, records availed for audit review indicated that the institute incurred unexplained additional expenditure of KSh. 2,433,627 on inland transportation and other services. Consequently, the validity of expenditure of KSh. 2,433,627 on inland transportation could not be confirmed.

2446. In view of the foregoing matters, the Management was in breach of the law.

Management Response

Use of Wrong Tender Documents

2447. It was true that the document used was for ICB instead of NCB. Although the ICB document was used, all the necessary NCB procurement processes were adhered to as per the requirements of the PPDA. The Institute had since put measures in place to ensure that subsequently, the correct tender documents are used in all its procurement processes.

Omission of Confidential Business Questionnaire Form

2448. It was true that the Confidential Business Questionnaire Form was missing in the tender documents. The Institute regretted the error and had since put measures in place to ensure that subsequently, tender documents must be reviewed at various levels in the procurement function publishing.

Excess Payments on Inland Transportation

2449. It was true that tender price included cost of inland transportation and other services required in the purchaser's country to convey the goods to their destination. Mombasa was the destination indicated in the tender documents.

2450. The amount of KSh. 2,433,627 was incurred by the Institute to transport the equipment to the various KMFRI stations following the Inspection and acceptance by KMFRI instrumentalists at Mombasa Headquarters.

Committee Observations

2451. **The Committee made the following observations:**

(i) Considering that management had accepted on all the breaches of the procurement law as raised by the audit report, it was not clear whether they were done intentionally or with an intent to defraud the taxpayers.

(ii) This can only be unearthed by competent investigative agencies.

Committee Recommendation

2452. **The EACC should investigate the entire procurement exercise with a view to preferring charges on persons that may be found culpable.**

Lack of Internal Audit Charter (FY 2018/2019)

2453. The Institute did not have an Internal Audit Charter, as required under Regulation 162 (2) of the Public Finance Management (National Government) Regulations, 2015 which provides that the organizational structure of the internal audit unit facilitates the entity to accomplish its internal audit responsibilities with sufficient authority to promote independence and to ensure broad audit coverage, adequate consideration of internal audit reports, appropriate action to be taken on internal audit recommendations; and to be independent of the programs, operations and activities he or she audits to ensure the impartiality and credibility of the internal audit work undertaken.

2454. In absence of the Internal Audit Charter, the credibility of internal audit work could not be confirmed.

Management Response

2455. The Internal Audit Charter was in draft form during the audit but was subsequently approved.

Committee Observation and Recommendation

2456. **The audit charter has since been put in place thereby resolving the query.**

Lack of Board Charter (FY 2018/2019)

2457. Section 1.11 of the Mwongozo Code of Governance for State Corporations requires the Board to develop a charter to define the role, responsibilities and functions of the Board of Management. However, KEMFRI was in violation as it had not established a board charter.

Management Response

2458. The Board Charter was in draft form during the audit but was subsequently approved.

Committee Observation and Recommendation

2459. The audit charter has since been put in place thereby resolving the query

2.26 KENYA NATIONAL BUREAU OF STATISTICS (FY 2015/2016 TO FY 2019/2020)

EXAMINATION OF THE REPORT OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF THE KENYA NATIONAL BUREAU OF STATISTICS (KNBS) FOR THE FINANCIAL YEAR 2015/2016 TO FINANCIAL YEAR 2019/2020

Mr. Macdonald George Obudho, the Director General of Kenya National Bureau of Statistics accompanied by Mr. Elias Nganga Njoroge (Head of Finance) appeared before the Committee to adduce evidence on the audited accounts of the Bureau for the financial year 2015/2016 to financial year 2018/19.

<u>CASH AND CASH EQUIVALENT (FY 2015/16 TO FY 2017/2018)</u>

2460. The cash and Cash equivalents balance of KSh. 2,556,194,019 as at 30 June 2016 include county accounts balances totalling KSh. 1,868,658. No bank reconciliations and cash books for these accounts were provided for audit review hence, it was not possible to ascertain that all bank transactions and bank balances during the year under audit were fairly stated.

<u>Management Response</u>

2461. The Bureau opened 47 bank accounts with Kenya Commercial Bank in the Counties, with the County Statistical Officers (CSOs) being the main signatories.

2462. These accounts were used for the facilitation of various field activities including Counties' operations, among others. The County operations funds were sent to the accounts, with the CSO as the imprest holder.

2463. The Bureau experienced administrative challenges in operations of these accounts due to limited staff capacity, staff retirement, and staff deployments that necessitated the frequent changes in signatories. The CSOs are statisticians with little bookkeeping knowledge. It was not viable to employ an accountant in each of the counties to handle the bookkeeping, and reconciliations as required.

2464. Due to staff constraints, there were challenges in the preparation of monthly bank reconciliation statements, and the ability to comply with the requirements of the PFM Act.

2465. The management noted the issues raised by The Office of Auditor General and sought authority from the Board to close off all the accounts. This was granted during the Board's 45th regular meeting held on 28th July 2020.

2466. Further authority was sought from The National Treasury and this was granted on 10th February 2021 per See Appendix 1. The process of closure was completed by 30th April 2021, and all the funds transferred and accounted for in the Headquarters.

Committee Observations

2467. **Management was granted authority by the Board and the National Treasury to close off all the accounts which was completed by 30th April 2021, and all the funds transferred and accounted for in the Headquarters.**

Committee Recommendation

2468. **The matter was resolved.**

RECEIVABLES FY 2015/16

(a)Long Outstanding Imprests (FY 2015/16 to FY 2019/2020)

2469. The receivables balance of KSh.216,043,618 as at 30 June 2016 and as disclosed under note 13 to the financial statements included an amount of KSh.4,438,906 in respect of 2009 census exercise that has remained outstanding to date. It also included pending imprest balance of KSh.162,401,937 of which an amount of KSh.31,054,944 had been outstanding for over 180 days

2470. In addition amounts totaling to KSh.135,087,864.80 were owed by 135 staff who held more than one unaccounted for imprest as at 30 June 2016, clearly indicating that employees were issued with imprest before surrendering the previous ones.

Management Response

Long outstanding imprests

Census Imprests

2471. These imprests represented an amount sent to the 158 Census Districts to facilitate various activities related to the 2009 Housing and Population census. The delay in surrendering was either due to delays in receipt of the documents from the districts or submission of incomplete documents, hence rendering their acceptance difficult. These imprests were also the subject of both internal and external audits and the queries had to be cleared before the surrenders could be accepted.

2472. The Bureau followed up with the Ministry of Interior and Coordination of National Government on the outstanding 2009 KPHC census imprests. Some recoveries were made from the affected District Commissioners, who were the chairmen of the census committees and the AIE holders.

2473. An amount of Ksh. 843,307 was subsequently recovered and remitted to the Bureau, but to-date KSh. 4,438,906 was outstanding in the financial records as un- surrendered imprest. This had proved difficult and uneconomical to recover as well as follow-up and all our efforts to get more monies recovered have been fruitless. However, the Bureau had been following up on this matter.

2474. The Board approved the process of writing off the amounts in its 35th regular meeting held on 27th April 2017. Authority was sought from The National Treasury, in line with The Public Finance Management (PFM) Act, 2012 Section 69 (2), and the PFM (National Government) Regulations, 2015 Section 157(1) to write off this amount.

2475. Approval from the Cabinet Secretary, National Treasury for the write-off had not been granted and follow-up was being done.

Staff Imprests

2476. The management had been following up on all staff imprest not surrendered with a view to processing and clearing them.

2477. The reported balance as at 30.06.2016 moved from Sh.162,401,937 as at 30.06.2016 to Sh.69,534,430 as at 30.06.2017 following various actions taken, follow-ups, and recoveries from the payroll. An extract of the financial report for the two years indicating the change.

Committee Observations

2478. **The Committee made the following observations:**

(i) **Though some imprests had been recovered, others had taken inordinately long to be recovered in clear violation of the Public Finance Management Act 2012 regarding surrender of imprests within 7 days of completion of the activity for which the imprest was issued for.**

(ii) **Further, it was not ripe to request the National Treasury for a write off when all the options for recovery had not been dispensed with.**

Committee Recommendations

2479. The Committee recommends that:

(i) **The accounting officer for the KNBS should follow-up on recovery of unaccounted for imprest.**

(ii) **The National Treasury should only approve write off of the unaccounted-for imprest after all the options for recovery have failed.**

(iii) **The then accounting officer for KNBS should be reprimanded for failure to ensure accountability of issued imprests within seven days after the end of the activity for which the imprest was issued for.**

NON-CURRENT ASSETS (FY 2015/16 to 2017/2018)

Fixed Assets Register

2480. As previously reported, although the Bureau's plant and equipment were independently valued in November 2010, a fixed asset register to record all assets transactions and accounting treatment for the Bureau had not been prepared and reconciled.

Management Response

2481. The Bureau's assets were first valued in November 2010. A fixed assets register was not developed then due to software incompatibility challenges as it was not part of the initial contract. An asset register module was provided by the valuers based on Sage Evolution accounting software. The Bureau's accounting software then was based on Pastel Partner, a lower version. The Bureau prepared a list of fixed assets which was updated with assets bought in the subsequent years.

2482. The fixed asset register has since been put in place and all the Bureau's assets in all the offices in the Counties and the Headquarters, in the finance management system. A fresh asset valuation and tagging was done during the period between October 2020 and June 2021 and the new values had been incorporated in the asset's register per the certificate.

Committee Observations and Recommendation

(i) **The fixed assets register was put in place and the matter resolved.**

(ii) **Going forward, the accounting officer for the KNBS should ensure that the asset register is in place and updated.**

Lack of Title Deed

2483. The property, plant and equipment balance of KSh. 254,477,977 as at 30 June 2016 included a parcel of land measuring 0.16ha with a building valued at KSh. 8,494,071 situated in Embu Town. The Bureau did not have the original title document for this land.

Management Response

2484. The Bureau was allocated a plot in Embu town by the Provincial Administration and part development plan was done confirmed in 2016. The same was valued and included in the Bureau's asset register during the valuation exercise undertaken in 2010. The processing of the title documents commenced at the County Lands Office, with the budget for the processing of the Part Development Plan being settled together with other requisite charges.

2485. The Bureau subsequently followed up with the Ministry of Lands to ensure that the title deed was obtained. The processing of the Title at the County Lands Office took long reportedly because it had to be done alongside those of other Ministries and Departments which benefitted from the same allocation. Then, there was a directive from the Transition Authority halting all land deals and transactions that involved government agencies, until further notice.

2486. The Bureau had confirmed that the land area was a quarter-acre plot, and that the title was to be processed in the name of The National Treasury, as a custodian. The general boundaries survey was done. All the documents were filed at the Lands Office in Nairobi in late 2016 awaiting the requisite approvals, and processing of the title documents.

Committee Observation

2487. **The Bureau's Embu land remained without ownership document despite efforts from management to secure the same.**

Committee recommendation

2488. **The Committee recommends that the accounting officer for the KNBS should continue engaging the Ministry of lands and secure the Bureau's title to Embu land.**

Intangible Assets

2489. Based on the accounting policy, the amortization for the year should have been KSh. 4,249,100 and not the reported amount of KSh.4,202,948 and the maximum net book value of intangible assets should have been KSh. 10,444,883 whereas the amount reported in the financial statements is KSh. 10,456,921. The variance of KSh. 12,083 in amortization and net book value was not explained. Consequently, the accuracy of the intangible assets balance of KSh. 10,456,921 as at 30 June 2016 could not be confirmed. This was indicative of significant impairment on some of the properties.

2490. Consequently, it is not possible to confirm whether the carrying values as stated in the financial statements reflect the fair values of the properties.

Management Response

2491. The Bureau's policy on intangible assets was that amortization was charged on a straight-line basis at 33.3%p.a. as indicated in the Notes to the Financial Statements, and per the Bureau's Finance Manual.

2492. Under Note 15: Intangible Assets, the movement of the assets were indicated from 2014/2015 (amortization amount is Sh.4,202,948) to 2015/2016 (amortization amount is Sh.4,199,896) and the correct net book value figure is Shs.10,456,921.

2493. The observation of the variance of Sh.12,083 was wrongly captured. The correct variance on the movement of intangible assets amortization was Sh.3,052 and was due to rounding off, arising from the full amortization during 2014/2015.

2494. Intangible assets were fully impaired within three years, from the date of acquisition.

Committee Observation and recommendation

2495. **The explanation offered was satisfactory as admitted by the Office of the Auditor General. The matter was resolved.**

Failure to label Acquired Non-current Assets FY 2016/17

2496. During the year under review, KNBS acquired furniture and fittings, plant and equipment, motor vehicles and computers at a total cost of Sh.43,534,118. However, these non-current assets were not discreetly labelled and identified to facilitate physical verification

Management Response

2497. The Bureau acquired assets during the period worth KSh.43.5 million. The process of labelling was undertaken and the data captured

Committee Observation

2498. **The KNBS indicated that it has since done asset valuation, tagged and uploaded in the financial management system and as such the query was resolved.**

Committee Recommendation

2499. **The matter was resolved**

REVENUE RESERVES 2016/17 FY

2500. The revenue reserve balance included adjustments in revenue reserve of KSh57,335,487 for 2015/2016 which had not been supported. In addition, the revenue reserve account had an adjustment of Sh.18,834,392 for 2016/2017 being an amount in respect of movement in leave accrual. This was inappropriate accounting treatment as it contradicted the accounting policy on accrued leave.

Management Response

2501. The net changes and restatements in reserves of KSh57,355,487 were due to the adjustments related to prior year expenses. The revenue reserve had an adjustment of KSh18,834,392 was the equivalent of the unutilized leave days for the period 2015/2016. It was a provision and was charged against income during that period. In 2016/2017 the amount was reversed, hence increasing the reserves of the period, as a prior year item.

2502. The Bureau has since ensured that all remittances for taxes are dealt with within the financial year, or a provision is included in the financial reports. A provision for staff leave accruals is adjusted with the changes in the liability, either an increase or a decrease, instead of the prior treatment in which the entire expenses would be reversed. This has ensured that there were no prior year adjustment

Committee Observation

2503. This was an accounting issue that had been responded to adequately and verifies by the Office of the Auditor General.

Committee Recommendation

2504. **The matter was resolved.**

CREDITORS AND ACCRUALS FY 2016/17

2505. The creditors and accruals figure included amounts of KSh502,047 and KSh233,912 relating to financial year 2012/2013 and 2015/2016 respectively, which had remained uncleared from the books of accounts. It also included an amount of KSh3,029,267 in respect of withholding tax which was not supported by any documentation and tax certificates. The accruals and creditors also include staff accruals under PAYE.

2506. The schedule provided reflected an amount of KSh1,290,438.45 while the PAYE summary shows KSh1,513,933 resulting in a difference of KSh223,495 that has not been explained.

Management Response

2507. The Bureau withholds statutory deductions from the research assistants who are engaged for the various surveys and censuses. Some of these research assistants had not updated their NSSF, NHIF and KRA's itax information. The filing and payment of these deductions was done online, and this could not be done if the registration numbers were incorrect or the systems are not updated and is the obligation of the payee to do so. In view of this, reconciliations and reconfirmation of the details was undertaken and the remittances done, as appropriate.

2508. The status of KRA PIN Numbers in the itax module were being confirmed before release of payments to either supplier (for purposes of withholding VAT, and contractors' and consultants' fee withholding taxes), and for purposes of PAYE for all research assistants. This ensured that their details were updated and that the remittances were processed promptly.

Committee Observations and recommendation

2509. **Reconciliations and reconfirmation of the details was undertaken and the remittances done, as appropriate. The matter was resolved.**

EXPIRATION OF BOARD OF DIRECTORS TERMS (FY 2016/17 AND 2017/2018)

2510. The Statistics Act, 2006 requires the KNBS to have 8 members of the Board of Directors. However, except for one member whose term expire on 20.10.2019, the terms of all other members of the board have expired. No new appointments had been made to fill the vacancies.

Management Response

2511. Though the Board was not fully constituted, it was subsequently constituted by the appointing authority.

Committee observation

2512. **Though the Board was fully constituted, failure to fully constitute it by the appointing authority could result in oversight gaps on the management.**

Committee Recommendation

2513. **The appointing authority should always ensure that the Board of KNBS is fully always constituted.**

LONG OUTSTANDING RECEIVABLES 2017/18

2514. The receivables included KSh161,642,529 in respect of staff debtors issued as staff imprests. The aging analysis revealed that KSh132,587,620.29 had remained outstanding beyond the statutory period of 30 days

Management Response

2515. The Bureau was undertaking several activities under the Kenya Statistics for Results programme, with the few available officers engaged in activities. Imprests were issued for each activity but there were instances where the officers were still in the field and didn't get time to surrender the previous ones. In other instances, the surrender documents would be under process, awaiting clearance and eventual cost allocation. This led to a time lag, as the activities continued. The process was streamlined as the Bureau engaged more staff under its new structure.

Committee Observations

2516. **The Committee made the following observations:**

(i) Though the management had been following up on the recovery of the issued imprests, all the amounts had not been recovered to date.

(ii) Further, management violated the Public Finance Management Act 2012 in not enforcing accountability of imprests within seven days after end of the activity for which imprest was issued.

Committee Recommendations

2517. **The Committee recommends that:**

(i) The accounting officer for the KNBS should recover unaccounted for imprest from the officers concerned through the payroll or their terminal benefits.

(ii) The accounting officer for the KNBS should comply with the Public Finance Management Act 2012 and its regulations on accountability of imprest.

MULTIPLE IMPRESTS 2017/18

2518. The staff debtors balance of KSh161,642,529 included an amount of KSh70,523,983.70 advanced to forty (40) staff all who had multiple imprests in disregard of the law governing management of imprests.

Management Response

2519. The Bureau was undertaking several activities under the Kenya Statistics for Results programme. With the few available officers engaged in activities that followed each other, imprests were being issued for each activity. As a result, the officers were still held up in the field, before finding time to make the previous surrenders/the surrender documents would be under process, awaiting clearance and eventual cost allocation.

2520. The Bureau followed up with members of staff to surrender their imprest. No additional impressts are being advanced until full accounting of the previous ones. Recoveries from the payroll has also been undertaken on a regular basis.

Committee Observations

2521. **It was illegal for one officer to be issued with multiple imprests and failure of the accounting officers to enforce accountability of imprest.**

Committee Recommendations

2522. **The Committee recommends that:**

(i) The accounting officer for the KNBS should recover unaccounted for imprest from the officers concerned.

(ii) The accounting officer for the KNBS should comply with the Public Finance Management Act 2012 and its regulations on accountability of imprest.

CASH WITHDRAWN AND NOT ACCOUNTED FOR (FY2017/2018)

2523. The accountant at Turkana Regional Office was the only signatory to the office bank account withdrew KSh160,000 from the bank account that has remained unaccounted for to date. The officer was subsequently dismissed but the amount has not been recovered from him to date.

Management Response

2524. The officer in charge of the County, was summarily dismissed on 08.10.2018 and on 19th December 2019, he paid KSh160,950 in cash that was due from him and this was acknowledged vide Receipt No. CSH0723. He was dismissed for many other disciplinary cases even after being taken to rehabilitation and transferred severally.

Committee Observation and recommendation

2525. **This matter was adequately addressed and therefore resolved.**

CREDITORS AND ACCRUALS 2017/18

2526. The creditors and accruals balance of KSh22,566,396 that consisted of KSh40,057.50 in respect of pending leave, KSh56,793 as withholding tax and withholding VAT of KSh2,958,849.65 all of which had not been supported by any documentation.

Management Response

a. KSh40,057.50 – staff leave for interns, awaiting their clearance from the Bureau after the end of their internship programme.

b. KSh56,793 - withholding tax on contracts and was reconciled and the account cleared.

c. KSh2,958,849 - VAT withheld upon payment of suppliers and merchants. Reconciliation of the amount, together with the KRA PIN numbers of the suppliers was done and the amount cleared

2527. The status of KRA PIN Numbers in the itax module were currently being confirmed before release of payments to either supplier (for purposes of withholding VAT, and contractors' and consultants' fee withholding taxes), and for purposes of PAYE for all research assistants.

Committee Observations and Recommendation

2528. **The matter was satisfactory addressed and therefore resolved**

STAFF SALARY ACCRUALS 2017/18

2529. The staff salary accruals balance of KSh1,820,618 which related to NSSF employee contribution -KSh7,863, NHIF contributions - KSh22,800, Pension contribution KSh466,607.75, salary accruals - KSh157,342 and training levy - KSh44,000, all of which did not have the relevant supporting documents.

Management Response

2530. The Bureau withheld statutory deductions from the research assistants who were engaged for the various surveys and censuses. Some of these research assistants had not updated their NSSF, NHIF and KRA'S itax information. The filing and payment of these deductions was done online, and this cannot be done if their registration numbers were incorrect or the systems are not updated. Reconciliations and reconfirmation of the details was undertaken with a view to clearing the amounts.

2531. The status of KRA PIN Numbers in the itax module is currently being confirmed before release of payments to both suppliers (for purposes of withholding VAT, and contractors' and consultants' fee withholding taxes), and for purposes of PAYE for all research assistants.

Committee Observation

2532. **The matter was satisfactory addressed and therefore resolved**

Committee Recommendation

2533. **The matter was resolved**

STAFF AND INSURANCE DUES 2017/18

2534. Staff and insurance dues balance of KSh2,118,924 had been long outstanding.

Management Response

2535. Included in the figure for staff and insurance dues is KSh329,124 being amounts due to staff, due to cash over-surrenders. A further KSh1,789,800 was in respect of insurance dues to former members of staff who had passed on as follows:

a. Mr. John Kipkemoi - KSh1,489,880 The former member of staff passed on, and this amount related to the death benefits dues from insurance. The Bureau retained this amount pending payment to the surviving family members who had a family dispute.

b. KSh100,000 was received as part of final death benefits due to Peninah Kazigah following the death of her spouse.

c. KSh 200,000 was received as part of final death benefits in respect of Mr. Stephene Mcharo

Committee Observations

2536. **The impugned payments were paid, albet late, and verified by the office of the Auditor General. The matter was resolved**

Committee Recommendation

2537. **The accounting officer for the KNBS should ensure timely payments of services provided to the bureau.**

<u>IMPREST ISSUED ON BEHALF OF OTHERS 2017/18</u>

2538. The audit of imprest revealed that five (5) staff members took imprests amounting to KSh19,165,000 on behalf of others as opposed to each officer being advanced with his /her own for accountability purposes. The explanation given was not satisfactory.

<u>Management Response</u>

2539. Bulk imprests that were issued to officers on behalf of various groups had been duly surrendered.

<u>Committee Observation</u>

2540. **It was not a violation of the Public Finance Management Act 2012 for one to take bulk imprest on behalf of others so long as it is accounted for.**

<u>Committee Recommendation</u>

2541. **The matter was resolved.**

<u>Variances between the Trial Balances and Financial Statements FY 2018/2019</u>

2542. The management submitted a Trial Balance as at 30th June 2019 reflected balances against Office and General supplies of Sh.22,978,515 which differed from corresponding balances reflected in the financial statements of Sh.4,660,615 by Sh.18,317,900 for the year then ended. The trial balance was a revised set of generated but the movement of the figures therein and the ledger as stated above were not supported.

<u>Management Response</u>

2543. The financial statements were amended and a final trial balance generated. The changes involved the transfer of amounts incurred for the 2019 census materials, but incorrectly posted to General Office Stationery. The corrections were done through Journal Entry No.0120 so as to transfer the amount to Census expenses.

<u>Committee Observations</u>

2544. **This is a case where information for audit was not presented to the OAG for audit within the required timelines. The journal voucher and supporting schedules was later availed to the OAG & verified.**

Committee Recommendation

2545. **The accounting officer for the KNBS should adhere to statutory timelines on presentation of documents for audit failure to which the sanctions provided for under the Public Audit Act 2015 ensues.**

Mobile Devices and Related Accessories Expenses (FY 2018/2019)

2546. Included in the population census preparation figure of KSh1,805,207,409 were payment of KSh32,033,022 in respect of the creation charges of Letters of Credit (LC) representing 20% advance payment. However, there were anomalies noted in respect of the creation of Letters of Credit and the payment made.

Management Response

2547. The Bureau financed 75% of the contract for Supply and Delivery of Mobile Devices, Power Banks and Solar Chargers through a Letter of Credit and not 80% as implied. The Letter of Credit was meant to ease the flow of funds from the buyer in Kenya to the source of material in China. This is a common practice in international transactions, and was not used to transfer the Bureau's responsibilities to KCB Bank. The Bureau used Direct Procurement to source for a service provider for the Letter of Credit as per the PPADA2015 Clause 103 section 2 "(d).

Committee Observations

2548. **The Committee made the following observations:**

(i) Management failed to explore other available cheaper options when procuring rather than use Government to Government.

(ii) Secondly, it was unnecessary for the KNBS to get Letters of Credit for KSh 32 million from the Bank when this could have been done by Treasury.

(iii) An explanation that the procurement was urgent and that Census was fast approaching could not be sustained.

Committee Recommendation

2549. **The then accounting officer for the KNBS should be reprimanded for getting expensive letters of Credit from banks instead of using Treasury. He should also be reprimanded for irregular use of direct procurement.**

Doubtful payments to village elders FY 2018/2019

2550. The population census preparation figure includes an amount of KSh18,509,600 paid to the village elders who were involved in the Census cartographic mapping exercise in all the 47 counties. However, there was no official list with relevant details like name, identification number, the Division, Location, Sub location and the village they represented prior to the beginning of the exercise.

Management Response

2551. One of the objectives for conducting sensitization of National Government Administration Officers (NGAO) across the country was to ascertain the correct 4 administrative units so that proper planning for field cartographic mapping could be done. Prior to the start of the sensitization process for the NGAOs, a list of administrative units was requested from Ministry of Interior offices at County level through the Bureau's County Statistical Officers (CSO). Official responses were received through the respective CSOs. This information was used for making logistical arrangements and budgeting for the exercise.

Committee Observations

2552. **The Committee made the following observations:**

- **(i) The management response/explanation was not satisfactory and was devoid of the relevant supporting documents.**
- **(ii) Only people that attended training were recorded but those that went to the field were not availed for audit hence it was not possible to confirm whether those paid were the correct beneficiaries.**

Committee Recommendations

2553. **The Committee recommends that:**

(i) **Considering that the KNBS's Director General confirmed that there was no attendance register taken for people that worked, the KNBS should submit the names of KNBS officers that took imprest of the amount that they paid to the said village elders and how they accounted for / surrendered to the Office of the Auditor General for audit and reporting in the next audit cycle.**

(ii) **Going forward, an attendance register should be done whenever such an activity is done. The monies paid should not be in Cash – scan be done by Mpesa**

Training expenses (FY 2018/2019)

2554. Included in the training expenses of KSh54,031,907 was cash payments in the form of imprest to staff amounting to Ksh30,091,300. Hotels used for training were paid through imprests and not directly under normal procurement procedures. Further, examination of vouchers on hire of conference facilities, revealed that payment was made for the number of people booked as opposed to the number of attendees. The attendance registers revealed that the number of people who attended the conferences were less than those who were booked resulting to overpayment of KSh1,369,800 for hire of conference facilities.

Management Response

2555. The Bureau hired conference facilities from M/s Morendat Institute of Oil & Gas – Kenya Pipeline Company which had a policy to bill the client as per the request and not as per the attendance.

2556. The hotels used for training were procured independently, local service orders made and are paid upon successful completion of the exercise. Payments to hotels for conference facilities had never been paid on cash or through imprests.

Committee Observation

2557. **Explanation offered was satisfactory. The matter was resolved.**

County Bank Accounts FY 2018/2019

2558. Included in this figure was KSh6,017,635.35 recalled from the 47 county accounts with KCB bank to the KCB Development account. No bank reconciliations and cash book from all the 47 county accounts were provided for audit verification.

Management Response

2559. Staff constraints led to non-adherence to the requirements of the PFM Act 2012. All the county accounts were closed by 30th April, 2021 after the approval from the National Treasury and the Board and all the funds transferred and accounted for in the Headquarters.

Committee Observations and Recommendation

2560. **The approval from the Board and National Treasury was availed and verified. The matter was resolved.**

Non- disclosure of Special census bank accounts balances (FY 2018/2019 and 2019/2020)

2561. The Cash and Cash equivalent balance of KSh4,622,304,050 which excluded KSh47,605,315 special census bank accounts in 47 counties were wrongly treated as debtors.

Management Response

2562. The KPHC 2019 census accounts were special dedicated accounts for the census activities only. Imprests were issued in the names of the County Statistics Officers (CSO) for the facilitation of the various census activities. The census recruitment process was to commence in late June 2019 and funds were released to each of the Counties, as imprest, which was to be accounted for by the CSOs, upon completion of the exercise. As at 30th June, 2019 KSh64,799,799 was outstanding as it had not been accounted for. The amount of Sh.47,605,315 as noted in the audit findings, was the bank balances, as the census recruitment process was ongoing as at the end of the period. This was captured in note 14.

Committee Observations

2563. **It was against Regulation 91(2) and Regulation 93(12) of the PFM Act 2012 to treat special census accounts as debtors.**

Committee Recommendations

2564. **The Committee recommends that:**

(i) Going forward, the accounting officer should ensure that financial statements are accurately prepared and presented using an IPSAS template.

IMPRESTS FY 2018/2019

Long outstanding Staff Debtors FY 2018/2019

2565. The receivables of KSh4,506,252,401 included KSh493,856,282 in respect of staff debtors issued as staff imprests. A review of staff imprest aging analysis revealed that imprest advanced to staff amounting to KSh471,057,210.08 had remained outstanding beyond the statutory surrender date.

Management Response

2566. The surrenders for the above amounts had been received and processing of the same has was on-going. The Bureau had prioritized processing of imprest surrenders. In this regard additional accounting officers had been engaged on a temporary basis to build capacity and fast track the process. Recoveries through the payroll was also going on.

Committee Observations

2567. **This was a repeat paragraph from the previous financial years. The observations made there obtain here.**

Multiple imprests

2568. KSh493,856,262 as shown in Note 14 to the financial statements included an amount of KSh.388,954,579.08 advanced to three hundred and eight (308) staff all of whom had multiple imprests in disregard of the law governing management of imprest. No satisfactory explanation has been provided for this anomaly.

Management Response

2569. The Bureau was undertaking several activities under the Kenya Statistics for Results programme. With the few available officers engaged in activities that followed each other, imprests were being issued for each activity. As a result, the officers were still held up in the field, before finding time to make the previous surrenders/the surrender documents would be under process, awaiting clearance and eventual cost allocation.

Committee Observations

2570. **This was a repeat paragraph from the previous financial years. The observations made there obtain here.**

Outstanding Census Imprests

2571. Out of KSh4,506,252,401 in respect of receivables was KSh4,438,906 in respect of year 2009 census exercise that had remained outstanding to date. The recovery of this amount was doubtful and no provision has been made for the debt in the financial statements.

Management Response

2572. The delay in surrendering was either due to delays in receipt of the documents from the districts or submission of incomplete documents. The amount is still outstanding to date. The Bureau was waiting for approval for write off from the Cabinet Secretary, National Treasury.

Committee Observations

2573. **The Committee made the following observations:**

(i) **This amount had not been recovered and should not be written off as the KNBS had initially proposed.**

(ii) **Correspondences to Ministry of Interior had failed to yield any fruits on surrender including sharing of names of District Commissioners that had not surrendered.**

Committee Recommendation

2574. **The Principal Secretary for Interior should assist in recovery of the pending imprest by either recovery from the serving officers or from the terminal dues of those that exited the service.**

Provision for Bad Debts (FY 2018/2019 and 2019/2020)

2575. The statement of financial position and as disclosed under Note 14 to the financial statements reflected a balance of KSh 4,506,252,401 in respect of the receivables. This included sundry debtors amount of Sh.23,855,025 out of which Sh.23,433,873 was in respect of ERP development debtor which was the subject of a court case. The debt had remained outstanding for a period of over five years. Management had not made provisions in the financial statements in respect of this amount whose recovery was uncertain

Management Response

2576. The management ascertained that no benefit was expected from the proposed ERP development, which the supplier failed to implement as per the contract terms. The Bureau sued the supplier for the above amount that had already been paid to them, whilst the supplier also sued for the outstanding balance of KSh5,948,468.

2577. The legal suit had been disclosed as a contingent liability in the Notes to the Financial Statements.

2578. The Nairobi Chief Magistrates Civil Case No 244 of 2015: Mareba Computers Vs KNBS is still pending in court.

Committee Observations

2579. **The Committee made the following observations:**

(i) **This is a repeat paragraph from the previous years. It should be noted that the case is still pending in court and that the matter in question had been recognized as a contingent liability.**

(ii) **It was however not clear why the management did not recall the performance bond, if at all it existed.**

Committee recommendation

2580. **The Committee requests the judiciary to expedite hearing and determination of the case in question.**

Irregular expenditure on car hire services (FY 2018/2019 and FY 2019/2020)

2581. Irregular Sub-contracting of services. KSh 33,953,672.83. The management contracted car hire services firm to provide services to the Bureau on 27th April 2017 for a period of one year. The contract was extended for a further one year upon expiry without following due process. This was notwithstanding the supplier's own admission for lack of capacity to deliver the service on 13th June 2018. To bridge the supplier's capacity gap, management informally agreed with the contracted supplier for the car hire services to be subcontracted to other service providers. However, although the subcontractor was to prove ownership of the vehicles, the logbooks provided were in the names of other individuals other than the contractor.

2582. It was therefore not possible to ascertain that the service delivery and the payment of Sh.33,953,672 were made to the right and bonafide subcontractor.

Management Response

2583. Motor vehicle hire services through a competitive process. The service provider performance was satisfactory during the mapping exercise. However, there was hostility in ASAL areas e.g. North Eastern Region and Turkana County where the car firm could not be allowed to operate using the vehicles that were meant for the exercise. A request was done to KNBS and approval to subcontract the services as per the contract clause 10 was granted in order to ensure that the assignment was accomplished as per the requirements. Contract price remained the same and all payments were made to the firm.

2584. The Bureau complied with the PPADA 2015 as far as subcontracting of the contract was concerned and the need was necessitated by reasons beyond its control. The Bureau sourced for one service provider to undertake the exercise in the counties because its staff worked in one area or region then moved to the next one. There was no need to source different service providers for different regions since the areas or regions were not covered simultaneously which might have necessitated for numerous contracts for effectiveness.

Committee Observations

2585. **Though the explanation offered was satisfactory in terms of tendering through a competitive process, hostilities from some local communities made it hard to work hence need for subcontracting.**

Committee Recommendations

2586. **Going forward, the locals in the perceived hostile areas should be involved whenever such services are sought to avoid rejection of service providers brought from far flung areas.**

Irregular Procurement of Rental Space 2018/2019

2587. The Bureau leased office space at a total rent of KSh105,300,000 per year from January 2018 including service charge. The Bureau paid rent for the period between October 2017 to June 2019 of KSh.163, 083,000 while the building remained unoccupied with no value for money achieved hence misuse of public resources. Consequently, the value for money was not realized on the payment of the lease amount of Sh.163,083,000 between October 2017 and June 2019 when the premises had not been occupied and the Bureau was in breach of law.

Management Response

2588. The Bureau took over the office space immediately the rental contract was signed with the lessor. The tender process for partitioning works commenced immediately thereafter as it could not begin earlier due to the fact that the acquisition of space had not been concluded and therefore the office space had not been handed over to the Bureau by the owner. The delay caused by the main contractor impacted on other contracts since they could not conclude their assignments on time. The contract was extended twice and two default notices were issued.

2589. The moment the Bureau took over the office space it was therefore obligated to pay rent as the processes for partitioning the space was continuing. The Bureau was utilizing the office spaces for the 2019 Census preparatory activities and storage of materials, including the setting up of the Census Data.

Management Response

2590. The reason for late entrance into the building was occasioned by the long process of competitive procurement for partitioning that had to start once the lease agreement had been signed. There was no value for money (nugatory expense) that ought to have been anticipated and mitigated before signing a lease agreement through advise of the advice of the public works. The amount of rend paid by KNBS per day ss KSh. 287, 671.

Committee Observations and Recommendations

2591. **The explanation offered was satisfactory. The matter was resolved.**

Office Partition Space at Real Towers – Upper Hill Nairobi (FY 2019/2019)

2592. The Bureau contracted service providers for air conditioning and plumbing, cabling, electrical and portioning at a cost of KSh259,016,232. However, the Bureau paid KSh301,555,495 as shown below:

2593. works – KSh194,625,991, rent – KSh105,300,000, taskforce allowances for leased offices – 1,629,500 resulting in overpayment of KSh 42,539,263. Further the budget for partitioning was 120,000,000 for office partition resulting in an over expenditure of KSh 181,555,495.

Management Response

2594. The Bureau took over the office space immediately the rental contract was signed with the lessor. The tender process for partitioning works commenced immediately thereafter as it could not begin earlier due to the fact that the acquisition of space had not been concluded and therefore the office space had not been handed over to the Bureau by the owner. The delay caused by the main contractor impacted on other contracts since they could not conclude their assignments on time. The contract was extended twice and two default notices were issued.

2595. The moment the Bureau took over the office space it was therefore obligated to pay rent as the processes for partitioning the space was continuing. The Bureau was utilizing the office spaces for the 2019 Census preparatory activities and storage of materials, including the setting up of the Census Data.

Committee Observations

2596. **There was an approved board paper for reallocation of the funds that varied the initial budget. It is the absence/failure to provide this board paper at the time of audit led to this query.**

Committee Recommendation

2597. **The accounting officer for the KNBS should always adhere to the statutory timelines on submission of documents for audit failure to which the sanctions provided for in the Public Audit Act 2015 ensues.**

Lack of competitive Bidding-MFI Document Solutions Limited for KSh104,519,803.20 (FY 20018/2019

2598. During the year under review, the Bureau procured consumables totaling to KSh104,519,803.20 from MFI Document Solutions limited to facilitate implementation of the preparatory activities and actual enumeration of Kenya Population and Housing Census without a competitive bidding process as required by the law. Management has not provided explanations on why single sourcing was used in the procurement.

Management Response

2599. KNBS procured equipment through open tendering method from M/s MFI Document Solutions Limited. A Service level agreement/maintenance contract with rates for consumables to be supplied by supplier was signed between the parties. This restricted the Bureau from sourcing for consumables from other suppliers which might render the agreement null and void when an equipment is faulty. The Bureau further sought clarification from the Original Equipment Manufacturers who confirmed that M/s MFI Document Solutions Limited was their appointed dealer in Kenya. This prompted the Bureau to use direct procurement method to procure the consumables from M/s MFI Document Solutions Limited as per the PPADA 2015 Clause 103 section 2.

Committee Observations

2600. **Single sourcing may have been contemplated from the word go going by the procuring entity's failure to provide specifications that could not lock out other manufacturers from supplying accessories.**

Committee Recommendation

2601. **The management should always adhere to Article 227 of the Constitution by embracing competitive procurement and should only resort to other forms on exceptional circumstances.**

IRREGULAR PAYMENT FOR THE 2019 KENYA POPULATION AND HOUSING CENSUS (FY 2020)

Payment for Provision of Security during the 2019 KPHC

2602. The management transferred an amount of Sh.500,000,000 in form of an imprest to the Kenya Police Service (KPS) to meet the allowances of security officers during the exercise. The imprest amount of Sh.499,817,500 was subsequently surrendered on 4th June 2020. However, the basis for the transfer of Sh.500,000,000 was not supported by an agreement between KPS and the Bureau to inform the amount required for security.

2603. Further the surrender documents did not contain details of the number of security officers that were deployed for the exercise, their respective stations, the number of days worked and the amount received by each officer. There were also no daily attendance registers to authenticate the identity of officers that rendered the services at various station as proof of participation in the exercise and hence justification for the payment. There was no summary payment schedule breaking down the payments by region and station.

2604. In addition, the amount of KSh. 500,000,000 included an amount of KSh. 10,072,000 being payment to non-security officers. The roles, names, details of the non-security officers and the reasons for their involvement in the census exercise was not explained or documented.

Management Response

2605. During the Cabinet meeting held on 29th May 2017, the Ministry of Interior and Coordination of National Government was directed to ensure that appropriate provision of security was made throughout the census process. For all security operations during the census enumeration period, the Bureau had budgeted for KSh.514.253 million, which had been approved by the Board. The NPS requested for the funds to pay the allowances for 109,714 security personnel who participated 2019 Census.

2606. The Bureau transferred Ksh 500 million to the NPS bank account held at the National Bank of Kenya, Harambee Avenue Branch. The NPS was in turn required to account for the funds which were issued as imprest.

2607. When the surrender documents were received from NPS, a number of documents were noted to be missing. The Bureau had since written 2 letters dated 22nd February and 21st October 2021 to the Inspector General requesting for the missing documents such as details of the number of security officers that were deployed for the exercise, their respective stations, the number of days worked and the amount received by each officer, daily attendance registers and summary payment schedule breaking down the payments by region and station. Further, in the same letters the Bureau sort clarification on the expenditure amounting to KSh. 10,072,000 paid to non-security officers.

2608. The Inspector General had not responded to date.

Committee Observations

2609. **The Committee made the following observations:**

(i) The issue in the query was accountability of the amount disbursed which was still outstanding from the Inspector General.

(ii) Failure to provide these details will point out that the intended beneficiaries may not have received the amount.

Committee Recommendation

2610. **The Inspector General of Police should account for the monies advanced to the Service and a report on the same compiled during the next audit cycle.**

Unsupported use of airtime, data bundles and procurement of SIM cards

2611. An amount of KSh. 218,147,260.00 was spent for the purchase of Sim cards, data bundles and airtime from various telephone and internet service providers. However, the management did not provide detailed analysis on the quantities of data bundles supplied, how much was utilized and how it was utilized over the period of the census and the balance as at 30.06.2020.

Management Response

2612. A total of 30 million SMS were sent out. Safaricom confirmed having sent out 22,856,831 bulk SMSes with the balance of 7,143,169 which were sent by Telkom and Airtel as per the inspection report**.** Details of SMS sent, when they were sent, message content, delivery records, rejection records and the details of the recipient numbers were contained in the soft copy provided for verification.

Committee Observations

2613. **The Committee made the following observations:**

(i) Confirmation on the balance of 7,143,169 SMS of KSh. 8,214,644 sent by Airtel and Telkom networks was made to the Committee.

(ii) The details of the recipient numbers said to be contained in soft copy were belatedly availed for verification. This query arose due to failure by management to provide documents for audit within the statutory timelines.

Committee Recommendation

2614. **The accounting officer for the KNBS should always adhere to the statutory time lines on submission of documents for audit failure to which the sanctions provided in the Public Audit Act 2015 should ensue.**

Unsupported payment to Census Personnel

2615. Payments for enumerators expenses, content supervisors and ICT supervisors of Sh.3,211,275,700, Sh.1,191,151,000 and Sh.197,536,100 respectively, total of Sh.4,599,962,800 were captured as payments made from the specials census bank accounts that were maintained in all the 47 counties. However, no details of the numbers of each category of staff per county were provided. There were also no details on the number of days worked and evidence of work done by way of signed attendance sheets for each person paid. In addition, management did not provide documents in support of recruitment at the counties of ICT supervisors, content supervisors and enumerators.

Management Response

2616. The recruitment of census personnel process was one of the mandates of the County Census Committees (CCC), chaired by the County Commissioners. This was spelt out in the Legal Notice.

2617. There were 163,320 census personnel who were to be recruited and whose budgeted amount was as per the table below.

S/No	Cadre	Number	Days	Rate	Amount
1	ICT Supervisors	2,467	27	3,000	**199,827,000**
2	Content Supervisors	22,273	27	2,500	**1,503,427,500**
3	Enumerators	138,580	16	1,500	**3,325,920,000**
	TOTAL	**163,320**			**5,029,174,500**

2618. The breakdown of the total number of the census personel by category and county was provided to all the County Commissioners alongside the recruitment guidelines**.** The entire recruitment process included advertising, receiving of applications, data entry of applicants' details, shortlisting, interviews and selection. This was undertaken by the CCC at the county level.

2619. A sample copy of the advert, the registers where applicants were signing, summary of the register's list of applicants, an endorsed list of applicants signed by the County Commissioner, those shortlisted and selected personnel were available for verification.

2620. All the census personnel signed contracts, which stipulated the number of workdays, and took oath of secrecy at the county level. These documents are available at the County Officers.

2621. The confirmation that the census personnel worked was through the daily submission of data though the servers, and confirmation of completion of work in the assigned areas.

<u>Committee Observations</u>

2622. **The Committee made the following observations:**

(i) Recruitment process, numbers recruited under each category, days worked and attendance records were belatedly provided and verified by the OAG thus resolving the query.

(ii) It however emerged that officers that worked during census had not been paid due to errors in bank details they provided.

<u>Committee Recommendation</u>

2623. **The accounting officer for the KNBS should always adhere to the statutory time lines on submission of documents for audit failure to which the sanctions provided in the Public Audit Act 2015 should ensue.**

<u>Unsupported payment to village elders</u>

2624. Payments were made to village elders engaged for 9 days at a rate of KSh. 600 per day amounting to Sh.1,115,470,472. It was not clear how they were identified and later recruited for the exercise in all the counties. The list was also not provided for audit verification.

Management Response

2625. The village elders are part of the National Government Administrative Officers (NGAOs) in the Ministry of Interior and Coordination of National Government. They are usually identified by their respective Assistant Chiefs to participate in any national exercise within their sub-locations.

2626. During implementation of 2019 Census, the village elders were identified and assigned to work with enumerators in an Enumeration Area. The engagement of village elders was done at the county level and facilitated by respective County Census Committees chaired by the respective County Commissioners.

2627. Prior to the commencement of enumeration, the Assistant Chiefs assembled the village elders in their sub-locations and assigned each to an Enumerator to work with. Enumerators thereafter captured their details in the 2019 Census Tablets. After enumeration, the endorsed list of Village Elders was submitted to the Bureau for payment. As at the time of the audit, these documents were not available at the head office but were at the County offices. The documents were now available at the head office for review.

Committee Observations and Recommendation

(i) **The explanation offered was satisfactory and therefore the matter was resolved.**

(ii) **The accounting officer for KNBS should always provide documents for audit within the statutory timelines provided under the public audit act failure to which the sanctions provided in the said should ensue.**

Variances between Payments and Mpesa Statements KSh 8,526,600

2628. The village elders in the counties were paid through mpesa. However, the payments recorded in the ledger for the 45 counties could not be verified against the mpesa statements as they were not provided for audit review. Management provided mpesa statements for Nairobi and Nyandarua counties only where the following anomalies were noted:

a) In Nyandarua County, out of the total expenditure of KSh. 10,152,000 paid as allowances to village elders, KSh. 9,801,000 was supported by Mpesa statements availed as proof that the elders were paid resulting to a variance of KSh. 351,000 which has not been supported or explained who was paid,

b) In Nairobi County, Mpesa statements availed as proof that the elders were paid shows that the total amount that was successful as per the Mpesa schedule provided is KSh 79,444,800 while the payment voucher is KSh. 85,735,800 hence a variance of KSh 6,291,000 which has not been explained.

c) Out of KSh. 79,444,800 paid through Mpesa statements to the village elders in Nairobi County, analysis of the payments established that some of the village elders in various sub counties were paid twice totaling to KSh.1,884,600.

Management Response

2629. The amount of KSh 351,000 related to payment of elders did not go through because the mobile numbers were not compatible with KCB bulk Mpesa payment system. The amount reverted to the Nyandarua County Census Account and later paid to the beneficiaries.

2630. The payments to village elders of KSh. 85,735,800.00 was paid by the bank through Mpesa system vide payment vouchers PV14 dated 16th September 2019 and PV17 dated 14th October 2019 for KSh 82,792,800.00 and KSh 2,943,000.00 respectively. The Mpesa statements amounting to KSh. 79,444,800 was for the payment voucher PV 14. The Mpesa statements for PV 17 amounting to KSh. 2,908,120 was shared for verification. However, out of the two payment vouchers a total of KSh. 3,402,000 was unsuccessful and hence credited back to Nairobi County Special Census KCB Account on 30th September, 2019 and 31st October, 2019. The village elders whose money was unsuccessful were paid by cash and signed payment schedules were available for verification.

2631. There were instances where some elders shared the same Safaricom number for purposes of receiving payment. This resulted into the observed payments through Mpesa which appeared as double payments but was payment for several elders. The KCB Mpesa payment platform could not pay to non Mpesa registered lines.

Committee Observation

2632. **The matter was satisfactorily explained but it arose due to management's failure to provide documents for audit.**

Committee Recommendation

2633. **The accounting officer for KNBS should always provide documents for audit within the statutory timelines provided under the public audit act failure to which the sanctions provided in the said should ensue.**

Unsupported survey expenditure FY 2019/2020

2634. An amount of Sh.683,924,793 was spent on 3 surveys namely 2019 Kenya Continuous Household (KCHSP), Covid-19 and other prefeasibility activities. The survey costs in turn included research assistants' costs amounting to Sh.150,334,810. The management did not provide procedures used in identifying the assistants, the recruitment process and the determination of the number required for each survey.

2635. Though management indicated that there was a database maintained where the research assistants are selected from as and when required, the database could not be verified as access was not granted.

Management Response

2636. The Bureau developed Guidelines for Recruitment of Temporary Survey and Census Personnel in May 2015 which was approved by the Board.

2637. Requirements for recruitment of research assistants for various activities was usually determined by the user directorate. Each activity had its own requirements which was provided in the user request and approved by the Director General. Taking into considerations the requirements for the positions, the selection of candidates for the various activities was done as per the set criteria.

2638. The guidelines provided for recruitment of research assistants using a database of applicants. The database was usually updated using details of various applicants who apply for various posts. The database of applicants was available in soft copy and available for verification.

Committee Observations

2639. **The Committee made the following observations:**

(i) **The Guidelines for Recruitment of Temporary Survey and Census Personnel in May 2015, which was approved by the Board, was belatedly availed and verified by the OAG.**

(ii) **The Bureau equally granted the OAG belated access to the data base**.

Committee Recommendations

2640. **The Committee recommends:**

(i) The accounting officer for KNBS should always provide documents for audit within the statutory timelines provided under the public audit act failure to which the sanctions provided in the said should ensue.

(ii) The KNBS should expedite development of regulations operationalizing the Statistics Act that will address matters of recruitment among others.

Unreconciled County Accounts FY 2019/2020

2641. Included in Cash and Cash Equivalents was KSh. 736,219 from the 47 county accounts. However, no bank reconciliations and cash books from all the 47 county accounts for the whole year had been submitted for audit review.

Management Response

2642. The Bureau opened 47 bank accounts with Kenya Commercial Bank in the Counties, with the County Statistical Officers (CSOs) being the main signatories. These accounts were used for the facilitation of various field activities including Counties' operations, among others. The County operations funds were sent to the accounts, with the CSO as the imprest holder. The CSOs accounted for the imprests thereafter through surrenders of accounting documents. In instances where full accountability was not done, recoveries were effected through the payroll.

2643. The cash books and bank reconciliation statements had been prepared and available for verification.

Committee Observation

2644. **Imprests were accounted for and cash and bank reconciliations done and verified.**

Committee Recommendation

2645. **The accounting officer for the KNBS should ensure timely reconciliation of statements and accountability of imperests.**

Property Plant and Equipment (PPE) FY 2019/2020

2646. Included in the assets reported value was Sh.3,851,838,447 for 2019 KPHC gadgets. However, the detailed inventory receipt of the devices and issue to users were not provided for audit verification.

Management Response

2647. The schedules of the inventory receipts of the devices and their issues were available for verification.

Committee Observation

2648. **The matter was satisfactorily explained but it arose due to management's failure to provide documents for audit.**

Committee Recommendation

2649. **The accounting officer for KNBS should always provide documents for audit within the statutory timelines provided under the public audit act failure to which the sanctions provided in the said should ensue.**

Receivables – Imprest Management (FY 2019/2020)

2650. The reported receivables included KSh. 265,780,908 in respect of staff debtors in form of staff imprests. A review of staff imprest aging analysis revealed that imprest advanced to 125 staff members who had multiple imprests. Sh.244,911,285 was also outstanding as at the time of the audit. Management did not provide explanations for non-recovery of the imprest.

Management Response

2651. The Bureau was undertaking several activities under the Kenya Statistics for Results programme which had strict timelines. This was in addition to the continuing 2019 KPHC mapping exercise which was also time-bound. The officer submitted the surrender documents on time, but the processing of the submitted documents delayed due to the increased workload against the limited human resource. Due to the need for continuity in implementing the statistical activities, the officer were issued with imprests before completion of the processing of the submitted documents. This therefore made it appear as if officers were issued with multiple imprests.

Committee Observations

2652. **The outstanding imprests was belatedly accounted for and verified by the Office of the Auditor General.**

Committee Recommendation

2653. **The accounting officer for KNBS should always provide documents for audit within the statutory timelines provided under the public audit act failure to which the sanctions provided in the said should ensue**.

2.27 TOURISM FUND (FY 2011/2012 TO FY 2017/2018)

EXAMINATION OF THE REPORT OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF THE TOURISM FUND (TF) FOR THE FINANCIAL YEAR 2011/2012 TO FINANCIAL YEAR 2017/2018

Mr. David K. Mwangi, the acting Chief Executive officer of the Tourism Fund accompanied by Mr. Charles Okeyo (Director, Levy Services), Mr. Eden Odhiambo (director, Strategy and Resource Mobilization) and Ms. Jennifer Chege (Manager, Finance and Accounts) appeared before the Committee to adduce evidence on the audited accounts of Fund for the financial year 2011/12 to financial year 2017/18.

FY 2011/12 to FY 2017/2018: Trade and Other Receivables

2654. The trade and other receivable balance of KSh.9,736,815 as at 30 June 2012 excludes an amount of KSh.16,617,045 relating to various levy collections for dishonored cheques brought forward from the previous year for which a provision of the total amount has now been made. Although the management had explained that a panel of lawyers had been instructed to pursue one client involving KSh.9,500,000 of the total amount, no evidence had been seen in relation to the outcome of the case.

Management Response

2655. The amount of KSh.16,617,045 consisted of levy collections balances fully provided for in the previous year. The greatest portion of the levy debt related to African Safari Club whose debt was KSh.9,900,423.25. The club was taken to court by the fund for recovery of the said debt vide case number no CM CR No 2207/2009 (where one of the directors Mr. Frank Helge Neugebauer was arrested).

2656. An out of court settlement was negotiated and the club agreed to deposit to the Fund postdated cheques for the entire sum owed. The club issued eighteen (18) postdated cheques and a ruling was issued by the Magistrate Court dated 12/4/2010 withdrawing the case under Section 87(a) of the Criminal Procedure Rules Cap 75 LoK.

2657. Upon banking the said cheques on their maturity date, only two (2) cheques were honored amounting to KSh.400,000/- and the rest were dishonoured. On 12th February 2014 through the firm of Wekesa and Simiyu Advocates, the Fund filed a notice of intention to be enjoined in Winding Up Case No. 1 of 2005 at Mombasa between Universal Hardware Ltd (Creditor) and African Safari Club. A judgement on the case was delivered on 19th June 2014 and a Winding Up order against the Club was issued on 23rd June 2014. After the Winding Up order was issued against the Club, the Fund's lawyers together with the Fund's legal officer had been attending the Official Receiver meetings with a view to ensuring that the organization benefits from sharing of the assets to date.

2658. On the particulars of the Directors, the Fund instructed Safety Loss Assessors to investigate on the particulars of the Club and in their report, the directors are as follows;

- Carl Jacob Rudin
- Benato Fabrizio Bachmann
- Brigitte Hutzli
- Frank Helge Neugebauer
- Murtaza Hatimala Hassanazi
- Hans Peter Rudedin

2659. The Fund further instructed the Law Firm to do a search in the Companies Registry on the Particulars of the directors and shareholders, however the firm was unable to get the particulars since the subject file was missing at the Registry. The costs incurred so far in the recovery process amounted to KSh.974,340/- being legal fees and investigation fees.

Committee Observations

2660. **Only 60% of impugned funds had been accounted in the response while the difference has not been addressed. In the absence of a response on the remaining KSh 7.5 million, the matter remained unresolved. However, recovery of these monies had inordinately taken long.**

Committee Recommendations

2661. The Committee recommends that:

(i) The accounting officer for the Tourism Fund should pursue recovery of the KSh. 9.5 million from the then directors of the African Safari Club that went under after issuing dishonored cheques to the Fund and the 7.5 million cheques from levy revenue.

FY 2011/12, 13, 14: Trade and Other Receivables:

2662. Further the receivables include an amount of KSh.2,100,230 described as miscellaneous debtors which had no movement during the year under audit. Although management had explained that the debtors relate to former employees and that the same had been fully provided for, no satisfactory explanation was given on why the management did not recover the dues from the former employees before they left the Trustees.

Management response

2663. The figure of KSh.2,100,230 comprised of miscellaneous debtors due from defunct Kenya National Assurance of KSh.649,958, Pension arrears from I.C.E.A. of KSh.116,501, staff loans amount of KSh.1,678 and KSh.880,000, miscellaneous debtors of KSh.452,093. These loans related to former staff of Tourism Fund who either died of left organization and their final dues were not able to cover the outstanding loans or medical advances given. Efforts to trace those who left have been futile. Management made a full provision of the amounts owed and was continuing to pursue the five 5(five) who left and were still alive. A detailed updated schedule of the same had was provided.

Committee Observations

2664. **Though management indicated that it could trace some of the debtors, the Committee noted that some debtors such as institutions had assets which could be sold.**

Committee Recommendations

2665. **The Committee recommends that:**

(i) The accounting officer for the Tourism Fund should compile a list of unrecoverable debts and recommend to the Board for a write off.

Proposed Office Block (FY 2011/2012 to FY 2017/2018)

2666. As reported previously, included in the property, plant and equipment balance of KSh. 2,099,397,939 as at 30 June 2018 was an amount of KSh.1,465,768,637 being work in progress for construction of the Fund's office block that was still ongoing by the time of the audit. However, examination of the contract agreement revealed that the intended completion date for the construction work was 30 November 2012 and the original contract sum was KSh.811,717,150. No approval for project extension period was given after expiry of the initial contract duration.

2667. According to the financial appraisal No.5 dated November 2015, the projected revised contract price was KSh.1,415,281,613, with a variation of KSh.603,564,463 (about 74.36%) from the original contract price. However, no approval of the financial appraisal as per Section 139 of the Public Procurement and Disposal Act, 2015 was not provided for audit confirmation.

2668. Consequently, the propriety of the anticipated expenditure of KSh.603,564,463 without appropriate approval and the uncertainties underlying the project implementation could not be confirmed.

Management Response

2669. The provisions in the contract as to the site possession were 15th November 2010. However, the contractor took over the site officially on 1st February 2011. The initial exercise of excavation took longer than expected due to the nature of the hard rock and this had not been addressed at the time of preparing the time schedule. In May 2012, the contractor wrote officially requesting for the extension of time considering the time lost in excavation. This proposal was presented to the Board for further guidance. The finance committee of the board deliberated on this issue during the meeting held on 18th July 2012 and directed management to move with speed and finalize the matter with Ministry of Public Works. Management engaged the Officials from the public works who agreed to conduct a thorough audit of the project and report back.

2670. However, the board was de-gazetted before this exercise was concluded. The new board took over the matter and an official meeting was held on the site on 15th February 2016. The pending issues were addressed. The increase in the contract sum was as result of the specialized works whose provisional sums were not provided for in the contract sum.

According to the financial appraisal No. 5, the project was estimated to be valued at KSh 1,415,281,613 as per the following breakdown:

Item	**Amount (KSh.)**
Original Contract Sum	811,717,150
Services Installations (Electrical, Plumbing, Stand by Generator, Lifts & Escalators)	103,478,839
Specialized Works (Aluminum, Alucobond & Glazing Works)	98,241,647
Contractual claims	100,326,424
Builders Works Variation	301,517,552
Total	**1,415,281,612**

2671. These specialized works were tendered for in September 2013 and July 2015; three to five years after the award. Advertisement for these specialized works were provided.

2672. The building was complete and was officially handed over to the Fund on 17th October 2016. The Certificate of Practical Completion and Certificate of Occupation were provided**.** It should also be noted that the appointment of the Board of Trustees had also been regularized.

<u>Committee Observations</u>

2673. **The Committee made the following observations:**

(i) The query questioned non approval of the extension of time and financial appraisal report leading to 74.6% variations; which the committee noted were never done or regularized later when the new Board was gazetted.

(ii) Though public works was involved in the initial design, it was irregular not to be engaged in the variation.

(iii) Though there was a claim of KSh 200 million from the contractor, the amount was contested hence the reason payment had not been made.

(iv) The totality of these points to illegalities of the procurement law by the then management of the Fund.

Committee Recommendation

2674. **The Committee recommends that the EACC should investigate the implementation of the project with a view to preferring charges against persons found culpable in failure to adhere to the law when doing variations and extensions of time.**

Irregular Procurement – Uncertified Works (FY 2014/15 TO 2017/2018)

2675. As previously reported, the office partitioning works at Central Kenya regional office was awarded to M/s Plenser Limited at a cost of KSh.4,958,766 according to quotation number 0837 dated 24 October 2011. The work involved partitioning of the new office space and the existing (old) office space at the cost of KSh.3,560,953 and KSh.713,845 before VAT respectively. Although inspection and acceptance certificate No.296 indicated that partitioning works in respect of the new office space were well done, the committee did not give any comments on the certificate relating to works on existing (old) office space. As a result, the Fund may have paid KSh.713,845 for works not done.

Management Response

2676. After following up on the Works Certificate no. 296, it was verbally confirmed to have been for works for both the old and new office, hence the wordings should have been captured to reflect both new and old office works.

Committee Observation

2677. **Certificate N. 296 covered payments for partitioning of both old and new offices.**

Committee Recommendation

2678. **The Committee recommends that the accounting for the Tourism Fund should put mechanisms in place to ensure that payment certificates are correctly worded to avoid ambiguity.**

Cash and Cash Equivalents - Use of Defunct Name FY 2015/2016

2679. The Fund maintains an account for central regional office with a balance of KSh.68,945 as at 30 June 2016 at National Bank of Kenya which reflected the name of Catering and Tourism Development Levy Trustees. With the operationalization of the Tourism Act 2011, the organization's name had since changed to Tourism Fund. It was not clear why it took too long to change the name of the account or have it closed and new one opened.

Management Response

2680. Following the changeover, the public was informed of the change. The Fund also wrote to National Bank to have the accounts changed and this had been resolved. *Bank statements were provided.*

Committee Observations and recommendation

2681. **The account name was subsequently changed and therefore the matter resolved.**

Encashment of Cheques (FY 2015/2016 to FY 2017/2018)

2682. It was noted that cashiers do encashments of cheques for individual payments as well as board allowances which was contrary to the Tourism Fund Finance manual and contravened the Treasury circular No. 9/2007 and No.18/2009 which set out 1 October 2009 as the commencement date of Electronic Funds Transfer (EFT) method in all Government departments. During the financial year 2015/2016, cash withdrawals of KSh.152,331,828 were done**.** Consequently, the propriety of the withdrawn cash could not be confirmed besides the Fund violating its own financial manual and contravening Treasury circulars.

Management Response

2683. The encashment of cheques took place when staff or the board members are travelling out of the country where there was urgency of the travel and the process of exchanging currency to the denomination of the destination country. However, this gap was noted and further payments in cash were halted.

Committee Observations

2684. **The Committee made the following observations:**

(i) **Management owned to violation of the treasury directive on use of EFT.**

(ii) **The supporting documents such as evidence of travel Board members, vouchers that support breakdown of expenditure of the payments and the circular mentioned in the query were provided and verified.**

Committee Recommendation

2685. **The Committee recommends that the accounting officer for the Tourism Fund should always ensure adherence of Treasury Guidelines and the Public Finance Management Act 2012 on financial management.**

Bank Reconciliations FY 2015/2016

2686. A Co-operative Bank account balance of KSh.440,000 did not reconcile with the balance disclosed in the bank reconciliation statement as at 30 June 2016 of KSh.37,435 which resulted in a variance of KSh.402,565. Consequently, it was not possible to confirm the accuracy and completeness of cash and cash equivalents balance of KSh.150,560,880.

Management Response

2687. The entry of KSh.440,000 arose as a result of a refund that Tourism Fund was making to the Donor Account. All transactions made in or out of the fund account were processed through the ERP system. The reconciliation has seen been correctly done.

Committee Observation

2688. **A reconciliation was later done and verified thereby resolving the matter.**

Committee Recommendation

2689. **The Committee recommends that the accounting officer for the Tourism Fund should institute mechanisms for ensuring prompt reconciliation of the Fund's books of account.**

Board Expenses FY 2015/16

2690. During the year under review, the board members attended various events both locally and abroad for which they were issued impressts. However, by the conclusion of the audit exercise, imprests totaling to KSh.5,463,996 had not been accounted for as tabulated below:

PV No.	Payee	Amount (KSh.)	Description	Response
986	Eunice Cherotich	2,072,386	Official travel to Instabul Turkey	Note 1.
1170	Norah Nkirote	512,685	Trustees Allowances	Note 2.
1443	Eunice Cherotich	1,304,929	Trustees Allowances	Note 3.
1511	Eunice Cherotich	1,573,996	Travel to Peoples Republic of China	Note 4.
	Total	**5,463,996**		

2691. Further, the Board expenses of KSh.18,745,064 exceeded the budget of KSh.17,572,000 by KSh.1,173,064 whereas the trustees travelling and accommodation expenditure of KSh.12,479,064 exceeded the budget of KSh.8,042,000 by KSh.4,437,064 without approval. This is despite the fact that the Board was only appointed on October 2015.

2692. As a result, the priority and probity of the payments could not be ascertained and the over expenditure was in contravention of Public Finance Management Act 2012.

Management response

2693. Note 1: The Board of Trustees together with the Head of Internal Audit attended training mounted by Institute of Internal Auditors in Istanbul.

2694. Note 2: Part of the funds amounting to KSh.450,800 was paid to the trustees who travelled to Kilifi to accompany the Parliamentary Committee on Finance, Planning and Trade during their visit to the Ronald Ngala Utalii College site.

2695. Note 3: Part of the funds was paid to the Board and Management who attended a Board retreat at Kilaguni from 16th – 19th June 2016. Part of the funds amounting to KSh.193,200 also was paid to 2 trustees who went to Mombasa to attend Kenya Association of Hotel Keepers Symposium.

2696. Note 4: The funds were paid to the Management and Board of Trustees who travelled to the People's Republic of China.

Committee Observations

2697. **Considering that management failed to provide surrender documents of imprests and how the board/mother ministry approved the exceeded budgets, the Committee was unable to clear the matter.**

Committee Recommendation

2698. **The Committee recommends that the accounting officer of the Tourism Fund should always adhere to the Public Finance management Act 2012 in budget execution.**

Levy Management Module FY 2015/2016

2699. Walkthrough of the system and levy operations revealed that the levy regulations were not properly mapped on the system and required human intervention to undertake transactions especially those conducted after the due date of 10th of every month. The system could not also distinguish a late payment with an arrears payment, as it applied penalties on both. This meant that levy department had to call back and confirm the payment and manually make the corrections. Consequently, there was a possibility of data manipulation and making unauthorized entries in the system.

2700. The levy reported may not be a true reflection of the levy collected and hence likelihood of misstatement of collection of levies. Further, the Fund had budgeted to collect

KSh.2,388,200,968 but only realized an amount of KSh.2,029,627,284 reflecting an under collection of KSh.358,573,684.

Management response

2701. The Tourism Fund Regulations 2015 being one of the supporting legislations to the Tourism Act 2011 provided the following treatment on late remittance of tourism levy:

- Imposition a KSh. 5000.00 instant penalty; and
- A 3% interest penalty to the same.

2702. The ERP currently applies the above automatically on posting receipts based on the receipt date and the period being paid for. However, the levy period was not always indicated on MPESA and Bank statements especially on RTGS related transactions. The Collection Banks (KCB and COOP) also withdrew the customized deposit slips which provided for this information. This implied that certain adjustments were necessary and the receipting module provides for the same. A self-service customer portal in integrated with the ERP has since been implemented to negating the automatic imposition of penalties.

2703. Tourism Levy Collection realized was highly dependent on among other factors the performance of tourism sector in terms of international tourist arrivals. The collection realized vary from time to time depending on these exogeneous factors beyond the Fund's span of control.

Committee Observations

2704. **The Committee made the following observations:**

(i) The query related to the propriety of the system which the management misunderstood and therefore failed to adequately answer.

(ii) It however emerged from the oral interactions that the porous system had since been ameliorated.

Committee Recommendation

2705. **The matter was resolved**

Over and Under Declaration of Levy FY 2015/16

2706. An analysis of the data from ledgers and bank details revealed the following differences which were not explained by the management.

Source	Ledger Amount	Bank Details	Difference
	KSh.	**KSh.**	**KSh.**
Mpesa	76,884,506	77,096,698	(212,192)
Co-op	410,409,542	1,013,707,739	(603,298,197)
KCB	1,066,697,568	889,583,159	177,114,409
Total	**1,553,991,616**	**1,980,387,596**	**(426,395,980)**

2707. Further, 34 MPESA transactions amounting to KSh.199,198 in the month of June 2016 were not posted to the MPesa collection account. Thus, there was a likelihood that revenue has been materially misstated.

Management response

2708. The previous Legacy ERP cash book worked as follows;

- Imported bank statements from files sent by the Banks/MPESA
- Searched for credits that appear to be levy payments
- Raised receipts from the above
- Posted the receipts to A/R sub ledger and the General ledger
- Ledger fees and transfers were posted manually via Journal Vouchers

2709. It should be noted that the statements processed daily were interim statements that could differ from final statements from the Banks. The system provided for importing this and merging any previously missing entries to the relevant periods.

Committee Observations and recommendation

2710. **The responses given were satisfactory and the matter resolved**

Deleted and Missing Receipts and Transactions (FY 2015/16)

2711. Analysis of the receipts and transaction data revealed that 5,274 receipts were missing in the receipt range BS-196453 to BS-258606 issued within the year. Further, 30,057 transaction entries were missing during the year under review. In addition, 17,209 receipts had been deleted from the year 2013 amounting to KSh.390,583,398. Included in the 17,209 receipts were 4,360 receipts that related to the financial year 2015/2016 amounting to KSh.74,330,435. Further analysis revealed that 99% of these receipts were deleted by the vendor/consultant. Further and coincidentally, the Fund transferred revenue from the main collection account to the operations account and made unexplained cash withdrawals of over KSh.152,331,828 during the financial year.

2712. As a result, there was likelihood that revenue collected was deleted from the system and later withdrawn in cash for unauthorized transactions and also possible manipulation of receipt numbers. Consequently, it is not possible to ascertain if the levy income of KSh.2,009,627,284 was fairly stated.

Management response

2713. The receipting module in the ERP provided for the following;

- A correlation of the uploaded bank transactions and corresponding levy receipts
- Cancellation of receipts to accommodate bank duplication and errors
- Reprocessing statements where the levy establishment was incorrectly identified by the import program.

2714. The process of loading/ reloading of bank statements would appear in the database audit trails as a series of bulk deletions followed by bulk inserts of the extracted receipt data. It should be noted that the consultant used to provide technical assistance to the ERP on an ongoing basis. This was especially the case in the initial stages of development of the automatic statement processing hence the number of audit trail entries with the consultant's user ID between 2013 – 2015.

2715. The KSh. 152,331,828.25 reported as unexplained cash were withdrawals relating to the following to (a) Settling of PAYE obligations (b) Withholding Tax Remittances and Settling of training fees among others. A detailed schedule of the same was provided to the Committee.

Committee Observations

2716. **The Committee made the following observations:**

(i) Evidence was tendered to the Committee that dispensed the query.

(ii) It was however noted that KSh 152, 331,828.25 that was queried and explained to be for PAYE and withholding Tax is the same amount that management used to explain payments of Board expenses for travelling abroad, PAYE and KRA with evidence on the same in the previous query.

Committee Recommendation

2717. **The Committee recommends that the accounting officer for the Tourism Fund should put in place a record management system that ensures accountability of all expenditures.**

Receivables from Non-Exchange Transactions (FY 2015/2016)

2718. The receivables balance included an amount of KSh.2,044,617 described as other debtors which had minimal movement during the year under audit. Although management had explained that the debtors related to former employees and that the same had been fully provided for, no satisfactory explanation was given on why the management did not recover the dues from the former employees before they left the Fund.

Management Response

2719. The figure of KSh.2,509,617 comprised of miscellaneous debtors amounting to KSh.2,004,617 being: miscellaneous debtors due from defunct Kenya National Assurance of KSh.649,958; Pension arrears from I.C.E.A. of KSh.116,501; staff loans amount of KSh.1,678 and KSh.880,000; and miscellaneous debtors of KSh.356,480. These loans related to former staff of Tourism Fund who either died or left organization and their final dues were not able to cover the outstanding loans or medical advances given. Efforts to trace those who left had been futile. Management made a full provision of the amounts owed and was still pursuing the five 5(five) who left and alive A detailed updated schedule of the same had been enclosed.

Committee Observations

2720. **The Committee made the following observations:**

(i) **Though management had made a provision for the debt and indicated that it was almost unrecoverable, it exposed the Fund's weak policy on loans to an existent that officers were advanced more loans than what could be recovered from them through terminal dues.**

(ii) **Further, it was logical to write off debts for those employees who had died.**

Committee Recommendation

2721. **The Committee recommends that the accounting officer for the Tourism Fund should put in place a system that ensures loans advanced to its staff can be recovered in full whenever the beneficiaries leave the service for one reason or the other.**

Receivables from Non-Exchange Transactions (FY 2015/2016)

2722. The receivables were noted to increase at a rate of 67% to KSh.75,032,494 compared to previous year figure of KSh.43,863,170. At the same time the management had only been able to collect an insignificant portion from debtors during the year under review.

Management Response

2723. The increase in debtors was because of imposition of penalties and arrears to non-compliant tourism levy payers by the Fund as provided for in Legal notice 199 of 2015 Part II being the Tourism Levy Provisions.

Committee Observations

2724. **Non-compliance with Tourism Levy saw management of the Fund impose penalties to non-compliant. These penalties were not paid immediately resulting to increase in debtors.**

Committee Recommendation

2725. **The matter was adequately addressed and therefore resolved.**

Unsupported Expenditure (FY 2015/2016)

2726. It was noted that there were payments made with no proper documentation, whereby there was no issue of official ETR receipts nor invoices in contravention of Section 49 of VAT Act and ETR Regulations as tabulated below:

PV No.	Payee	Amount	Response
457	Public Relations Society of Kenya	195,000	Note 1.
1164	Norah Nkirote	586,118	Note 2.
887	Kenya School of Government	137,460	Note 3.
875	Nyeri Motors	143,901	Note 4.
972	Kenya School of Government	29,000	Note 5.
1090	Pawoka Enterprises	103,950	Note 6.
	Total	**1,195,429**	

2727. As a result of unavailability of proper documentation, it was not possible to confirm the propriety of payment of KSh.1,195,429 which were not in compliance with Section 49 of VAT Act 2013 and ETR regulations.

Management Response

2728. **Note 1:** The payment was supported by proforma invoice since the organization did not have a credit facility with Tourism Fund.

2729. **Note 2:** The payment related to allowances paid to Trustees while attending Corporate Governance course mounted by Centre for Corporate Governance. The cost of the training was KSh.471,600 inclusive of taxes which was paid separately.

2730. **Note 3:** The payment was supported by proforma invoice since the organization did not have a credit facility with Tourism Fund.

2731. **Note 4:** The payment was supported by proforma invoice since the organization did not have a credit facility with Tourism Fund.

2732. **Note 5:** The payment was supported by proforma invoice since the organization did not have a credit facility with Tourism Fund.

2733. **Note 6 (**The supplier supplies milk on credit terms). Payment was supported by the delivery notes and the invoice raised at the end of the month. There was no vat charged on the fresh milk supplied. Proper follow-up measures had been put in place to ensure the payments are supported by invoices and not pro-forma invoices.

2734. It should be noted that sometimes most government agencies sent invoices without attaching ETRs like the Kenya School of Government and the Office of the Auditor General and the Fund thereafter based the payment on the invoice value and also withheld the necessary taxes if any and remit to Kenya Revenue Authority as per Law provided.

Committee Observations

2735. **The Committee noted that management justified these payments by producing bank statements.**

Committee Recommendation

2736. **The matter was resolved.**

Budgetary Control (FY 2015/2016)

2737. The Fund exceeded the budgeted provision for the following line items for which the relevant approval for over expenditure had not been availed for audit review.

Item	Actual	Budget	Over	Percentage

	Expenditure		expenditure	
	KSh	**KSh**	**KSh**	**%**
Trustees Travelling and Accommodation	12,479,064	8,042,000	4,437,064	55.2
Subsistence and Travel	46,439,376	39,226,842	7,212,534	18.4

2738. The excess expenditure without approval contravenes Section 44 of the Public Finance Management Act, 2012.

Management Response

2739. The requisite supporting documents were since availed for audit review.

Committee Observations

2740. **Without obtaining requisite approval documents from the Board on over expenditure, the management was in breach of the law.**

Committee Recommendation

2741. **The Committee recommends that the accounting officer for the Tourism Fund should always adhere to the Public Finance management Act 2012 on budget execution.**

Human Resource and Payroll: Difference between Net Pay and Bank (FY 2015/2016)

2742. Comparison of the net pay voucher and re computation of the amounts paid to different banks revealed a difference of KSh.2,131,667.05 which was not explained by the management and thus the fund may lose money to fictitious and fraudulent activities. The excess expenditure without approval contravenes Section 44 of the Public Finance Management Act, 2012.

Management Response

2743. The comparison between the net pay voucher (Payroll summary) and amounts paid to different banks (Banking reports) shows nil difference as indicated in Net pay salary vouchers & banking reports.

Committee Observation and Recommendation

2744. **This was a reconciliation issue that was later addressed and therefore the matter resolved.**

Lack of Approved ICT Policy (FY 2015/2016)

2745. A review of the Information Communication Technology (ICT) policy availed to audit indicated that it had not been approved by the board of Trustees. In addition, the draft document lacked guidance on key issues like password management, user management, and detailed information on business continuity, disaster recovery and back up procedures. As a result, this may be an indication of lack of commitment from the senior management to support Information Technology (IT) strategies and functions.

2746. Further, ICT operations in the institution may not be effectively guided and the institution may not be prepared to handle disasters and ensure business continuity in the event of unforeseen eventualities.

Management Response

2747. Since 2012, the organization had no Board in place to approve the draft ICT policy. This applies to all other policies in use in the organization. Subsequently, Management had since reviewed all the policies and presented to the Board in which, they were approved inclusive of the ICT policy. Password management, User Management, Business Continuity and Disaster preparedness and Backup Procedure were now being captured in the ICT Policy.

Committee Observation and Recommendation

2748. **The matter was adequately addressed and therefore resolved.**

Lack of Segregation of Duties (FY 2015/2016)

2749. Further analysis of the user set-up indicated that there were sixty-two (62) users who had conflicting roles in the system. Consequently, administrative errors may not be detected in time and there is a likelihood of inappropriate or unauthorized transactions to occur.

Management Response

2750. There were no conflicting roles. All users had defined roles and could not access un-authorized modules. A submodule on the authorization table was created to handle:

- Authorization by program
- Authorization by user login.

Committee Observation

2751. Segregation was done and therefore the matter resolved.

Over Reliance on Vendor (Database Consultant) (FY 2015/2016)

2752. Enquiry on database related issued revealed that the organization system administrator did not have access to all database and the organization placed heavy reliance on the vendor/ consultant for any access to and resolution of all database issues. As a result, in case of unavailability of the consultant, there was a likelihood of failure of operations and the integrity may be compromised without being detected by the management.

Management Response

2753. Access to the Informix Database was availed to the DB Admin to some level for security controls. Organization contracted ICTA to carryout Systems Audit and the gaps which were identified in the report especially on Training needs were addressed accordingly.

Committee Observations and Recommendations

2754. **The staff of the Fund had since been granted access to the database and capacities build on operations. This therefore resolved the matter.**

Investments (FY 2017/2018)

2755. Note 16 of the financial statements reflected a figure of KSh.3,100,000 for shares invested in Consolidated Bank, whose recoverability remained doubtful. Although management had explained that no dividends had been received as at 30 June 2018 and the recoverability of the investment is doubtful, no provision was made in the financial statements of the Fund.

2756. Consequently, it was not possible to ascertain the validity of the investment.

Management Response

2757. The investments related to period before 2000. The institutions involved were: Thabiti Finance KSh.55.2M, Trade Bank KSh.5.9M and Cosmopolitan KSh.1.5M. There was no dividend expected from these investments hence full provision in the financial statements. The excerpts of the Financial Statements 2017/2018 and Investments Correspondences were provided for perusal.

Committee Observations

2758. **The Committee made the following observations:**

(i) **From the management response, it was not clear why the Fund continued to have investments in banks that could not generate interest.**

(ii) **Further, it was not clear whether management obtained both the Board and the National Treasury's approval to make such investments.**

(iii) **And finally, it was not clear how the banks in which the impugned investments were procured.**

(iv) **In the absence of all these information and management's concession that recovery of the said investments was in doubt and therefore made a provision, the Committee could not establish the prudence of such investments.**

Committee Recommendation

2759. **The Committee recommends that the accounting officer for the Fund should aggressively pursue recovery of invested funds in the banks.**

RONALD NGALA UTALII COLLEGE (FY 2014 TO 2018/2019)

Failure to fence 20 acres of the land

2760. The College had been initially established as Kenya Utalii College, Coast branch vide Cabinet Memo Ref: CAB.58/4A of 18 September 2007 at REA Vipingo site on 60 acres of land donated by REA Vipingo Plantations Ltd. However, out of the total acreage only 40 acres has been fenced leaving the other 20 acres exposed to the risk of encroachment.

Management Response

2761. The design of the college was to take a total of 40 acres which had been fenced off. The balance of 20 acres was to be used to put up a five-star hotel as envisaged in the concept paper under Public Private Partnership. The construction of the hotel had not commenced on the 20 acre piece of land touching the ocean. In the preceding years, there were no Funds allocated or approved for fencing off the 20-acre piece of land. The Board of Trustees recently resolved fencing of the said land by the end of 2022.

Committee Observations

2762. **The Committee made the following observations:**

(i) It had taken inordinately long to fence the remaining 20 acres of land thereby putting it a risk of grabbing.

(ii) Though the board approved such fencing in its 135th Meeting held on 3rd February 2022 and also placing a caveat on the entire land, it is the Committee's hope that management would expedite implementation of the said resolution.

Committee Recommendation

2763. **The Committee recommends that the accounting officer for the Tourism Fund should ensure that all the land meant for Ronald Ngala Utalii College is fenced and a caveat placed to secure its title within the first half of the 2022/2023 fiscal year.**

Uncertainties surrounding the name of the college

2764. The development of the College was transferred to Catering and Tourism Development Levy Trustees (now Tourism Fund) from Kenya Utalii College and a process began to change and legalize the college name to Ronald Ngala Utalii College without Cabinet approval. By a Gazette Notice No.3478 of 25 March 2010, the then Tourism Minister established Ronald Ngala Utalii Academy and which was now different from the envisaged name of the "College" and further appointed board members of the Academy through Gazette Notices of 6 August 2010 and 5 November 2010.

2765. However, these appointments were nullified in 2012 alongside those of other Tourism Agencies by the subsequent Minister for Tourism. In view of the change of name from Ronald Ngala Utalii College to Ronald Ngala Utalii Academy there were uncertainties as to the name the new title deed will be registered in.

Management Response

2766. The transfer of Title L.R No. 5052/4 Vipingo from Kenya Utalii College had been going for the last three years. The lawyers Kaplan and Stratton representing the Vipingo Properties Ltd did write to Tourism Fund then CTDLT on 13th June 2014 informing the Fund of the Clients surrender of the property to the Government and thereby asking Tourism Fund to undertake the necessary steps to acquire a valid title. The Fund had since embarked on this process and due to delays in regularization, the organisation had embarked on filing a restriction against the mother title at the Ministry of Lands & planning that shoul result to the release of the deed.

Committee Observations

2767. **The Committee made the following observations:**

(i) Management failed to appreciate the query raised in the audit i.e the matter in issue related to change of name of the college without Cabinet approval.

(ii) Considering that the name of the college had not been settled and that the land in which it was being developed had not been formally registered, it was not clear which name the College's assets will assume.

Committee Recommendation

2768. **The Committee recommends that the Cabinet Secretary in charge of Tourism should expeditiously initiate consultations to come up with a suitable name for the college, have it lawfully approved to allow registration of the College's assets under the said name.**

Inadequacy of the feasibility study and procurement plans on the project

2769. No feasibility study was done for the project to establish its viability. The Fund's procurement plan did not capture the estimated cost of the project nor in the multi-year procurement plan as envisaged in Section 26(3) of the Public Procurement and Disposal Act, 2005 and Section 12 of the Public Finance Management Act, 2012.

Management Response

2770. The Ronald Ngala Utalii College was jointly funded by Tourism Fund and The National Treasury. In the period succeeding the Cabinet Memorandum of 2007, the Ministry of Tourism in conjunction with the Ministry of Public Works developed the initial concept paper and design works for the College. The concept paper developed detailed all the aspects relating to the study and implementation of the college. The Fund only implemented the results of the study which were documented in the Concept Paper. Further, the Cabinet Memorandum signed in June 2014 required that Tourism Fund set aside KSh. 500 million annually in favor of the project and the National Treasury set aside KSh. 1.23 billion annually. These proposals were presented and documented in the Medium-Term Expenditure Framework (MTEF) and the General Economic and Commercial Affairs Sector (GECA) sector paper

Committee Observations

2771. **The Committee made the following observations:**

(i) A concept paper was submitted by the management on intention to have Ronald Ngala Utalii College with the proposed phase 1 on implementation of the project expected to cost USD 26 million and that the government had committed USD 14 million towards phase I. This indicates that there was commitment from the National Treasury in financing the project.

Committee recommendation

2772. **The Committee recommends that the Cabinet Secretary in charge of Tourism and the Board of the Tourism Fund should always ensure that proper feasibility study is done on a project before its implementation.**

Irregularity in recruitment of consultants

2773. No evidence has been availed to prove that the procurement process for the consultancy started with expression of interest as envisaged by Section 78 of the Public Procurement and Disposal Act, 2005. Further there was no proof that the tender committee approved use of request for proposal method without going through the expression of interest.

Management Response

2774. Trustees put in place measures to procure professionals to implement the Project. In accordance with the Public Procurement and Disposals Act, 2005 and the Regulations made thereunder, the Fund identified a consortium of Consultants to oversee the design and overall supervision of the Project. Vide an advertisement carried out in the daily press, Trustees invited qualified firms to submit proposals for consideration. The respective consortia would be composed of architects, civil and structural engineers, services engineers and quantity surveyors.

Committee Observations

2775. **The Committee made the following observations:**

(i) **Procurement of consultants should have been done through expression of interest and not request for proposals.**

(ii) **This management decision may have limited the competition of possible suppliers of the service hence.**

Committee recommendation

2776. **The Committee recommends that the EACC expedites investigation on the procurement process of the consultants and make appropriate recommendations pursuant to its mandate.**

Conflict on Tender Evaluation

2777. The tender evaluation committee included two members from the procured consortium of consultants (Baseline-Architect and Ujenzi-Quantity Surveyor) who were responsible for designing and drawing of bills of quantities which was in contravention of Section 26(3)(c) of the Public Procurement and Disposal Act, 2005 on segregation of duties and Section 28 of the same Act on appointment of procuring agent.

Management Response

2778. The Fund did not have in-house engineers and therefore, the exercise was outsourced to the consultants. During tender evaluation, the consultants were the best suited because of their in-depth knowledge of the technical issues in in bills of quantities. The Act allowed for invitation of external expertise on technical matters in the evaluation of tenders. The team was also composed of Public works officials appointed to the evaluation process. There was no conflict of interest in the appointment of members of the consortium of consultants to evaluate the tenders.

Committee Observations

2779. **The Committee made the following observations:**

(i) This matter was under investigations by the EACC.

(ii) Investigations by the EACC had taken inordinately long.

Committee Recommendation

2780. **The Committee recommends that the EACC expedites investigation of the matter and makes appropriate recommendations pursuant to its mandate.**

Negotiation of Consultancy fees

2781. The tender for consultancy services was awarded to Baseline Architects Limited and the award was based on the technical proposal submitted by the winning firm, who were to be invited for negotiation on the basis of scale of fees for professional services. It was not clear whether the procuring entity indeed negotiated as provided for by request for proposal document with the consultants taking into consideration that the negotiation of award was done on 4 April 2012 which was the same day the tender was awarded. The award letter did not also specify the scale of fees applicable for professional services and the tender document was silent on how the consultants were to be paid. Baseline Architects Ltd consortium included Geomeasures Surveyors Ltd whose bid was not evaluated and was one of the contracted consultants.

2782. Consequently, it was not possible to ascertain the fairness of the evaluation process.

Management Response

2783. The consultants were procured using Standard Tender documents provided for by the Public Procurement Oversight Authority. The standard document provided at Clause 2.1.3 as follows: *In the assignment where the procuring entity intends to apply standard conditions of engagement and scales of fees for professional services, which scale of fees will have been approved by a relevant authority, a technical proposal only may be invited and submitted by the consultants. In such a case the highest ranked individual consultant in the technical proposals shall be invited to negotiate a contract on the basis of the set scale of fees.*

2784. *The technical proposals will be the basis for contract negotiations and ultimately for a signed contract with the selected individual consultant*. The contract entered into with the consultants provided for minimum scale of fees as provided for in law and there was negotiation on the man hour charges. The entire consortium was evaluated in accordance with their relevant laws e.g. Architects and Quantity Surveyors Cap 525, engineers Cap 530.

Committee Observations

2785. **The Committee made the following observations:**

(i) **Going by the response from management that it used Standard Tender documents provided for by the Public Procurement Oversight Authority and that the scales of fees were provided in law and considering that there was a fees negotiations team, the matter was resolved.**

Committee Recommendation

2786. **The Committee recommends that the accounting officer of the Tourism Fund should always adhere to the procurement laws whenever procuring and executing projects.**

Irregular award to the third lowest bidder

2787. The award of the construction project contract was made to the third lowest prequalified bidder Ms. Mulji Devraj and Brothers at a contract cost of KSh.8,961,370,998. It was not clear why the contract was not awarded to the lowest bidder (M/S China Jiangxi

International K Ltd) since there was a material difference of KSh.498,731,291 yet all the bidders had undergone evaluation and prequalification.

Management Response

2788. The tender for the main works was awarded to M/s Mulji Devraj & Brothers Ltd in accordance with the resolution of Tourism Fund tender Committee meeting held on 11th April 2013. The tender was awarded on the basis of evaluated bids that had been submitted by six pre-qualified firms. The tender required bidders to submit both financial and technical bids. An award would therefore be made to the most responsive bidder based on the combined financial and technical scores. After the due process had been followed, the firm of M/s Mulji Devraj & Brotheras Ltd were awarded the tender for the main works for being the most responsive bidder with the highest combine technical and financial score. It was important to note that the contractor was procured using standard tender documents provided for by the Public Procurement and Oversight Authority.

Committee Observation

2789. **The explanation offered by management was satisfactory.**

Committee recommendation

2790. **The matter was resolved**

Absence of Cabinet Approval on downscaling of works

2791. The contract was revised on 25 August 2014 vide second addendum which scaled down the contract sum from KSh.8,961,370,998 to KSh.4,923,005,000. However, no cabinet approval was availed to confirm the revised scope of the project.

Management Response

2792. Due to economic austerity measures, it was agreed that even though the works were tendered and awarded at KSh. 8.96 billion, the project must be rationalized with a view to downscaling the total cost through possible ways while ensuring that the project does would still be functional and achieve the mandate. The review was done in consultations with parent Ministry and the National Treasury. Specifically, the Fund was required to mobilize the consultants to rationalize the project by removing all the auxiliary proposed developments and retaining only the functional components.

2793. The total construction cost would be scaled down to KSh 4.93 billion. The costs of construction was to be provided by the National Treasury while the Tourism Fund would pay for the professional services. This culminated in the signing of the cabinet Memo dated 9th July 2014. The Fund further concluded this process by having the concerned parties sign an addendum to the earlier contracts executed. Downscaling of the project considered the fact that there was already a valid contract which had not been executed for close to two years. The extension was therefore given to cater for the time lapsed and the actual time it would take to complete the project.

Committee Observation

2794. **The Committee made the following observations:**

(i) This matter arose due to management's failure to provide a Cabinet memo dated 9th July, 2014 authorizing downscaling of the building for audit review.

Committee Recommendation

2795. **The Committee recommends that the accounting officer for the Tourism Fund should always provide documents for audit within statutory timelines failure to which the Sanctions provided in the Public Audit Act 2015 be applied.**

Amounts paid to the project

2796. During the year under review (FY 2018/2019), the National Treasury transferred KSh.94,663,793 whereas the Fund incurred KSh.528,795,651 on the project while in the financial year ended 30 June 2017, the National Treasury transferred KSh.562,000,000 while the Fund incurred KSh.629,984,854 on the project.

Management Response

2797. The amounts reflected were consistent with the memorandum of understanding between Tourism Fund and the State Department of Tourism on co-funding the construction of Ronald Ngala Utalii College in Tourism Fund pays for professional services consumed by the College.

Committee Recommendation

2798. **The Committee recommends that the accounting officer for the Tourism Fund should always make full disclosure on all the expenditures the Fund makes.**

Slow progress vis a vis more payments made

2799. As reported previously, according to monthly progress report No.43 of February 2018, the certified gross value of work done together with advance payment, materials on site and contractual claims were approximately KSh.2.646 billion representing approximately 53.75% completion. Total payments made in respect of the project amounted to KSh.4,981,554,505 as at 30 June 2017. Most tasks were behind schedule and the updated programme of works indicated a finish date of 25 March 2019.

Management Response

2800. The consultants had claimed interest on overdue payments. This claim was made in accordance with Section 48 of the Public Procurement and Disposal Act, 2005. Likewise, the main contractor also charged interest on idle palnt and machinery, labour, acceleration costs and cost fluctuations as provided for by the governing laws in the industry.

Committee Observation

2801. **The Committee made the following observations:**

(i) Delayed exchequer releases were responsible for the delayed payments and escalation in interest.

(ii) Interest on delayed payments arising from delayed exchequer releases was costing taxpayers a lot of money that could be utilized in needy sectors of the economy.

Committee recommendation

2802. **The Cabinet Secretary for the National Treasury should ensure timely release of exchequer to avoid penalties on delayed payment.**

Payments to the consultants

2803. As previously reported, the amount of KSh.1,536,015,714 charged by consultants of the project was based on the original contract sum of KSh.8,961,370,998 (representing about

17.1%) yet the contract had been scaled down to KSh.4,923,005,699 as per revised bill of quantities and thus the consultants ought to have charged KSh.841,833,975 and therefore they were overpaid by KSh.694,181,739.

Management Response

2804. The payment of fees for professional services for the project was guided by the Architects and Quantity Surveyors Act. The Act provides at Section 5 for the gazettement of By-Laws to Guide payment of professional fees for consultants involved in the project. The fees for architectural services were calculated as specified percentages in the fourth schedule to the Act and in this case total construction cost upon which calculations were to be based is KSh 8,961,370,998.

Committee Observations and Recommendation

2805. **The matter was satisfactorily responded to by the management and the consultants when they appeared before the Committee. The matter was resolved.**

Irregular payments to the Advocate

2806. In financial year 2016/2017, the Fund paid KSh.7,959,600 to Kilifi County Government being land rates for Ronald Ngala Utalii College. It was however noted that M/s Kithi and Company Advocates had been engaged to negotiate on the outstanding land rates with Kilifi County Government in August 2013. The lawyer was paid KSh.13,000,000 excluding fees on 9th September 2014 and the rates clearance certificate was to be obtained within 30 days from the date of payment. On 10 October 2016, the lawyer wrote to the Fund to request for an additional KSh.10,000,000 towards finalizing the same which the Fund did not honour.

2807. The Fund's efforts to get a refund of the KSh.13,000,000 have not yielded any results. The value for money from legal fees paid could not be ascertained and the Fund had not recognized the lawyer as a debtor in its books for the KSh.13,000,000.

Management Response

The Fund had an outstanding rates balance of KSh.31,567,931 inclusive of annual rates of KSh.271,350 but took advantage of Kilifi County waiver period by paying KSh.7,959,600 thereby saving KSh.23,336,981. With reference to payments for services not provided by M/s Kithi and Co Advocates, the case was in court and there was an indication of willingness for out-of-court settlement. The debt would be accrued once a registered written commitment had been obtained.

<u>Committee Observations</u>

2808. **The Committee made the following observations:**

(i) Though the matter was in court on recovery of the overpaid monies to the firm of M/s Kithi and Company Advocates, it was not clear why management overpaid the said firm in the first place.

(ii) Further, it was not clear to the Committee on the contractual terms with the said law firm especially on whether the payments were pegged on delivery of specific milestones.

(iii) It could appear that the terms of engagement between the Tourism Fund and the firm of M/s Kithi and Company Advocates was skewed against the Fund.

<u>Committee recommendations</u>

2809. **The Committee recommends that:**

(i) The accounting officer for the Tourism Fund should pursue expeditious recovery of the overpaid funds.

(ii) The accounting officer for the Tourism Fund should restructure the legal Department of the Tourism Fund to be able to draft legally sound and enforceable contracts.

<u>Conundrum relating to recognition of the College's Assets</u>

2810. According to the Public Financial Management Act, 2012 Section 72 (1)(a), the accounting officer for a national government entity shall be responsible for the management of the entity's assets and liabilities. However, a review of the financial statements showed the Fund had been expensing grants to Ronald Ngala Utalii College project. However, an enquiry showed that Ronald Ngala Utalii College was non-existent hence the work-in progress had not been captured in any entity's books. Given that the Fund implemented and provided funds to the project and any liability thereof belonged to it, the corresponding asset also needed to be recognized.

Management Response

2811. The Fund engaged the services of EKV consultants in the financial year 2015/2016 to facilitate Tax Audit by Kenya Revenue Authority. Part of the KRA tax recommendations from the audit report was for the Fund to convert the cost of constructing Ronald Ngala Utalii College into a grant, with reference to KRA letter ref:P00060673U dated 9th December 2015.

Committee Observations

2812. **The Committee made the following observations:**

(i) **The key issue in this query was both an accounting and legal conundrum on how to recognize the advances for the purposes of College construction.**

(ii) **Though management was advised that it could recognize such advances as grants, the said grants should have been capitalized by an entity of government.**

(iii) **Without a registered and recognized entity, capitalization of the project presented a practical challenge.**

Committee Recommendation

2813. **The Committee recommends that in the 2022/2023 financial year, the Cabinet Secretary in Charge of Tourism should cause registration of the college as a separate legal entity capable of owning property.**

Failure to Disclose

2814. According IPSAS No.11 Section 51, an entity should disclose the aggregate amount of costs incurred and recognized surpluses (less recognized deficits) to date; the amount of advances received; and the amount of retentions. The contracts signed by the main contractor, consultancies and the sub-contractor provided for retention monies and advance payments to various contractors. It was however noted that the Fund did not report retention of KSh.170,222,858 and advance payment not yet recovered of KSh.242,524,026 in the financial statements.

Management Response

2815. The entity prepared and submitted draft annual reports and financial statements FY 2018/2019 to Office of Auditor General on 23 Oct 2019, a copy of the acknowledgement of receipt. In it, note 2 in the statement of financial position indicated a 10% Retention of KSh 170,777,985, derived on cumulative basis, from the certificates and fee notes received. KSh 242,524,026 paid as advance payment was capitalized as part of project cost, under note 1. Further disclosures were made under notes to the financial statements, 1 & 2, respectively.

Committee Observations recommendation

2816. **The matter was adequately addressed and therefore resolved.**

Accuracy of claims

2817. The Quantity Consultants letter Ref No.UC/P/105/V/24 dated 22 November 2017 for 24 interim valuation indicated work done as at that date as KSh.1,747,443,000. In addition to the valuation amount was a figure of KSh.298,250,000 as interest on delayed payments, KSh.105,000,000 on price fluctuations and KSh.286,750,000 as other contractual claims (idle plant and labour etc). These amounts were irrelevant as they had no commensurate value and should have been regarded as nugatory.

Management Response

2818. The consultants had claimed interest on overdue payments. This claim was made in accordance with Section 48 of the Public Procurement and Disposal Act, 2005. Likewise, the main contractor also charged interest on idle plant and machinery, labour, acceleration costs and cost fluctuations as provided for by the governing laws in the industry.

Committee Observations

2819. **The Committee made the following observations:**

(i) **Evidence from a consortium of consultants to the Committee itemized how the stated claims were arrived at.**

(ii) **It was however worrying to note that the taxpayers continued to lose money on interest charged due to delayed payments.**

Committee Recommendations

2820. **The Committee recommends that:**

(i) **The accounting officer for the Tourism Fund should always provide documents for audit as per the statutory timelines.**

(ii) **The National Treasury should ensure exchequer releases in time.**

Delayed implementation of the project

2821. The contract was revised on 25 August 2014 vide second addendum which scaled down the contract sum from KSh.8,961,370,998 to KSh.4,923,005,000. The project status as at 28 February 2019 was at 90% period lapse while percentage of work done is 70% where most tasks are behind schedule.

Management Response

2822. Due to economic austerity measures, it was agreed that even though the works were tendered and awarded at KSh 8.96 billion, the project must be rationalized with a view to downscaling the total cost through possible ways while ensuring that the project did would still be functioning and achieve the mandate. The view was done in consultations with parent ministry and the National Treasury. Specifically, the Fund was required to mobilize the consultants to rationalize the project by removing all the auxiliary proposed developments and retaining only the functional components. The total construction cost would be provided by the National Treasury while Tourism Fund would pay for the professional services.

2823. This culminated into the signing of the Cabinet Memo dated 9th July 2014. The Fund further concluded this process by having the concerned parties sign an addendum to the earlier contracts executed.

Committee Observations

2824. **The Committee made the following observations:**

(i) **Scaling down of the project cost the taxpayer dearly as the Tourism Fund had to pay for the designs that had already been made and for the redrawn new designs to respond to the changes.**

(ii) This expenditure, though legal as per the law governing remuneration of Architects, was nugatory on the part of government who failed to initiate a project that could be implemented.

Committee recommendation

2825. **The Committee recommends that:**

(i) The Committee recommends that the Cabinet Secretary in Charge of Tourism should always undertake wide consultation with all stakeholders including the National Treasury on availability of funds before initiation of projects.

(ii) The Attorney General should relook at the roles of Tourism Promotion Fund and the Tourism Fund with a view to merging them into one viable entity to collect funds and apply them prudently.

Expenditure queries

2826. Contract for consultancy services was signed on 15th May 2012 and expected completion period was tied to the three phases of the project which were listed as; Phase 1- Part Training, Tuition and Administrative facilities, Phase 2- Completion of the Training, Tuition and Administrative facilities and Phase 3- Hotel Complex. The Consultants had been paid an amount of KSh.2,643,215,084 as at 30th June 2019 as tabulated below.

Contractor	Project Cost Levied	Amount Paid	Outstanding Amount
Lead Consultant- Baseline Architects	1,126,637,070.71	1,091,391,510.16	35,245,560.55
Consultant- Westconsult Consulting Engineers	576,093,206.22	341,604,432.59	234,488,773.63
Consultant- Ujenzi Consultants	909,658,240.21	821,448,194.76	88,210,045.45
Consultant- Armitech	670,630,587.61	375,702,455.28	294,928,132.33

Consultant-Geomeasures	6,502,600.00	6,502,600.00	-
Consultant- PKF Consultants	6,565,892.00	6,565,892.00	-
Total	3,296,087,596.75	2,643,215,084.79	652,872,511.96

2827. It was not clear why the quantity surveyor and the architect had not scaled down the contract sum from KSh.KSh.8,961,370,998 to KSh.4,923,005,000 as reflected in the interim certificates. In addition, it was not clear why the management had continued to pay the consultants, the contractor and the subcontractor without proper and complete documentation.

2828. Consequently, the propriety of the Ronald Ngala Utalii College project expenditure could not be ascertained

Management Response

2829. The payment of fees for professional services for the project was guided by the Architects and Quantity Surveyors Act. The Act provided at Section 5 for the gazettement of By-laws to guide payment of professional fees for consultants involved in the project. The fees for architectural services are calculated as specified percentages in the Fourth Schedule to the Act and in this case total construction cost upon which calculations were to be based is KSh.8, 961,370,998.

2830. The supervision rates were however based on the scaled down works of KSh. 4.9 billion. In reliance to the foregoing and the contract entered into between the consortium and the Tourism Fund, payments were made for the amount of work done by the consortium. The first payment made to the consortium was well after they had submitted the initial design.

2831. The payments made were thus due in accordance with the Fourth Schedule of the Architects and Quantity Surveyors Act. In undertaking the initial design, the consortium relied on Part 5 of the By-laws which required of them to come up with a development plan and master plan for the project. The plans set out in detail how the project will be implemented and how future additions may be made thereto. All these aspects were contained in the overall fees chargeable by the consortium under the Act.

Committee Observations

2832. **The Committee made the following observations:**

(i) **The explanation offered was satisfactory as the fees paid was based on the Architects and Quantity Surveyors Act.**

(ii) **This explanation was supported by the consultants when they appeared before the Committee.**

Committee recommendation

2833. **The matter was resolved.**

2.28 NATIONAL TRANSPORT AND SAFETY AUTHORITY (FY 2017/2018 TO FY 2019/2020)

EXAMINATION OF THE REPORT OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF THE NATIONAL TRANSPORT AND SAFETY AUTHORITY (NTSA) FOR THE FINANCIAL YEAR 2017/2018 TO FINANCIAL YEAR 2019/2020

Mr. George Njau, the Director General of the National Transport Authority, accompanied by Eng. Gerald Wangai, Wyclife Wasike, Shalakha Shum, Patrick Tilitei, Benard Owour (Principal Finance Officer) appeared before the Committee to adduce evidence on the audited accounts of the National Transport and Safety Authority for the financial year 2017/2018 to financial year 2019/2020

Unqualified Opinion (FY 2017/2018)

2834. The authority was issued with unqualified opinion.

<u>**Receipts for National Urban Transport Improvement Project (NUTRIP) (FY 2018/2019)**</u>

2835. As disclosed in Note 7 to the Financial Statements, The Authority received an amount of KSh 36,000,000 for NUTRIP Project Cr.5140KE, which was funded by the World Bank, to facilitate payment of specified transactions as per the State Department for Transport letter Ref. MOT&l/ACCTS/033NOL. Ill (74) of 25th January, 2019, However, no satisfactory explanation was provided on the circumstances under which the transfer was made to the Authority. It was not explained why the State department for transport being the implementing agency for the project, could not make the payments.

2836. Further, the documents provided in support of the payments indicated that the transactions related to FY 2016/17 AND 2017/18. Although management explained that the payments were related to 20% GOK Counterpart funding owed to Suppliers for equipment delivered to the Authority, no evidence was given to confirm that the bills or invoices were still outstanding.

2837. In the circumstances, the validity of the receipt for NUTRIP Project and the propriety of the expenditure of KSh. 36,000,000 could not be confirmed.

Management Response

2838. The funds were part of NUTRIP Project financed by the World Bank, with a component of Road safety initiatives benefiting NTSA, The MoTIHUD (State Department of Transport) was the implementing agency while NTSA was beneficiary and procuring agent. The State department of Transport decided to transfer the value of counter party component of the contracted funds to be settled by NTSA. The funds were well accounted for in line with the World Bank requirement.

2839. Further, the Authority updated the financial statements to reflect this transaction.

Committee Observations and recommendation

2840. **The explanation offered was satisfactory i.e the amount of money came from the mother ministry with specific instructions to pay for the project. The matter was resolved.**

Unsupported Revenue from Foreign Motor Vehicle permit fees (FY 2018/2019)

2841. The Statement of financial performance reflected an amount of KSh 1,873,488,786 being revenue earned from rendering of services of which revenue amounting to KSh 65,752,925 related to foreign motor vehicle travel permits fees. The fees payable by the applicants for the permits was dependent on the duration of the applicants' stay within the country and the engine capacity of the vehicles used.

2842. However, supporting documentation including form C32 or Carnet used for applications and renewal of the permits as well as reconciliations of the permits applied for, permits issued and the revenue received were not available for audit verification. Although management explained that the fee is collected by the Kenya Revenue Authority, evidence of the measures in place to ensure all revenue due is collected and accounted for was not provided for audit.

2843. Consequently, the completeness and accuracy of the revenue of KSh 65,752,929 in respect of foreign motor vehicle travel permit fees could not be confirmed.

Management response

2844. The Authority wishes to confirm that all the revenues received under this revenue stream were fully supported with schedules from the E-Citizen ***pesaflow*** platform where it was collected. However, considering The East African Border protocol which does not allow many agencies to be present at the border except for KRA, the Authority based on mutual understanding, had adopted a multi-agency team system approach where there is end to end system integration between KRA, Government Digital Payment Platform (E-Citizen Platform) and NTSA to ensure seamless service delivery to the citizen. This initiative was intended to enhance automation of the various processes complete with a clear audit flow of all transactions for the three Government entities.

2845. In view of the above, the three entities had since initiated engagements with the intent of entering into Service Level Agreements to ensure that the services offered to the citizen was of optimal quality without compromising on the audit trail and compliance with the law.

2846. NTSA was in the process of finalizing engagement with Kenya Revenue Authority with a view to integrate their customs system (ICMS) with the Transport Integrated Management System (TIMS) to allow the Authority to have a role to play in the collection of FMVP.

2847. Further, management was working on TIMs re-plat forming to improve service delivery and system stability. The Authority was also working toward signing a Service Level Agreement with KRA to align this revenue stream. A draft SLA was hereby attached for reference.

Committee Observations

2848. **The Committee made the following observations:**

(i) The Committee noted NTSA management's concurrence that it had no documents as the said documents were with the Kenya Revenue Authority; which was the only entity that was allowed at the port.

(ii) With the agreement being put in place between NTSA and KRA, NTSA would be able to access the necessary documentations from the KRA.

Committee Recommendation

2849. **The Committee recommends that the accounting officers for both NTSA and KPA should finalize the information sharing agreement on imported motor vehicles and implement it within the 2022/2023.**

Technical operational Costs (FY 2018/2019)

Misstatement of expenses

2850. The Statement of financial performance reflects total expenditure of KSh 1,054,376,096 under general expenses (operating expenses) which, as disclosed in Note 13(i) to the financial statements, includes amount of KSh 34,200,655 and KSh 28,476,544 in respect to smart driving license expenses and specialized materials and supplies respectively. However, a scrutiny of records revealed that the reported smart driving license expenses were overstated by KSh 1,990,820 while the reported amount of KSh 28,476,544 for specialized materials and supplies was understated by KSh 2,355,092

Management Response

2851. The misstatements were discussed and agreed with the auditors and adjustments made to the financial statements**.**

Committee Observations

2852. **Contrary to the management response that reconciliations had been done and the matter addressed with the OAG, the OAG confirmed that though the schedules were provided, they were still undergoing verification.**

Printing of Smart Third License Stickers (FY 2018/2019)

2853. Included in the expenditure of 1,054,376,096 under general expenses was an amount of KSh 105,222,540 relating to printing of third license stickers. The amount specifically relates to the expensed cost of RFID Stickers issued in the period under review. The schedule provided in the support of the expenditure indicated an opening balance of 808,000 stickers and a closing balance of 446,000 stickers issued in the period.

2854. However, stores ledger and stock control card No. 291523 reflected a balance of 818,000 stickers as at 30th June 2018 and a balance of 470,000 stickers at the close of the financial year on 30th June 2019 translating to 348,000 stickers issued in the financial year 2018/2019, resulting in an explained difference of 14,000 stickers leading to an estimated overstatement of the printing of third sticker licenses expenditure by KSh 4,069,380

Management response

2855. Reconciliation was initiated and successfully concluded. The same would remain to be carried out on quarterly basis to ensure discrepancies are eliminated. Up to date, no discrepancies had been reported. The same had been confirmed in the subsequent audits FY 2019/2020 and FY 2020/2021- The Authority has discussed and resolved this matter with the auditors.

Committee Observation and Recommendation

2856. **The matter was adequately addressed and resolved.**

Unsupported Total Cash Flow Movement for General Expenses (FY 2018/2019)

2857. The statement of cash flows reflected a total cash flow movement of KSh 918,304,484 arrived at by deducting accrued expenses (creditors) amount of KSh 318,072,780 from previous year creditors settled amount of KSh 182,001,169. However, a schedule in support of the creditor's balances was not provided.

2858. In the circumstances, the accuracy and validity of the cash payments of KSh 918,304,484 relating to general expenses as reflected in the cash flow statement could not be confirmed.

Management Response

2859. The statement of cash flows was prepared using the direct method as prescribed by the International public sector accounting standards (Accrual basis) and IAS 7. The adjustment to the general expense figure carried to the statement of cash flows is to adjust for cash payments during the financial year relating to the previous periods. A schedule of creditors outstanding as at 30th June 2019 was provided for review.

Committee Observations

2860. **This matter arose due to failure to provide schedules at the time of office and that the schedules provided during the preparation for the meeting had not been reviewed.**

Committee Recommendation

2861. **The Committee recommends that the impugned schedules submitted to the Office of the Auditor General should be reviewed and a report submitted on whether the variances reconciled in the 2022/2023 audit cycle.**

Unreconciled Differences Between the Statement of Financial Performance and Statement of Comparison of Budget and Actual Amounts (FY 2018/2019)

2862. The expenditure amounts for two items reflected in the statement of financial performance differs from the amounts in the statement of Budget and Actual amounts as follows;

Expenditure Item	Expenditure as per statement of financial performance	Expenditure as per statement of Comparison of budget and Actual Amount	Variance
Compensation to Employees	1,050,725,415	993,197,223	57,528,192
Goods and Services	69,627,236	1,211,157,369	-1,115,904,305

2863. Consequently, the accuracy of the expenditure as reported under these items could not be confirmed.

Management Response

2864. The difference was occasioned by methods of classification and reporting of financial cost items. The item of travel allowances is captured under compensation to employees in Statement of performance while the same is captured as use of goods and services thus part of operational cost in the income and expenditure budget analysis statement. (See above table).

2865. A reconciliation of the two statements was included in the financial statements are required under IPSAS 24, where the adjustments are made for non-cash items and development expenditure which are not included in the Statement of financial performance in compliance with IPSAS Accrual.

Committee Observation and Recommendation

2866. **The matter was adequately address and therefore resolved.**

Long Outstanding Receivables (FY 2018/2019)

2867. The statement of financial position reflected KSh.218,849,449 under receivables from exchange transactions, which as disclosed in Note 16 to the financial statements, reflected an amount KSh 61,655,788.00 relating to revenue collection through e-citizen. Included in the figure was an amount of KSh 32,469,685 which had been outstanding since March, 2015. No explanation was provided for failure by management to collect the long outstanding amounts.

2868. Consequently, recoverability of the long outstanding receivables of KSh. 32,469,685 was therefore in doubt.

Management Comments

2869. The Authority engaged The National Treasury on several occasions including a follow up on audit query to recover the receivable and received an approval to write off the amount on grounds that the funds were remitted directly to the exchequer account. The process of writing off the receivable has commenced and the same is pending the Authority's Board approval to facilitate actual write off. A copy of the Approval from The Principal Secretary National Treasury was provided.

Committee Observations

2870. **The Committee made the following observations:**

(i) Though the National Treasury had granted approval to write off the impugned funds indicating that the amount was with the exchequer and that it was prudent to write off long outstanding receivables, it would have been prudent to net off such debts with the subsequent exchequer releases.

Committee Recommendation

2871. **This matter was resolved.**

INVENTORIES (FY 2018/2019)

Overstated Smart Card Inventories

2872. The Statement of financial position reflects a balance of KSh. 271,554,918 as at 30th June 2019. The balance includes KSh 98,661,768 being cost of 297,174 blank smart cards held at the Authority's main store at head office. The cards were valued at KSh 332 instead of KSh 307.80 as provided in the bid documents and the suppliers invoice leading to an overstatement of inventories as at 30th June 2019 by KSh 7,192,276. Although Management availed Journal Voucher No. 27 by which the inventories balances were increased by KSh. 7,192,276, details of the particular smart cards that led to the increase of the inventories we not provided for Audit.

Management Response

2873. The variance was occasioned by the difference in the valuation rate as indicated. The financial statements were adjusted as agreed and based on Journal voucher No. 27. The revision was applied to the smart card inventory balances held as at 30th June 2019.

Committee Observation

2874. **This matter arose due to failure to submit documents for audit which had since been provided and verified thereby resolving the matter.**

Committee recommendation

2875. **The Committee recommends that the accounting officer for the NTSA should always ensure that documents are submitted for audit within the statutory timelines.**

Unaccounted for Radio Frequency Identification (RFID) Stickers

2876. Also included in the inventories balances is a figure of KSh 129,638,810 being the value of 446,000 No. RFID stickers in the Authority's main store as at June 30, 2019. However, stores ledger and stock control cards No. 29123 indicated that the balance of the stickers in the store as at June 30, 2019 was 470,000. RFID stickers in store as at 30th June 2019.

2877. It was further observed that on 3 July, 2019 the stock control card No. 29123 was replaced with stock control No. 531342 wherein the balance brought forward was recorded as 446,000 2019 thereby leading to 24,000 No. unaccounted for stickers. The unaccounted-for stickers had a value of KSh 6,976,080 and would have generated KSh 16,800,000 in revenue

2878. Although management provided Enterprise Resource Planning (ERP) system generated counter requisition and issue vouchers (S11s) indicating that the 24,000 stickers were issued in May 2019, the reliability of the system generated documents was in doubt since they are not duly signed and due to the fact that management has admitted having challenges in the implementation of the inventory module in the ERP system.

Management Response

2879. Reconciliation was initiated and successfully concluded. The same shall remain to be carried out on quarterly basis to ensure discrepancies are eliminated. Up to date, no discrepancies have been reported. The same has been confirmed in the subsequent audits FY 2019/2020 and FY 2020/2021- The Authority has discussed and resolved this matter with the auditors. The supportive documentation for have been attached herein for reference.

Committee Observations

2880. **These were accounting matters that should have been addressed by management by providing documents for audit within the statutory timelines.**

Committee recommendation

2881. **The Committee recommends that the accounting officer for the NTSA should always ensure that documents are submitted for audit within the statutory timelines.**

Contingent Assets-Motor Vehicle Inspection Centers (FY 2018/2019)

2882. As disclosed in note 4 (g) to the financial statements - Provisions: contingent assets - disclosed that it undertakes motor vehicle inspection in seventeen (17) centers across the country which were handed over by the Kenya Police service in December 2013. During the year 2018/2019, the Authority generated revenue amounting to KSh 391,631,700 from motor vehicle inspections carried out at the centers. However, fair value of the centers had not been reflected in the financial statements as required under paragraph 14 of IPSAS 17- Property plant and Equipment and paragraph 41 of IPSAS 19 –Provisions, Contingent Assets.

2883. Further, no documentary evidence was provided for Audit review of notification to the National Treasury regarding the transfer of the inspection centers as required under regulation 143(5) of the Public Finance Management (National Government) regulations, 2015. In addition, the Authority was yet to obtain ownership documents for the inspection centers

Management Response

2884. The Authority was in the process of obtaining ownership documents, once complete the Assets will be probably accounted as owned Assets. The Cabinet Secretary for Interior & Coordination of National Government has contacted the Cabinet Secretary for Lands and the process of titling the parcels was in progress. A task force which includes officers from Ministry of Lands, National Police service and NTSA was fast tracking the process of issuing the titles to NTSA.

Committee Observations

2885. **The Committee made the following observations:**

(i) **It was curious that since the establishment of NTSA in 2012, the ownership status of its assets has not been streamlined to date.**

Committee Recommendation

2886. **The Committee recommends that the accounting officer for the NTSA should ensure acquisition of ownership documents for NTSA land within the 2022/2013 financial year.**

Cash and Cash Equivalent (FY 2018/2019)

2887. The Authority reported a cash and cash equivalents balance of KSh 212, 936,095 as at 30th June 2019, being reconciled bank balances held in six bank accounts with local commercial banks. However, monthly bank reconciliation statements for the bank accounts were not prepared and submitted to the National Treasury and to the Auditor-General as required under Section 90 of Public Finance Management Regulations, 2015. Management explained that the Cash and Bank Module of the Enterprise Resource

Planning (ERP) system had a technical challenge which took a longtime to address resulting in delayed bank reconciliation exercise.

2888. Consequently, the effectiveness and efficiency of banking and cash management practices of the Authority could not be confirmed.

Management Response

2889. The Authority prepares bank reconciliations on a monthly basis and submits quarterly reports to National Treasury as required by the PFM Regulations. The challenges in the ERP have been addressed to a large extent and the Authority is seeking ways of upgrading the system to increase efficiency.

2890. The bank reconciliation for the FY2018-19 had since been concluded.

Committee Observations

2891. **The Committee notes that despite the response from management, the OAG had not received reconciliations done during the audit period hence the query.**

Committee Recommendation

2892. **The Committee recommends that the accounting officer for the NTSA should ensure that reconciliations are done promptly**

Failure to Secure Ownership of Smart Card Based License Application Software and Related Infrastructure (FY 2018/2019)

2893. The Authority in March 2017 signed the contract for supply, delivery, installation and maintenance of second-generation smart card-based driving license and associated services with a local bank being the lead partner of the consortium that was to deliver the services at a contract sum of KSh 2,028,991,484 (USD.21,094,282).

2894. The contract sum included an amount of KSh 431,309,018 being the cost of development of the application software and operating system, installation, testing, commissioning and other software related components. However, the management had not secured ownership of the application software and related infrastructure including equipment such as signature pads, printers and the bulk printer used for printing the cards.

2895. Sign offs were provided for audit indicating that the system had been tested and accepted by the Authority, the Authority had also paid the vendor an amount of KSh 2,841,742 for the cost of training staff on the use of the system. However, audit inspection at the Smart driving license section revealed that printing of cards was being undertaken by the project consortium staff. This cast doubt on whether the system and hardware were indeed handed over to the Authority. The Authority, upon issuance of the five million cards provided in the contract was likely to incur additional costs in development, supply and installation of another software and related infrastructure which will be borne by the public.

2896. In the circumstance, it could not be confirmed that the Authority obtained value for money in acquiring and using the software and related infrastructure as required under Section 72 of Public Finance Management Act, 2012.

Management Response

2897. The contract under review was for supply, delivery, installation and maintenance of second-generation smart card-based driving license and associated services, part of the associated services includes provision of printing services.

2898. During the period under review the printing was being undertaken by the Consortium staff since this was part of their contractual obligation in consideration that the contract was still in force. It would be a double cost to the Authority to perform activities that a contractor is being paid to perform.

2899. Once the contract between the two parties came to an end, the Authority would release the consortium staff and ensure that printing was done in-house using our own staff.

Committee Observations

2900. **The Committee made the following observations:**

(i) The contract provided that the contractor trained staff for three years and print cards during the contract period.

(ii) **However, the contract period was extended for a further two years ostensibly because of covid-19 without evaluation though there was not cost escalation.**

(iii) **It was further not clear whether the software, though owned by NTSA, will be compatible with new modules.**

Committee Recommendation

2901. **The Committee recommends that the accounting officer for the National Transport and Safety Authority should ensure that the contract is effectively implemented as per the timelines.**

Overstocking of blank Smart Cards (FY 2018/2019)

2902. Review of the stores ledger and stock control cards for the blank smart cards maintained by the Authority and an audit visit to the Authority's stores, revealed that the balance of the cards in the store was 297,174 No. as at 30th June, 2019. However, as at the time of audit in May, 2020 the balance had increased to 1, 749,174 No. cards. The Authority was therefore in contravention of Section 162 (3) of Public Procurement and Asset Disposal Act, 2015 which provides that overstocking of any item shall be avoided and Section 83 (2) (h) of PFM Regulations, 2015 which provides for managing inventories to the minimum level necessary for efficient and effective programme delivery.

2903. The Authority was likely to incur losses from pilferage, damage or deterioration of excess cards.

Management Response

2904. The contract for supply, delivery installation and maintenance of second-generation smart card-based driving license and associated services had clear milestones on how delivery of 5,000,000 smart cards would be done with the final delivery of 500,000 to be delivered on 31st December 2019. However, enrollment of drivers was greatly affected by COVID-19 Pandemic following the suspension of most of our services and the lockdown imposed by the government. Consequently, the smart cards could not be personalized into driving licenses within the set timelines leading to overstocking of cards.

2905. Taking cognizant of the challenges, the Authority negotiated with the contractor to revise the delivery and have the final delivery of 500,000 cards delivered in December 2021.

2906. Going forward and in order to enhance enrolment and utilization of smart cards, the Authority was in the process of sourcing for more enrolment kits to increase uptake by our clients. More staff had been redeployed to various Huduma Centres countrywide to increase enrolment and uptake of the cards. In addition to this the Authority was planning to discontinue renewal of red booklet licenses through e-Citizen which will automatically increase the uptake smart cards.

Committee Observation and recommendation

2907. **The matter was adequately addressed and matter resolved.**

Accountability for Inventory Items Issued in Bulk (FY 2018/2019)

2908. The inventory balance of KSh 271,554,918 reflected in the statement of financial position as at 30th June 2019 includes an amount of KSh 11, 329,717 being the value of accountable items (held-for-sale inventories) held at the Authority's main store at the head office and at various regional offices respectively as at 30th June, 2019. However, records of the movement of the items after being issued in bulk from the main store to the regional offices and to the user departments were not provided for audit verification. In addition, it was not clear why the Authority had not fully automated its inventory management processes in spite of having acquired the ERP system in the financial year 2015/2016.

2909. It could therefore not be confirmed that preventative mechanisms were in place to eliminate theft, security threats, losses, wastage and misuse were in place as required under Section 139 (1) of Public Finance Management Regulations, 2015.

Management Response

2910. Accountability had been reinforced through use of receipt and issuance registers. To avoid occurrence of the same, the Authority had provided all Regional Managers with a template for record keeping and reconciliation for all accountable documents from the main store.

2911. Quarterly regional level stock-take reports on total consumption, damages and balances were submitted on quarterly basis for review. Regional officers have also been sensitized accordingly. Examples of documents submitted include:

a) Stock cards template for our regional offices together sample returns being submitted by our regional offices.

b) Counter Requisition & Issue Voucher (S11) used to issue stock to regional office

Committee Observation

2912. **The query related to failure to submit documents for audit, which have since been done. Further, it was risky operating a system that was not automated.**

Committee Recommendation

2913. **The Committee recommends that:**

(i) The accounting officer for the NTSA should always submit documents for audit within the statutory timelines failure to which the sanctions provided for under the Public Audit Act 2015 ensues.

(ii) The accounting officer for the NTSA should ensure automation of its systems to avoid pilferage of funds.

Revenue from Rendering Services (FY 2019/2020)

2914. The statement of Financial Performance reflects revenue from exchange transactions on rendering of services of KSh.1, 503,822,548.00 for the year ended 30th June, 2020. As disclosed under note 8(i) to the financial statements, this amount includes KSh.415,278,318 being revenue collected through Kenya Revenue Authority (KRA) from and transfers from E-citizen of KSh 1,083,391,775 totalling KSh 1,498,670,093.

2915. Although NTSA received revenue collected by third parties namely KRA and Ecitizen, Contract or service agreements signed with the service providers (third parties) were not provided for Audit review. Consequently, the accuracy, completeness and validity of receipts totaling KSh.1,498,670,093 relating to revenue from revenue from rendering services for the year ended 30th June 2020 could not be ascertained.

Management Comments

2916. The Kenya Revenue Authority collected revenues generated from Number Plates together with customs duty at the points of entry into the country based on Section 5 Subsection 2(a)(ii) of the KRA Act,1995 and Part II of the First Schedule of the KRA Act,1995

2917. The Kenya Revenue Authority was the official receiver and collector of Government revenues and as such, collect revenues on behalf of the Authority like other government entities. Further, this was part of a delinking process between KRA and NTSA at its inception when the NTSA Act, 2012 was enacted. The Authority had nevertheless initiated engagement on preparing a service Level Agreement which when complete will set guidelines on collection of revenues.

2918. NTSA revenues collected through the E-Citizen platform are on the other hand founded on Gazette Notice No.9290 of 30th December 2014 on Introduction of the Government Services Digital Payment Platform and Gazette Notice No.3299 of 13th May, 2015 on Establishment of The Governance Structure for The Government Digital Payments Programme.

Committee Observation and Recommendation

2919. **This is a repeat paragraph from the 2018/2019 but with different figures.**

Foreign Motor Vehicle Permits fees (FY 2019/2020)

2920. The Revenue earned from rendering of services of KSh.1,503,860,348 included an amount of KSh. 70,705,660.00 relating to foreign motor vehicle travel permit fees. The fee was payable by applicants for the permits is dependent on the duration of applicants stay within the country and the engine capacity of the vehicles used. However, supporting documents including the C32 or Carnet used for application and renewal of the permits as well as reconciliations of the permits applied for, permits issued and revenue received were not provided for audit verification.

2921. Consequently, the completeness and accuracy of the revenue amount of KSh 70,705,660 in respect of foreign motor vehicle permits could not be confirmed.

Management Response

2922. The Authority confirmed that all the revenues received under this revenue stream were fully supported with schedules from the E-Citizen pesaflow platform where it was collected. However, in light of The East African Border protocol which does not allow many agencies to be present at the border except for KRA, the Authority based on mutual understanding, relies on the KRA customs expertise and responsibility for clearance of vehicles entering the country to facilitate service delivery.

2923. Service delivery required for generation of Foreign motor vehicle permit revenue were thus executed by KRA at the Border points on behalf of NTSA using Customs Form 32 commonly referred to as form C32 under an agency arrangement but collected through the e-citizen platform. This had however been enhanced through automation of the various processes.

2924. NTSA was in the process of finalizing engagement with Kenya Revenue Authority with a view to integrate their customs system (ICMS) with the Transport Integrated Management System (TIMS) to allow the Authority have a role to play in the collection of FMVP.

2925. Further, management was working on TIMs re-plat forming to improve service delivery and system stability. The Authority was also working toward signing a Service Level Agreement with KRA to align this revenue stream.

Committee Observation and Recommendation

2926. **This is a repeat paragraph from the 2018/2019 but with different figures.**

Long Outstanding Receivables (FY 2019/2020)

2927. The statement of financial position reflects KSh.92,568,075 under receivables from exchange transactions, which as disclosed in Note 16 to the financial statements, reflected an amount KSh 37,835,028.00 relating to revenue collection through e-citizen. Included in the figure was an amount of KSh 32,469,685 which had been outstanding since March, 2015. No explanation had been provided for failure by management to collect the long outstanding amounts. Consequently, recoverability of the long outstanding receivables of KSh. 32,469,685 was therefore in doubt.

Management Response

2928. The Authority engaged The National Treasury on several occasions including a follow up on audit query to recover the receivable and received an approval to write off the amount on grounds that the funds were remitted directly to the exchequer account. The process of writing off the receivable had commenced and the same was pending the Authority's Board approval to facilitate actual write off. A copy of the Approval from The Principal Secretary National Treasury was provided.

Committee Observation and Recommendation

2929. **This is a repeat paragraph from the 2018/2019 but with different figures.**

2.29 KENYA PORTS AUTHORITY (FY 2017/2018 TO FY 2018/2019)

EXAMINATION OF THE REPORT OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF THE KENYA AIPORTS AUTHORITY (KPA) FOR THE FINANCIAL YEAR 2017/2018 TO FINANCIAL YEAR 2018/2019

Amb. John Mungemi, the Ag. Managing Director of the Kenya Ports Authority accompanied by his senior staff appeared before the Committee to adduce evidence on the audited accounts of the Authority for the financial year 2017/2018 to financial year 2018/2019.

Inaccuracies in the Financial Statements (FY 2017/2018)

2930. The financial statements for the year ended 30 June 2018 contained casting errors totaling to KSh.4,910,000 in absolute terms as detailed below

		Figure as Per Financial Statement	Re-casted Figure (KSh.)	Absolute Casting Error (KSh.)
1.	Statement of comparison of budget and actual	8,461,059,000	8,456,060,000	4,999,000
2.	Note 11- Property, Plant	144,614,772,000	144,614,861,000	(89,000)
	Total	**153,075,831,000**	**153,070,921,00**	**4,910,000**

2931. Consequently, the accuracy and completeness of the property, plant, and equipment balance of KSh.144,614,772,000 and the statement of comparison of budget and actual amounts net profit of KSh.8,461,059,000 for the year ended 30 June 2018 could not be confirmed.

Management Response

2932. The Statement of Comparison of Budget and Actual for the reporting year had a casting error of KSh. 4,999,000 while the Property, plant and equipment schedule had an error of KSh. 89,000.

2933. The errors were corrected, and the statement and schedule availed to the auditor vide our letter Ref. FA/3/2/02 of 27th February 2019.

2934. The Authority had since put in place internal review mechanism to ensure the financial reports were accurately prepared and free from any errors. The errors were immaterial, key characteristics on materiality includes (i) when misstatements were material if they could influence the decisions of users of the financial statement and (ii) when judgements about materiality were based on surrounding circumstances, including the size and nature of the misstatement.

Committee Observation and Recommendation

2935. **This was a reconciliation issue that was adequately addressed and therefore resolved.**

Other Income (FY 2017/2018)

2936. Note 7 to the financial statements for the year ended 30 June 2018 reflected sale of passes amounting to KSh.115,049,000. However, the management, through a notice addressed to port users dated 24 January 2014 varied the Gazetted port passes charges by making the port passes VAT inclusive without Board approval. This was contrary to Section 10(b) of Kenya Ports Authority Act CAP 391 and the Authority's Gazetted tariff book of 1 December 2012 which provided that all charges and fees in the tariff book were exclusive of VAT. This may have resulted to loss of revenue and VAT to Government as tabulated below:

Sale of passes as per Statement KSh.	Sale of passes as per Tarrif book	VAT on sales as per Statement (Revenue Loss)	VAT on sales as per Tarrif book KSh.	VAT variance
115,049,699	133,457,650	18,407,952	21,353,224	2,945,272

2937. Consequently, the management was in breach of the Law and its own tariff and may have occasioned loss of revenue amounting to KSh.18,407,952 and VAT due to the Government amounting to KSh.2,945,272 for the year ended 30 June 2018.

Management Response

2938. At the time of introduction of the rates in 2012, the rates were erroneously printed without adjusting for VAT. The notice to port users issued out on 24th January 2014 was to correct this printing error. The accounting of the revenue in the books was correct and appropriate tax was accounted for as required. There was no under collection of revenue nor VAT.

2939. Section 61 (1) of the KPA Act states "the *Board and the Managing Director may delegate to any person any of the powers vested in them under this Act and may grant to any person powers of attorney*", hence Management was not in breach of the law as pertaining to this notice and was properly guided in making it for the interest of the Authority.

2940. The KPA tariffs were under review considering the change in the business environment and this item had been earmarked for correction.

Committee Observations

2941. **The Committee made the following observations:**

(i) This matter was not adequately addressed as the said error was not presented to the Board of KPA for approval.

(ii) Further, the management of KPA failed to provide an internal memo correcting the error and an explanation of any action taken to persons that caused the error and the notice given to the public correcting the error.

Committee Recommendation

2942. **The Committee recommends that the accounting officer for the KPA should put in place mechanisms for reviewing accuracy of documents before they are made public for action.**

Establishment Expenses (FY 2017/2018)

Incentive Scheme

2943. Note 9 to the financial statements for the year ended 30 June 2018 reflects incentive scheme of KSh.29,607,000. However, payroll records availed for audit review indicated that the actual amount paid was KSh.97,398,000, resulting to a variance of KSh.67,791,000 which was not explained nor reconciled.

2944. Consequently, the accuracy and completeness of incentive scheme expenses of KSh.29,607,000 for the year ended 30 June 2018 could not be confirmed.

Management Response

2945. Incentive scheme expenses amounting to KSh.29,607,000 disclosed under Note 9 of the financial statement referred to payment of meritorious awards to staff for recognition of their efforts in the Port decongestion exercise that brought container population down from 22,580 TEUs to 10,150 TEUs. This was recognized in Incentive scheme GL 600791.

2946. On the other hand, the KSh.67,791,000, related to the payment of fixed allowance, which was paid to staff in container operations, marine operations, conventional cargo operations, marine engineering, conventional cargo engineering and container terminal engineering departments. Provided was a breakdown of the allowance that was paid monthly as a Bonus/Incentives**.** This expenditure was also disclosed under note 9 but under staff allowance GL 600116. The allowance was to encourage productivity and was paid as follows:

- Paid to all marine, container and conventional cargo engineering staff, provided they maintain a 70% equipment availability. Payment was 200/= Per day
- Paid to Ship Operations gangs/shift, all grades up to HG1, provided they worked on over 40 full containers using SSG/RTG/front loader/Tugmaster or over 20 full containers using SSG/RTG. Payment was 200/= Per day
- Paid to Container yard Operations (delivery/Acceptance) gangs/shift, to all grades up to HG1, provided they worked on over 20 full containers using RTG/ front loader.
- Paid to RMG Operations gangs/shift, all grades up to HG.1 provided they offloaded railway wagons over 40 full containers.
- The payments were abolished after the review of allowances in 2017 and payments ceased on 31.12.2017.

Committee Observations:

2947. **The Committee made the following observations:**

(i) **Though management was able to justify why the impugned payments were made, there was no list of beneficiaries given and board approvals for the same.**

(ii) **It was however noted that such allowances were abolished.**

Committee Recommendation

2948. **The Committee recommends that the accounting officer for the KPA should only pay allowances lawfully approved by the Board of KPA and State Corporations Advisory Council after consulting the Salaries and Remunerations Commission.**

Overtime Allowances

2949. Note 9 to the financial statements for the year ended 30 June 2018 reflects overtime allowances of KSh.2,688,474,000. Included in the overtime allowances of KSh.2,688,474,000 are third shift allowances of KSh.352,823,224 paid during the year under audit review. Records availed for audit indicated that basic pay for third shift was KSh.1,505,224,910. However, according to the Collective Bargaining Agreement of 2018/2019 paragraph 14(e), third shift was regarded as a normal shift like the first and second shifts but due to the odd hours worked, the compensation was 15% of the basic monthly salary. Therefore, the maximum amount payable as third shift overtime allowances should have been KSh.225,783,737, being basic pay of KSh.1,505,224,910 per annum x 15% for the year 2017/2018. This resulted to overpayment of KSh.127,039,487.

2950. Consequently, the overtime allowances amounting to KSh.127,039,487 paid to the staff during the year ended 30 June 2018 are irregular and not proper charge to public funds.

Management Response.

2951. Overtime was appropriately paid. The Human Resource manual and Collective Bargaining Agreement made the following provisions that guided the payments;

a) All overtime (excluding time worked on rest days, National and Gazetted public holidays) will be paid at the standard hourly rate, but the amount of time worked will be increased by one half for the purpose of calculating the overtime payment. All time worked on national and gazetted public holidays will be paid over and above the monthly salary at the standard hourly rate, but the amount of time so worked will be doubled for the purpose of calculating the total overtime payment to be made.

b) All time worked by employees of the Authority on a day of rest, except where an alternative day-off is given with an employee's consent will be paid at the standard hourly rate and the amount of time so worked will be doubled for the purpose of calculating overtime.

c) For calculating overtime, time allowed for meals will not be counted towards the total time worked except on a continuous turn of duty where the meal-break does not exceed thirty minutes.

d) The following categories of employees, unless otherwise specifically provided, are not eligible for overtime payment:

    i) Employees whose work cannot be scheduled

    ii) Employees whose work cannot be supervised

    iii) Employees whose nature of employment requires attendance for work or duty at any time, and for any period that the exigencies of the service may demand and whose conditions of employment have been taken into consideration when their emoluments are fixed.

e) Third Shift as a normal shift

2952. Third Shift is regarded as a normal shift like the first and second shifts. However, due to the "Unsociable Hours" worked during the third shift, a compensation of 15% of the basic monthly salary shall be paid in addition to the monthly salary provided that;

    i) The employee has been rostered to work on the shift and

    ii) The employee has worked for at least one full week of the third shift within the month he was rostered.

f) Repeated Third Shift

2953. Repeated third shift will be paid at 15% of the Basic Salary.

g) Double Shift Extension from Second to Third Shift

    i) Double shift extension from second to third shift will be paid at double rate to all employees.

ii) Staff operating Machines/Equipment should be discouraged from extending from second to third shift for safety reasons.

h) Compensation for Ordering and Cancelling of Gangs on Rest Days and Public Holidays. In the event of stevedoring gangs being ordered for overtime working on rest days and Public Holidays, but not required to work due to cancellation of Labour, each member of the gang will be paid 4 hours.

2954. The clarification on the payment of third shift allowance was as explained under items (e), (f) and (g) which were guided by provisions of the HR Manual 2017.

2955. Generally, port operations; cargo (stevedoring, yard and gates operations), marine and Security operate on 24/7 basis. Current staff numbers necessitate recalling staff to cater for the eight recall days.

Committee Observations

2956. **The Committee made the following observations:**

(i) The long explanation from the management on overpayment of allowances could not be sustained as Collective Bargaining Agreement on allowances should have been superior to the KPA Human Resource Manual 2017 on payments of allowances.

Committee Recommendation

2957. **The Committee makes the following recommendations:**

(i) The accounting officer for the KPA should always ensure that the allowances payable at the KPA are within the strictures of the law as signed and communicated from time to time from the Salaries and Remuneration Commission and State Corporations Advisory Council as well as the signed Collective Bargaining Agreements.

Staff Allowances

2958. Note 9 to the financial statements reflects staff allowances of KSh.1,936,776,000, out of which KSh.91,844,375 was paid as follows :

	Allowance type	Amount (KSh)
1	Pilot Trainee Allowance	11,745,000
2	Pilot Survey Fees	9,270,000
3	Pilotage Allowance	69,309,375
4	Pilot Trips	1,520,000
	Total	**91,844,375**

2959. However, the Ministerial approval for the above allowances was not availed for audit. This was contrary to Section 11(c) of the Kenya Ports Authority Act Cap 391 of 1978 which required Ministerial approval of major alterations of salaries and wages or other terms and conditions of service of employees.

2960. Consequently, the propriety and validity of staff allowances of KSh.91,844,375 for the year ended 30 June 2018 could not be confirmed.

Management Response

2961. Pilotage was a core function under Marine Services. Section 36 of the Kenya Ports Authority Act CAP. 391, states that the Port of Mombasa shall be a compulsory pilotage port for all vessels other than exempted ships. Moreover, given the uniqueness of the channel, coupled with the vagaries of tides and ocean currents, it is vital that a local pilot, familiar with these challenges, navigates vessels safely into and out of the port. Based on the above Kenya Ports Authority had in its Establishment Pilotage Sections with pilots recruited to perform the critical role in compliance with the act.

2962. Payment of Pilotage Allowance was introduced due to:

- Global shortage for Marine Pilots and Engineers hence the allowances were necessary as a retention strategy.
- Pilots and Marine Engineers undergo long training and requisite sea time and the fact that pilots must be examined and certified before they can pilot ships within compulsory pilotage waters.

2963. Pilotage allowance was approved in 1993 by both the Executive Management and Board Human Resource committees in line with section 10(b) of the Kenya Ports Authority Act Cap 391 of 1978 which empowers the Board to approve minor alterations in salaries, wages or other terms and condition of service of employee of the Authority.

2964. These allowances could not be referred to as major allowances since they were not paid to staff across the entire Authority. The allowances in question, totaling KSh 91,844,375, constituted less than 4.0% of revenue collection from marine services in the reporting year. They were duly approved by the KPA Board.

Committee Observations and Recommendation

2965. **This query was adequately addressed as the allowances were approved by the Board. Further, it was not mandatory for ministerial approval.**

Operating Expenses (FY 2017/2018)

Marine Spares

2966. Note 10 to the financial statements for the year ended 30 June 2018 reflects marine spares expenses of KSh.302,581,000. However, included in the amount is KSh.9,604,552 on servicing of marine equipment and pilot boat-Nahodha II whose support invoice was issued on 29 March 2018, before Local Service Order of 4 April 2018 was issued.

2967. Further, report of the inspection and acceptance committee was not availed for audit review nor the replaced parts produced for audit inspection.

2968. Consequently, the propriety and validity of KSh.9,604,552 on marine spares for the year ended 30 June 2018 could not be confirmed.

Management Response

2969. MANTRAC (K) are Caterpillar local agents in this region and KPA contracted them to undertake the periodical major overhaul and services of our Caterpillar engines as per the Original Equipment Manufacturers (OEM) recommendations.

2970. Nahodha II C32 main engines were overhauled in Dockyard and on opening up of the engines, our technicians together with the Caterpillar-Mantrac services engineers discovered that the Cylinder heads had cracks hence unfit for use and had to be replaced.

2971. Management found it prudent for the service provider to continue with the process of replacing the cracked cylinder heads for the LPO to follow. The works were carried out and the Cylinder heads were replaced.

2972. There was need to fast track return of Nahodha II into operations. The purchase and installation services for these marine engines is critical for sustaining availability and reliability of the Pilot Boats (Marine crafts) in providing efficient marine service. At the time of this service, there was no standing or ad-hoc committee on inspection and acceptance. However, the service done was inspected and accepted by our technical team headed by Principal marine engineer. Certified by Sea trial reports are attached.

2973. The replaced cracked cylinder heads had not been returned to dockyard at the time of audit. However, they were eventually returned, attached is the delivery note, report of the items in Marine Engineering yard and certified Sea trial reports.

Committee Observation

2974. **The Committee noted that that although the issue was addressed in the response, the Authority flouted procedures by allowing for services without valid LPO to service provider: an indication of weak controls in the operational procedures.**

Committee Recommendation

2975. **The Committee recommends that the accounting officer for the KPA should develop strong monitoring mechanisms to ensure adherence of standard operating procedures at the Authority.**

Repairs to Port Infrastructure

2976. Note 10 to the financial statements for the year ended 30 June 2018 reflected repairs of port infrastructure expenditure of KSh.1,028,154,000. Included in the expenditure was KSh.120,964,062 on various works as detailed below:

	Details	Amount (KSh.)
1	Proposed Civil Works and Rehabilitation of Containers into offices at the Authority's outer ports and Shimoni Station	25,566,339
2	Proposed fencing of parcel MN/111/528 - Takaungu	42,341,802
3	Proposed fencing of parcel MN/111/528 - Takaungu	29,004,015
4	Proposed fencing for LR no. MN/V/162 – Jomvu Kuu	24,051,904
	Total	**120,964,060**

2977. Site visit of Takaungu and Jomvu in the month of October 2018, could not identify the work done. Further, fabricated office containers were not seen at Shimoni outer port during project verification in the same month of October 2018.

2978. Consequently, the propriety and value for money for KSh.120,964,060 on the four (4) projects for the year ended 30 June 2018 could not be confirmed.

Management Response

2979. The Government gave a directive in 2016 for all State Corporations and Agencies to secure all their properties by fencing and erecting a sign board clearly stating the ownership of the properties. The board of KPA approved the fencing of all KPA properties. With relation to the parcels of land at Takaungu and Jomvu Kuu, the contractors were handed over the site and work commenced. However, it was met with resistance from the community/squatters who pulled down the fences. The management had expensed the works and requested the Legal department to pursue the contractors to either complete the works or institute recovery of the monies paid.

Committee Observations

2980. **The Committee made the following observations:**

(i) Failure to do the work by contractors had nothing to do with locals as alleged by the KPA management.

(ii) **KPA management confirmed that engineers that mislead the Finance Department to pay have since been dismissed from service.**

(iii) **The KPA management confirmed that the EACC was investigating this matter alongside others.**

(iv) **KPA had never instituted debarment proceedings against the companies that defrauded KPA.**

(v) **It was not in contention that the contractor for both Takaungu and Jomvu Kuu had been paid for the works not done. However, it was not clear why the management had failed to recover the paid monies from contractors after frustration of their contracts by recalling the performance bonds.**

(vi) **Further, it was not clear to the Committee whether the management had sued for recovery of funds paid to the contractors.**

Committee Recommendations

2981. **The Committee recommends that:**

(i) **The accounting officer for the KPA should ensure recovery of the monies paid to the contractors of Takaungu and Jomvu Kuu within the 2022/2023 Financial Year.**

(ii) **The EACC should expedite and conclude investigating the matter and prefer appropriate charges against persons that may be found culpable.**

ADMINISTRATIVE EXPENSES (FY 2017/2018)

2982. The statement of profit and loss and other comprehensive income for the year ended 30 June 2018 reflects administrative expenses of KSh.3,450,148,000, as detailed in note 8 to the financial statements. The following observations were made:

Water Supply Services

2983. Note 8 to the financial statements for the year ended 30 June 2018 reflected water supply services of KSh.149,51 1,000. However, included in this amount was KSh.98,442,012 whose delivery notes were not availed for audit review.

2984. Consequently, the propriety and validity of KSh.98,442,012 on water supply services for the year ended 30 June 2018.

Management Response

2985. This matter on supply of water to the Authority was under investigation by Ethics and Anti-Corruption Commission (EACC) and the Director of Criminal Investigations (DCI). The original invoices and delivery notes relating to water supply were taken to EACC and DCI and they were still in their custody. Copies of the invoices had since been availed and forwarded to the auditors.

Committee Observations

2986. **The Committee made the following observations:**

(i) **The provided copies of Invoices and Delivery notes to the OAG could not be authenticated as the originals were in the hands of the EACC and the DCI who were conducting investigations.**

(ii) **In the absence of the original documents, the Office of the Auditor General and the Committee could not confirm their authenticity.**

(iii) **Further, it was not clear whether the EACC and DCI had completed investigating the matter and the actions taken.**

Committee Recommendation

2987. **The Committee recommends that the EACC and the DCI should expedite investigations on the matter and make necessary recommendations to address the issue.**

Licenses and Computers

2988. Note 8 to the financial statements for the year ended 30 June 2018 reflects licenses and computers expenditure of KSh.710,795,000. Included in this expenditure is KSh.298,253,000 (US$ 2,953 ,000) for integrated security system annual maintenance, out of which KSh.126,048,000 (US$ 1,248,000) was spent on systems spares and stock parts which was expensed instead of being treated as part of inventory in line with accounting policy disclosed under Summary of Significant Accounting Policies 4(j) which states that, *'The Authority has a policy of stocking consumable strategic spare parts for a line of operational equipment. The spares are included in the inventory.*' Consequently, the validity of KSh.126,048,000 on licenses and computer expenditure for the year ended 30 June 2018 could not be confirmed.

Management Response

2989. The integrated security system maintenance of systems spares was procured on demand basis (as need arose) as direct issues. They were usually received from the stores directly for accounting purposes and were immediately expensed. These spares did not form part of the Authority's inventory.

Committee Observations

2990. **The Committee made the following observations:**

(i) The Authority did not disclose the stock for the Integrated Security System in the books thus there was a misstatement. The authority was working on incorporating the same, however this had not been completed.

(ii) The management's assertion that spare parts could not be identified due to security reasons could not be sustained as the contract for their provision listed the specific spare parts to be supplied.

Committee Recommendation

2991. **The Committee recommends that the accounting officer for the KPA should ensure that the authority's financial statements are presented in manner consistent with the International Public Sector Accounting Standards.**

Pension Scheme Expenses

2992. As similarly reported in the previous year, the statement of profit and loss and other comprehensive income reflected administrative expenses amount of KSh.3,450,148,000 for the year ended 30 June 2018. Included in this amount were expenses paid by the Authority on behalf of Kenya Ports Authority's Pension Scheme's administrative expenses amounting to KSh.62,320,801. This was done contrary to the Treasury Circular 18/2010-52(10) dated 24 November 2010 which required the employer to meet the set-up costs for the scheme only for the first year. Although the management had indicated that a process of delinking the pension's scheme expenses from the Kenya Ports Authority Board had been initiated, the process had not been concluded as at 30 June 2018.

2993. Consequently, it was not possible to confirm the propriety of KSh.62,320,801 on Pension Scheme's administrative expenses for the year ended 30 June 2018.

Management Response.

2994. The National Treasury's letter Ref: EPN 171/07 VOL. Q (94) of 16th June 2011 made changes to its circular No. 18/2010 of 24th November 2010 under **variation of clause 10** to allow an option that scheme expenses related to **in house administration** may be met by the employer (in this case KPA).

2995. The Board of KPA in compliance with the Treasury circular Nos. 18 of 2010, agreed to delink the Pension Scheme through outsourcing which was then discussed in The Board of Trustees (BoT) meetings and each of the two boards chose a different mode of autonomy.

2996. The KPA Pension Scheme (DB scheme) chose the stand-alone mode which involved setting up a secretariat separate from the Sponsor (in this case KPA) and manned by professionals who would be employed and paid by the Trustees.

2997. The KPA Retirement Benefits Scheme 2012 (DC Scheme) chose complete outsourcing to a professional external administrator. On member engagement during the Pension week held in August 2018, the members were against the outsourcing mode. The DC Trustees went back to the drawing board on the same.

2998. In a combined DB/DC board meeting held in November 2018, the Trustees agreed to form a stand-alone secretariat, run by professionals and funded by the combined boards based on the fund value of each scheme. In this regard the Board of Trustees resolved to refund the current staff operations costs to the Sponsor (KPA) effective January 2019.

2999. Both schemes refunded the full staff costs to the Sponsor (KPA) based on the fund values of the scheme as at every preceding end of year as shown in the table below.

KPA PENSION SCHEME STAFF COSTS TREND 2019-2021 FIGURES IN KSH'000'					
YEAR	**FY COSTS**	**DB COSTS**	**DC COSTS**	**DB %**	**DC%**
2019				74%	26%

	50,248.00	37,146.00	13,102.00		
2020	59,057.00	41,920.00	17,137.00	71%	29%

3000. The Board of Trustees also advertised a tender for consultancy on an optimal secretariat structure and awarded M/s PKF Consulting. The contract with M/s PKF Consulting was signed in April 2019. The Board of Trustees reviewed and deliberated on the consultant's recommendations on 26th November 2019. The anticipated Scheme structure report was finalised by the Consultant PKF and shared with the joint boards of directors in January 2020. The combined DB/DC boards elected an implementation committee made up of six members with three members from each scheme.

3001. The Implementation committee together with its secretariat from the PKF consulting team were tasked with (a) Phased staffing of the proposed new structure through sourcing of staff both internally and externally by job matching and interviews (b) redeployment of the staff who do not fit into the new structure and (c) advising, guiding, supporting and oversighting the projects progress.

3002. The Consultant PKF Kenya and the Task force committee of the DC and DB Trustees carried out a briefing session to the Scheme Secretariat on the upcoming changes in the organization structure by sharing the (a) the new organization structure (b) job roles (c) process of filling in the positions and (d) the salary structure.

3003. The committee advertised all positions in phases through the Nation and Standard newspapers in March 2020 and August 2020. The first four management positions were filled by December 2020 with three of the managers reporting in early December 2021 and the fourth manager reporting on 20th January 2021. The four managers recruited in this phase were Pension Scheme Administrator, Manager Finance and Investments, Manager Benefits and Manager ICT and Records.

3004. The next level officers, who were nine in number, reported on 11th January 2021 and the final level of nine assistants and two supporting staff reported on 11th February 2021. The internal auditor from KPA was hired on contract to help in transitioning. The total number of staff recruited is 25.

3005. The handing over process was implemented in phases from January to May 2021. All sixteen (16) staff from the old Pension team were deployed back except two (2) who applied and were retained in the new team. As the Scheme took on a new outfit, a fresh organization structure had been instituted with fresh appointments of its staff in the year 2020.

3006. There was no further support by the KPA- the sponsor on administration costs as the board of trustees now pays all the staff in the secretariat.

Committee Observations

3007. **The Committee made the following observations:**

(i) The matter was adequately addressed as raised in the query.

(ii) However, it was not clear whether the pension had refunded the KPA expenses incurred by KPA before separation of functions.

Committee Recommendation

3008. **The matter was resolved.**

PROPERTY PLANT AND EQUIPMENT (FY 2017/2018)

3009. The statement of financial position as at 30 June 2018 reflected property, plant and equipment balance of KSh.144,614,772,000 as detailed in note 11 to the financial statements. The following observations were made:

Alienated Properties

3010. As similarly reported in the previous year, the statement of financial position as at 30 June 2018 reflected property plant and equipment balance of KSh.144,614,772,000. The Property, Plant and Equipment balance included land leased valued at KSh.6,162,840,000 and land and buildings balance of KSh.22,354,767,000.

3011. Information availed for audit review indicated that twenty-nine (29) properties belonging to the Authority had been invaded by third parties. Management indicated that third parties had purportedly acquired ownership rights over the properties and undertaken development.

However, the Authority had filed suit in various law courts which were pending determination.

3012. Further, out of these twenty-nine (29) properties, only nine (9) properties had values totaling to KSh.313,400,000 while twenty (20) properties were included in the fixed assets register at nil values. Consequently, the property plant and equipment balance of KSh.144,614,772,000 as at 30 June 2018 was therefore not fairly stated.

Management Response.

3013. As previously reported, the Authority had filed several cases as listed in the table below. The total number of plots belonging to KPA that had been irregularly alienated to third parties was 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 informed the Authority it had published a notice listing parcels illegally alienated from KPA and gave the registered parcel owners 90 days to vacate the parcel.

3014. 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 KPAs original parcels by creating new ones in the names of private parties 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.

3015. 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 is attached.

3016. The table below summarizes the status of these plots:

	Plot No.	Allocated To	Revalued Amount (KSh)	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 take a hearing date at the Registry. Matter is listed for hearing of a 1st defendants Application dated 11th July 2019 for withdrawal from acting for their client in second half of 2021	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 A.B. Patel & Patel Advocates.
2	XLVII/112 0.7503 Acres	Stone Wave Limited P.O. Box 82576 Mombasa	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	HCCC NO. 499/01 A.B. Patel & Patel Advocates

		Directors Abbasali A.G. Dossa Naushad A. Merali		not siting. The case was fixed for hearing on 28th March 2019. Court directed that the Intended Interested Party's application to be enjoined to the suit. Matter was listed for mention on 8th March 2021 to take directions. Parties have filed their documents save for the Attorney General who sought leave to enable him file his documents, which leave was granted and the court ordered the matter to be mentioned on 15th June 2021 to confirm compliance by the Attorney General and fixed the hearing in the second half of 2021.	
3	XLVII/113 0.535 Acres	Supernova Properties P. O. Box 82077 Mombasa Directors	65,000,000	An office block has been constructed on the plot. Application to consolidate this case and further directions was on 19th February 2019 Court directed that the	HCCC NO. 40/05 A.B. Patel & Patel Advocates

		Ashok L.Doshi Doshi Group of Companies		application to have the suit 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 Matter was fixed for mention on 9th June 2021 to take directions in ELC Nos. 41, 42 & 43 of 2005 and for hearing of the 1st Defendant's Applications to dismiss the suit as against it in ELC No. 40 of 2005. The application which was filed in Court for consolidation of all these matters under ELC No. 40 of 2005 is still pending. The court granted 30 days for the plaintiff's (KPA) advocate file additional witness statement in Case Nos. 41, 42 & 43 of 2005 and fixed the matter for	

4				mention on 30th September 2021 to confirm compliance by plaintiffs (KPA). The 1st Defendant's Application seeking to have the suit against it dismissed for want service of summons in ELC No. 40 of 2005 has been fixed for hearing in the second half of 2021.	
4	XLVII/114 0.363 Acres	**Santunia** Limited P. O. Box 87270 Mombasa	37,500,000	A boundary stone wall has been built. 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 Matter was fixed for mention on 9th June 2021 to take directions in ELC Nos. 41, 42 & 43 of 2005 and for	HCCC NO. 40/05 A.B. Patel & Patel Advocates Same as 1 above

				hearing of the 1st Defendant's Applications to dismiss the suit as against it in ELC No. 40 of 2005. The application which was filed in Court for consolidation of all these matters under ELC No. 40 of 2005 is still pending. The court granted 30 days for the plaintiff's (KPA) advocate file additional witness statement in Case Nos. 41, 42 & 43 of 2005 and fixed the matter for mention on 30th September 2021 to confirm compliance by plaintiffs (KPA). The 1st Defendant's Application seeking to have the suit against it dismissed for want service of summons in ELC No. 40 of 2005 has been fixed for hearing in the second half of 2021.	
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	HCCC No.43/05 A.B. Patel & Patel Advocates

				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 Matter was fixed for mention on 9th June 2021 to take directions in ELC Nos. 41, 42 & 43 of 2005 and for hearing of the 1st Defendant's Applications to dismiss the suit as against it in ELC No. 40 of 2005. The application which was filed in Court for consolidation of all these matters under ELC No. 40 of 2005 is still pending. The court granted 30 days	

				for the plaintiff's (KPA) advocate file additional witness statement in Case Nos. 41, 42 & 43 of 2005 and fixed the matter for mention on 30th September 2021 to confirm compliance by plaintiffs (KPA). The 1st Defendant's Application seeking to have the suit against it dismissed for want service of summons in ELC No. 40 of 2005 has been fixed for hearing in the second half of 2021.	
6	XLVII/117 0.558 Acres	Nature System Limited P. O. Box 19002 Nairobi Directors Abdul-Gaffur Abdulgani Pastor Abdulgani Abdul-Gaffur Pastor	63,000,000	Boundary wall had been 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. A company known as Red Sparrow limited has applied to be enjoined as a Defendant claiming that it is the registered owner of the	HCCC No. 496/01 A.B. Patel & Patel Advocates

				suit property. Suit was for recovery of the title. It was transferred from the High Court to the ELC and is currently awaiting directions of the Court regarding hearing of KPA's case.	
7	XLVII/118	TSS Grain Millers P. O. Box 85039 Mombasa	114,500,000	An office block had been constructed on the plot. 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 fixed for hearing on 25th September 2019 and the other seeking to have the suit against the 1st Defendant dismissed Matter was fixed for mention on 9th June 2021 to take directions in ELC Nos. 41, 42 & 43 of 2005 and for	HCCC No.41/2005 A.B. Patel & Patel Advocates

				hearing of the 1st Defendant's Applications to dismiss the suit as against it in ELC No. 40 of 2005. The application which was filed in Court for consolidation of all these matters under ELC No. 40 of 2005 is still pending. The court granted 30 days for the plaintiff's (KPA) advocate file additional witness statement in Case Nos. 41, 42 & 43 of 2005 and fixed the matter for mention on 30th September 2021 to confirm compliance by plaintiffs (KPA). The 1st Defendant's Application seeking to have the suit against it dismissed for want service of summons in ELC No. 40 of 2005 has been fixed for hearing in the second half of 2021.	
8	XLVII/179 0.0336 Ha	Akaba Investment P. O. Box 8997	18,200,000	Construction had commenced but was stopped by a court order. KPA has obtained judgment	HCCC No.124/01 Cootow & Asscoiates

		Mombasa Directors Abdikarim Shigog		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. Court delivered its ruling on 27th February 2019 restraining the defendants from developing and/or dealing with the suit property The appeal matter came up on 28th April 2021 before the Court of Appeal for purposes of withdrawal of the Appeal by the Appellants in terms of the consent dated 3rd February 2021. The same was adopted as an order of the Court. Matter marked as settled.	

9	1/469 0.2501 Ha	Hydery (P) Limited P. O. Box 82576 Mombasa Masumali G. Merali Naushad A. Merali	Not Revalued	Warehouse built on plot. This was a road reserve There are two Applications pending before Court: One filed by KPA & KPAPS for contempt of 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.	No court case filed as yet awaiting judgement on the related cases to be used as a test case.
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 has 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 proceed because the matter was not listed. The Court directed parties to take a	HCCC No. 497/01 A.B. Patel & Patel Advocates

				hearing date at the Registry. Matter listed for mention on 8th March 2021 to take directions. Parties have filed their documents save for the Attorney General who sought leave to enable him file his documents, which leave was granted and the court ordered the matter to be mentioned on 15th June 2021 to confirm compliance by the Attorney General and fixed the hearing of the matter in the second half of 2021.	
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	HCCC No. 498/01 A.B. Patel & Patel Advocates

				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. Matter listed for mention on 8th March 2021 to take directions. Parties have filed their documents save for the Attorney General who sought leave to enable him file his documents, which leave was granted and the court ordered the matter to be mentioned on 15th June 2021 to confirm compliance by the Attorney General and fixed the hearing of the matter in the second half of 2021.	
12	XXVI/1001 0.1805 Ha	Wayland Limited P. O. Box 12416 Nairobi Directors	37,000,000	KPA house occupied by OCPD Port. The case is now fixed for hearing on 28th March 2019. Matter fixed for further mention in the second half of 2021	HCCC No. 500/01 (Now ELC. No. 211 of 2018) A.B. Patel & Patel Advocates

		Not on company registry database Geometer Ltd – Directors Gordon Wayumba , Alice Ochieng , Francis Odhiambo			
13	XLVII/149	Osman Taraab and Zera Taraab	61,500,000	Plot created out of an access road as depicted in the excerpt of the Mombasa County Cadastre	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 Directors Ashok L.Doshi Doshi Group of Companies	55,000,000	The plot is "created" off the access road to Dockyard. Not just the road reserve but part of the road.	No court case filed as yet awaiting judgement on the related cases to be used as a test case.

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 Directors 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	Plot created out of a road reserve in front of plot XLVII/84 belonging to KPA and on long term lease to Oceanfreight EA Limited. The plot cuts off plot 84's frontage and access to Moi Avenue.	As above
20	XLVII/162 0.0451 Ha	Vanezia 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.	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 opposite Bandari College. Boundary wall and buildings.	Railway siding plots allocated to private individuals. No cases have been filed.
22	XLVII/164	As above	40,000,000	As above	As above

	0.500 Ha				
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. Plot without access.	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 available for perusal.

Committee Observations

3017. **The Committee made the following observations:**

(i) **This matter was addressed in the PIC's 23rd Report that called for expeditious conclusion of pending cases in Court.**

(ii) **It was however noted that minimal progress had been made so far.**

Committee Recommendation

3018. **The Committee recommends that the Committee on Implementation should follow-up implementation of the PIC's recommendation on this matter.**

Land Without Documents of Title

3019. As reported in the previous year, included in the property, plant and equipment balance of KSh.144,614,772,000 for the year ended 30 June 2018 is land and buildings valued at KSh.22,354,767,000 owned by the Authority. Documents availed for audit review indicated that the Authority did not have title deeds for thirty-four (34) parcels of land valued at KSh.3,478,490,000.

3020. Although the Management engaged a private consultant in the month of May 2017 to conduct verification of all its properties, the report of the consultant was not availed for audit review.

Management Response

3021. As previously reported, indicated is land with no titles. 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. We could not thus lodge the searches.

The KPA therefore wrote to the Land Registrar to ensure he avails the files. Further, KPAfiled cautions to protect the interests of the Authority.

3022. On 26th July 2019 the four plots were gazette and an application for provisional certificate of title deed will be submitted to the Mombasa lands office upon expiry of the 60 days. Details of the plot and gazette notice were (refer to Appendix 12) shown below:

- Notice No 6899 for MSA/Block/XLVIII/131
- Notice No 6900 for MSA/Block/XLVIII/558
- Notice No 6901 for MSA/Block/I/315
- Notice No 6902 for MSA/Block/XLVIII/156

3023. Some plots were grabbed from the Authority and had cases in court while others were consolidated/subdivided leading to new titles. The rest of the plots had titles (Copies of the titles were provided).

3024. The Authority had encountered several challenges in the pursuit of its irregularly alienated land. Some of the challenges had been manifested in foregoing brief. Others were:

1) Lack of Cooperation from the Land Registry.
2) Adverse legal advice by the Commissioner of Lands.
3) Loss of records in the Land registry/missing record cards.
4) Lack of implementation of the recommendations made the Ndung'u report which was a government intervention.
5) Difficulty in service of court pleadings due lack of particulars of the allottees.
6) Conflict of opinion as between KPA and government advisers. The defenses by the beneficiaries of the irregular allocation and the Attorney General on behalf of Commissioner of Lands and the Chief Land Registrar appear geared towards supporting the illegal and irregular allocation of the contentious public lands to private companies, to the detriment of KPA.
7) Delay in hearing of court cases due to myriad of reasons including:

(i) A number of interlocutory applications were filed in the cases and their conclusions took time. These applications must be heard before hearing of the main suit;

(ii) In the years under reference (2001 to 2012) the court diaries used to fill up very early in the year and getting hearing dates was a challenge;

(iii) Disappearance of court files from the court registries necessitating reconstruction of skeleton files. Leave of the court is required in such instances.

(iv) Several Lead counsels leaving law firms and in one instance, demise of the lead counsel.

3025. Management confirmed that it used best efforts to reclaim the lands. These efforts included seeking various interventions from the government which unfortunately did not yield the desired results. A decision was thus made to let the law take its course.

Committee Observations

3026. **The Committee made the following observations:**

(i) This matter was addressed in the PIC's 23rd Report that called for expeditious conclusion of pending cases in Court and that the KPA secures her property by securing ownership documents.

(ii) It was however noted that minimal process has been made so far.

Committee Recommendation

3027. **The Committee recommends that the Committee on Implementation should follow-up implementation of the PIC's 23rd Report recommendation on this matter.**

Idle Parcels of Land

3028. As reported in the previous years, the property plant and equipment balance of KSh.144,614,772,000 as at 30 June 2018 included fourteen (14) pieces of land measuring about 263.47 hectares and valued at KSh.660,932,445 which were not utilized. Although the management had indicated the proposed action plan for each parcel of land, the actions had not been executed and status remained as reported in the previous year.

Management Response

3029. As previously reported, actions taken by Management and current status of the fourteen (14) unutilized plots were as explained here below.

(a) Details of 7 parcels of land that are so far secured are;

<table>
<tr><th>No</th><th>Description</th><th>Asset No.</th><th>Revalued Amount (KSh)</th><th>Value during Audit (KSh)</th><th>Current Status and Risk Exposure</th></tr>
<tr><td rowspan="3">i</td><td rowspan="3">Plot No. MSA/XLVII/81, 82 & 83; 1.466 Acres Housing the White House Buildings, Mombasa</td><td>170143</td><td>67,500,000</td><td>29,700,000</td><td rowspan="3">The three plots had a leasehold title for a term of 99 years with effect from 1st April, 1991. They were 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 had been completed, the next stage was design and construction.</td></tr>
<tr><td>170144</td><td>67,200,000</td><td>26,000,000</td></tr>
<tr><td>170145</td><td>54,500,000</td><td>28,680,000</td></tr>
<tr><td>ii</td><td>Plot No. LR/16121; 2.5 Ha; Located at Shimoni, Kwale</td><td>170159</td><td>20,500,000</td><td>9,325,550</td><td>The plot was acquired in 1994, was vacant and fenced in preparation for Shimoni port development whose feasibility study had been completed.</td></tr>
</table>

					The National Treasury approved the Public Private Partnership (PPP) and the Authority was going on with the project. However, the site was not the same.
iii	Plot No. MN/V/1683; 1.018 Ha Located at Miritini, Mombasa	170158	42,500,000	6,288,695	The parcel was bought in April 1994 and was vacant. The Board had, in 2014, considered disposal of the parcel. KPA will further engage the Parent Ministry and NT for approval to dispose and whether there was viable use of the same in line with KPA's masterplan. The plot was heavily infested with squatters.
iv	Plot No. MN/V/196; 63 acres, Located at Jomvu Kuu, Mombasa	170036	850,000,000	63,000,000	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 also been instructed to institute a civil suit to evict the squatters. KPA had also identified an

					Auctioneer (Siuma Auctoneers) to evict the squatters and consultations were underway.
v	Plot No. MN/17944/45; 2.4 Ha, Located in Kisumu	170234	13,500,000	3,600,000	The two parcels were acquired in 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.
		170235	13,500,000	3,600,000	
vi	Plot No. LR 24588; 9.182 Ha, Located in Malaba	170233	48,250,000	19,650,000	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	25,250,000	2,500,000	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 was reserved for future port development (ICD)
	TOTAL		**1,202,700,000**	**192,344,245**	

(b) Actions taken by Management on the other seven (7) parcels of land are as follows.

	Description	Asset No.	Revalued Amount (KSh)	Value during Audit (KSh)	Current Status and Risk Exposure
i	Plot No. MN/III/528/E; 173.6 Ha, located at Takaungu, Kilifi	170232	1,100,000,000	233,783,200	The plot was bought in October 1993. Part of it is occupied by squatters. A proposal to resettle squatters on part of the plot to forestall further encroachment was not approved by the government. 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 has also been instructed to institute a civil suit to evict the squatters.
ii	Plot No. LR/9093; 7 Ha, Located in Malindi	170160	85,000,000	66,585,000	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 has emerged the KAA was expanding the Malindi Airport and land featured among the list of parcels to be affected by the expansion. KPA has notified the KAA of its claim to the encroached parcel.
iii	Plot No. MS/46/I; 5.073 Ha, Located at Likoni; Mombasa	170225	37,500,000	25,000,000	The plot was bought in October 1991 and is an open field utilized as a football pitch by the locals. Management plans to either offer the plot for sale to the Kenya Navy or sell it as per the Public Procurement and Disposal of Assets Act.
iv	Plot No. MS/1682/I; 2.708 Ha, located at Likoni, Mombasa	170238	42,500,000	26,765,000	The plot was acquired in 1994 and is partly occupied by squatters but a large portion is being used by the Community as playing ground. The Authority will be developing the open grounds into a pitch as part of its CSR. Preparation of BQ's is underway to enable tendering and survey map is attached.

v	Plot No. MS/137/II; 2.46 Acres, Located at Mtongwe, Mombasa	170226	33,000,000	21,600,000	This plot was acquired in 1991 and was being used by a youth group as a fish landing site and farming. The Board approved granting of lease for 33 years to M/s Midland Energy Limited, who agreed to remove the group. Midland have gone quiet on the matter. However following the opening of the Mtongwe ferry a public road has been created to serve the Mtongwe ferry area and we are engaging the county in this regard with a view to resurveying the land for informed decision making on future use of the plot.
vi	Plot No. MN/V/1614; 2.5 Ha, Located at Kibarani, Mombasa	170239	432,500,000	18,820,000	The plot, acquired in 1992, is occupied by squatters. The Board had in 2014 approved disposal by advertisement. We have instructed the firm of Sisule Munyi Kilonzo & Associates Advocates to institute a civil suit to evict the squatters before we can dispose.

vii	Plot No. MN/VII/3794; 12.24 Ha, located at Chaani, Mombasa	170224	1,450,000,000	90,735,000	This land is held on leasehold for 99 years with effect from 1st July, 1993. It is currently occupied by squatters who have put up permanent and semi-permanent buildings. We have instructed the firm of Miller & Company Advocates to institute a civil suit to evict the squatters before we can dispose.
	TOTAL		**3,180,500,000**	**483,288,200**	

<u>Committee Observations</u>

3030. **The Committee made the following observations:**

(i) This matter was addressed in both the 22nd and 23rd PIC reports with recommendations that the KPA puts into economic use the idle pieces of land.

(ii) It was however noted with concern that the PIC's recommendations remained largely unimplemented.

<u>Committee Recommendation</u>

3031. **The Committee recommends that the Committee on implementation should follow-up on implementation of the PIC's 22nd and 23rd Reports on the matter of KPA's idle land.**

<u>Reclaimed Land</u>

<u>Excision of Part of Harbor Area</u>

3032. As similarly reported in the previous financial year, KPA tariff book pronounced all the tidal waters encircling the Mombasa Island as Harbour Area. However, a firm of private developers had reclaimed part of the waters encircling the island adjacent to the Kenya Ports Authority offices.

3033. The Authority vide a letter Ref TSM/3/1/03 dated 20 September 2010, inquired from the developer the reason for reclaiming land which had not been communicated to the Authority. On 17 December 2015, the National Land Commission vide letter Ref NLC/CHAIRMAN/VOL.Xlll/310 indicated to the developer that some of land parcels ref LR NO.MNNl/4789, LR NO. VI 4180, 3819 and 3823 were reclaimed and which, according to the Commission, amounted to allocation that had to be sanctioned by the Commission. The Commission requested for letter of application for and approval to reclaim the land. The Commission further instructed immediate cessation of any development on the subject land and its environs until determination of the matter.

3034. In the year under review, the Authority did not provide any indication that the National Land Commission had sanctioned reclamation of the land and that the Minister responsible for transport had permitted change of the harbor area as required by Section 34 of the Kenya Ports Authority Act Cap 391.

3035. The developer, therefore, illegally excised part of the harbor area and has proceeded to develop the same against the instruction issued by the National Land Commission.

<u>Management Response</u>

3036. As previously reported, 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. Additionally, a Terms of Reference was being prepared for a consultant/surveyor to map the harbour limits.

3037. 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 plot's boundaries. The National Land Commission, through letter dated 17th December, 2015, also addressed the firm and asked them to stop the reclamation. They were the ones mandated by law to intervene.

<u>Committee Observations</u>

3038. **The Committee made the following observations:**

(i) **This matter was addressed in the PIC's 23rd Report with a recommendation that the National Land Commission revokes the titles for the alleged third parties and issue them to the KPA.**

(ii) **It however appears that this recommendation had not been implemented by the time the Committee was compiling this report.**

Committee Recommendation

3039. **The Committee recommends that the Committee on Implementation should follow-up implementation of the PIC's 23rd Report Recommendations.**

Approval of Access Road

3040. As similarly reported in the previous financial year, the Authority's Board approved the construction of a road linking the reclaimed parcels of land by the same developer to the Port through a defined route on parcel MSNBLOCK 1/691 which was reclaimed through dumping material from the Port. The road was restricted for use by the developer only who had installed a weighbridge and an office. 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.

3041. The management had not explained how the developer applied for and acquired title for the irregularly reclaimed land on behalf of the Authority and who authorized the management to initiate the transaction. The Authority therefore violated Part IV Section 8(e) of Kenya Ports Authority Act, (Cap 391) of 1978 that required the Board to ensure that *'no particular person or body is given any undue preference or is subjected to any undue disadvantage'*.

3042. In light of the foregoing, it was not possible to ascertain the accuracy, completeness and ownership of the property, plant and equipment balance of KSh.144,614,772,000 and that the balance was fairly stated as at 30 June 2018.

Management Response

3043. As previously reported, the Developer applied through letter to the Authority as acknowledged in KPA letter Ref. TSM/3/1/03 dated 23rd December 2008. Approval was given by the Board as indicated in the KPA letter to Multiple Hauliers Ref. TSM/3/1/03 dated 11th January 2011.

3044. 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.

Committee Observations

3045. **The Committee made the following observations:**

(i) The explanation given by management that approval by a third party to construct the road was granted by the Board did not respond to the matter in question as the audit issue related to failure to obtain the requisite approvals from the Mother Ministry and not the Board.

(ii) It was further noted that the KPA management failed to regularize such approvals from the mother Ministry and therefore was in violation of the law.

Committee Recommendation

3046. **The Committee recommends that the accounting officer of the KPA should seek belated ministerial approval of the impugned access road and ensure that it was available for usage by the public.**

Assets Disclosed on Estimated Values

3047. Note 11 to the financial statements for the year ended 30 June 2018 reflected equipment, motor vehicles and furniture balance of KSh.24,007,820,000, which included assets additions of KSh.7,297,741,000. This included assets additions of KSh.1,882,918,233 in respect of assets donated by the National Government through Kenya Railways Corporation. However, no documents were provided to support the values of the donated assets.

3048. Consequently, the accuracy and completeness of assets valued at KSh.1,882,918,233 included in the property, plant and equipment as at 30 June 2018 could not be confirmed.

Management Response

3049. The Authority wrote to Kenya Railways Corporation (KRC) requesting for a formal list with values of all the assets handed over under the KRC-SGR project. A reminder was sent to KRC to provide the transfer values and ownership documents. The Authority engaged a valuer to determine their values.

Committee Observations

3050. **The Committee made the following observations:**

(i) It was not clear to the Committee how the value of KSh 1.883 million of assets added to the KPA Assets and alleged to have been handed over by the National Government from SGR was arrived at considering that there was no valuation done.

(ii) The reflected figure of assets was therefore misleading.

Committee Recommendation

3051. **The Committee recommends that the accounting officer for the KPA should ensure valuation of assets added to KPA assets and coming from SGR should be valued and an accurate figure reflected in the KPA's books of account.**

Work in Progress

3052. Note 11 to the financial statements for the year ended 30 June 2018 reflected work in progress (WIP) balance of KSh.26,660,435,000 out of which KSh.16,301,660,274 was in respect of Lamu Port Project funded by National Government Grants. However, Lamu Port land costing KSh.1,925,347, 735 was not included in the property, plant and equipment balance of KSh.144,614,772,000 as at 30 June 2018.

3053. Further, during physical verification of the construction works at Lamu Port in the month of October 2018, it was observed that the Project Affected Persons, were still occupying the land despite receipt of full compensation. In addition, a schedule of compensation of beneficiaries provided by the Authority indicated an amount of KSh.1,304,487,369 which varied with KSh.1,925,347,735 which wass included in the work in progress resulting to a variance of KSh.620,860,366. The discrepancy of KSh.620,860,366 has not been explained or reconciled.

3054. Consequently, the accuracy and completeness of the WIP balance of KSh.26,660,435,000 as at 30 June 2018 and the propriety of KSh.620,860,366 paid to Project Affected Persons could not be confirmed as at 30 June 2018.

Management Response

3055. Contrary to the observation made, Lamu port project land was included in the PPE schedule at the value of KSh 1,925,347,734.70. The amount was compensation to Project Affected Persons (PAPs) done by the National Lands Commission (NLC).

3056. Total compensation for PAPs through the NLC was KSh 1,925,347,734.70 paid out as KSh 1,319,586,674.55 in February 2015, KSh 576,857,791.65 in July 2015 and KSh 28,903,268.50 in May 2017. Attached is the list of PAPs compensation.

Committee Observations

3057. **Though the management satisfactorily responded to the issue of variances in compensation and capitalization of the acquired land, there was no response on why the Project Affected Persons were still occupying the land for which they were compensated for.**

Committee Recommendation

3058. **The Committee recommends that the accounting officer for the KPA should ensure that all the Project Affected Persons that were duly compensated vacate the land for construction of lamu port within three months of adoption of this report.**

INTANGIBLE ASSETS (FY 2017/2018)

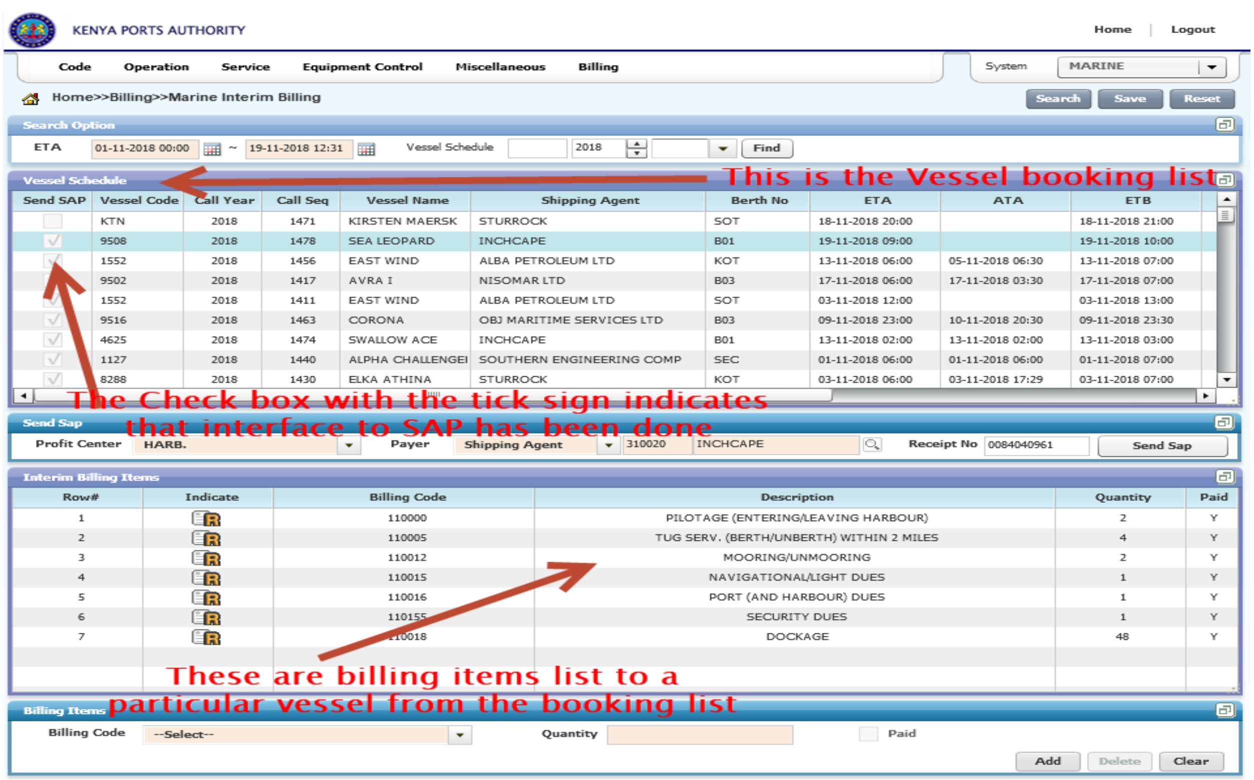
3059. Note 13 to the financial statements as at 30 June 2018 reflected intangible assets balance of KSh.675,383,000. Included in this balance was KWATOS marine operation module procured at a cost of KSh.52,797,750 (US$. 522,750). However, as at the time of audit in the month of October 2018, the marine module was not operational despite the Final Acceptance Certificate having been signed on 8 August 2009, an indication that the system had been idle for the last nine years. Further, the Authority had continued incurring annual maintenance cost of KSh.15,913,257 (US$ 157,557).

3060. Consequently, the accuracy and value for money of the intangible assets balance of KSh.675,383,000 as at 30 June 2018 could not be confirmed.

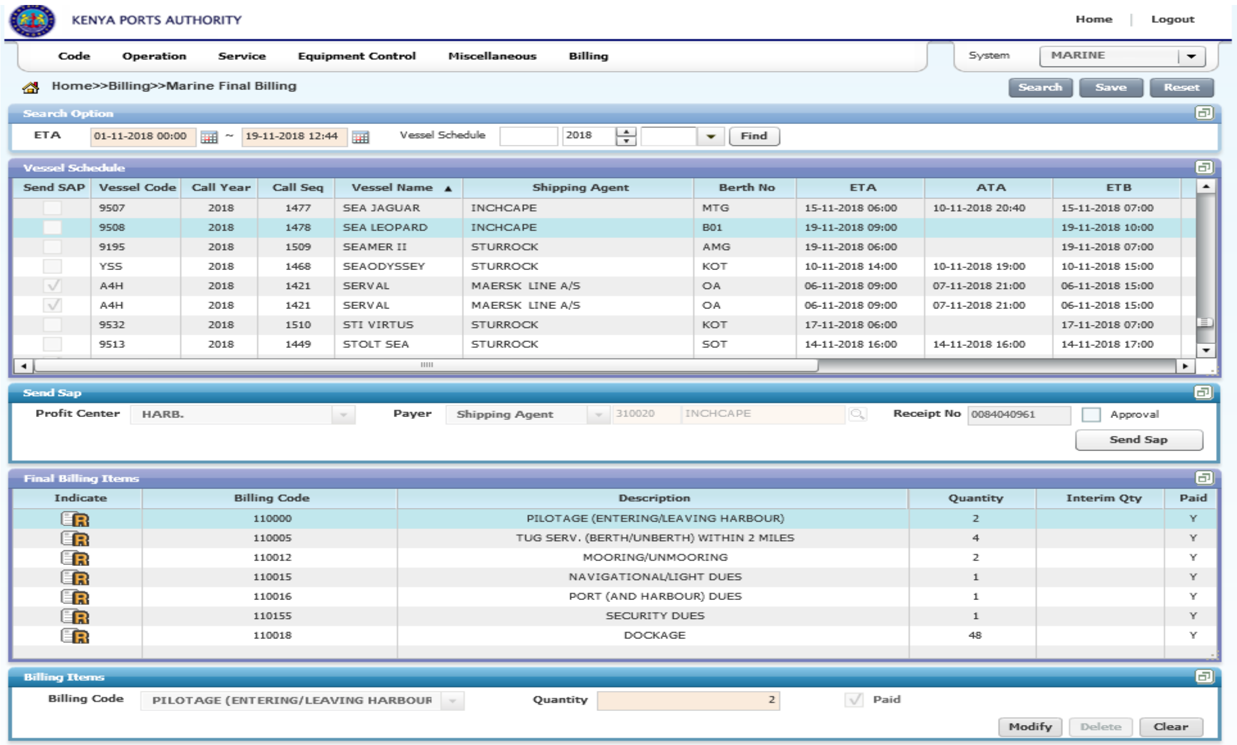
Management Response

3061. As previously reported, the marine operations module in KWATOS was operational as explained and seen from the screenshots below. The module was being utilized for sending billing information. Hard copies of the bill's information was maintained for record and verification purposes. The maintenance costs were thus valid & duly incurred.

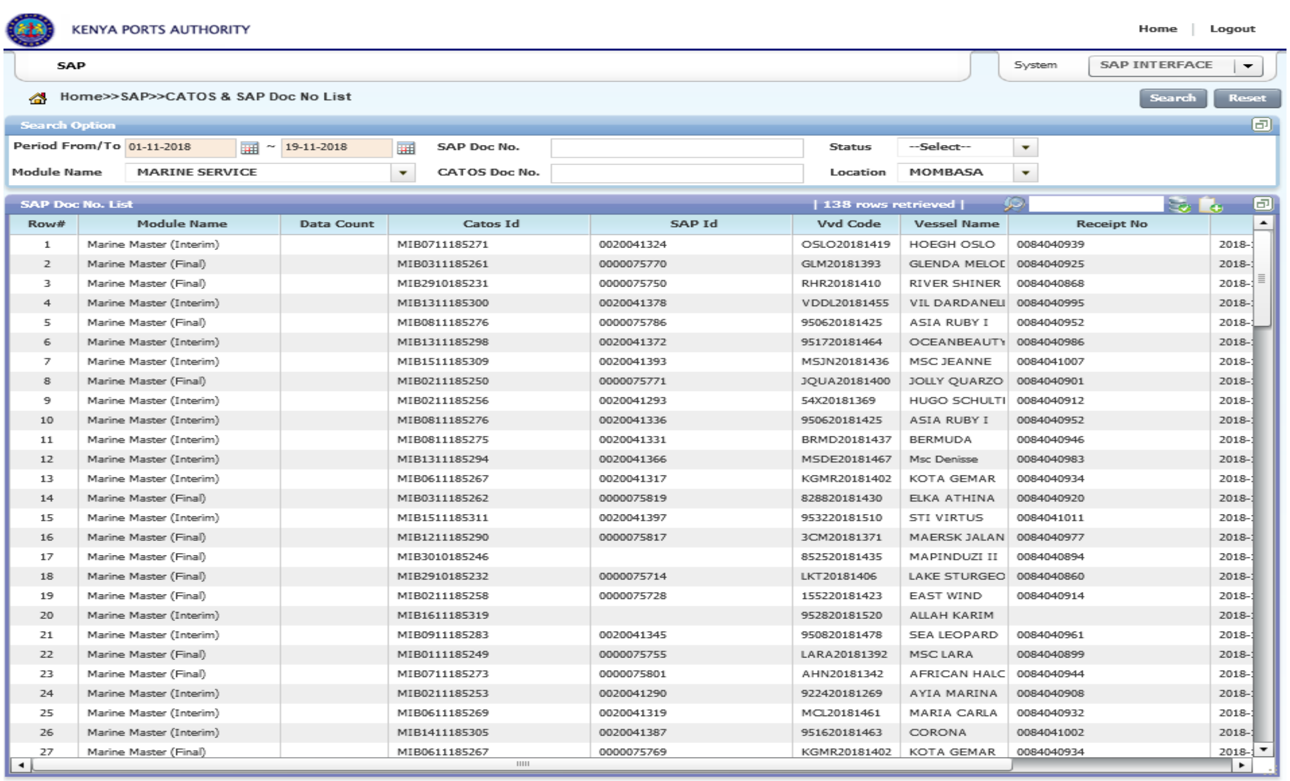
(i) This first screen is mainly for creation of interim Bills for expected vessel calls. (Marine Interim Billing Screen). This ensures that the standard charges are prepared even before the vessel arrives and secured before the vessel leaves.



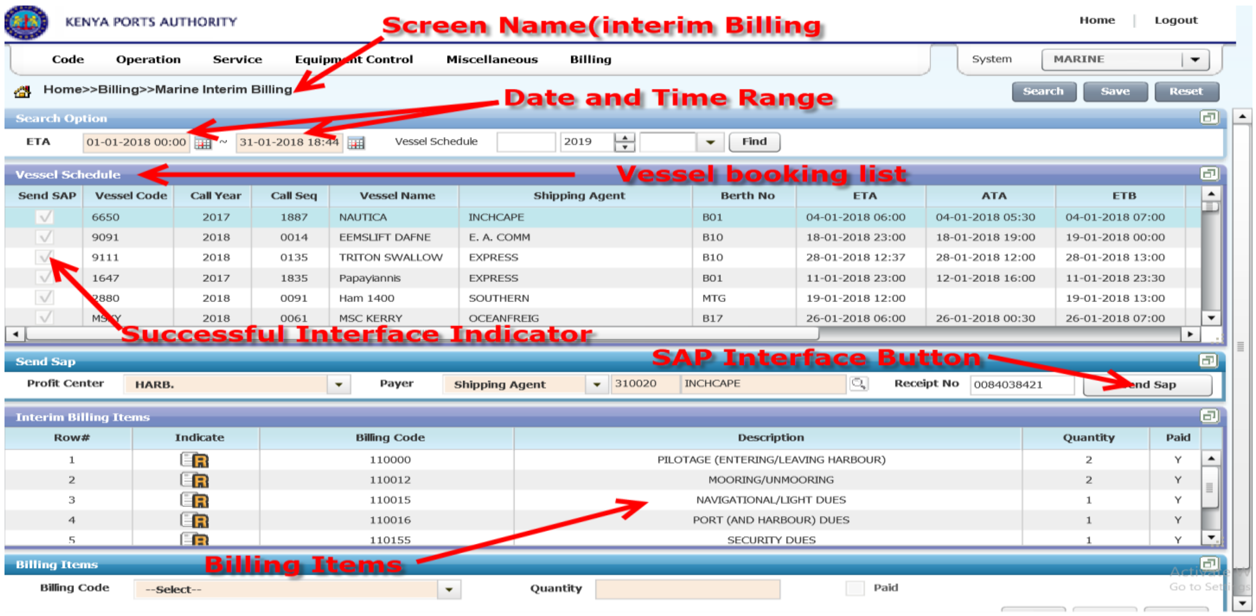
(ii) The second screen is for final Billing of vessels after the vessel has left the port. (Marine Final Billing Screen).

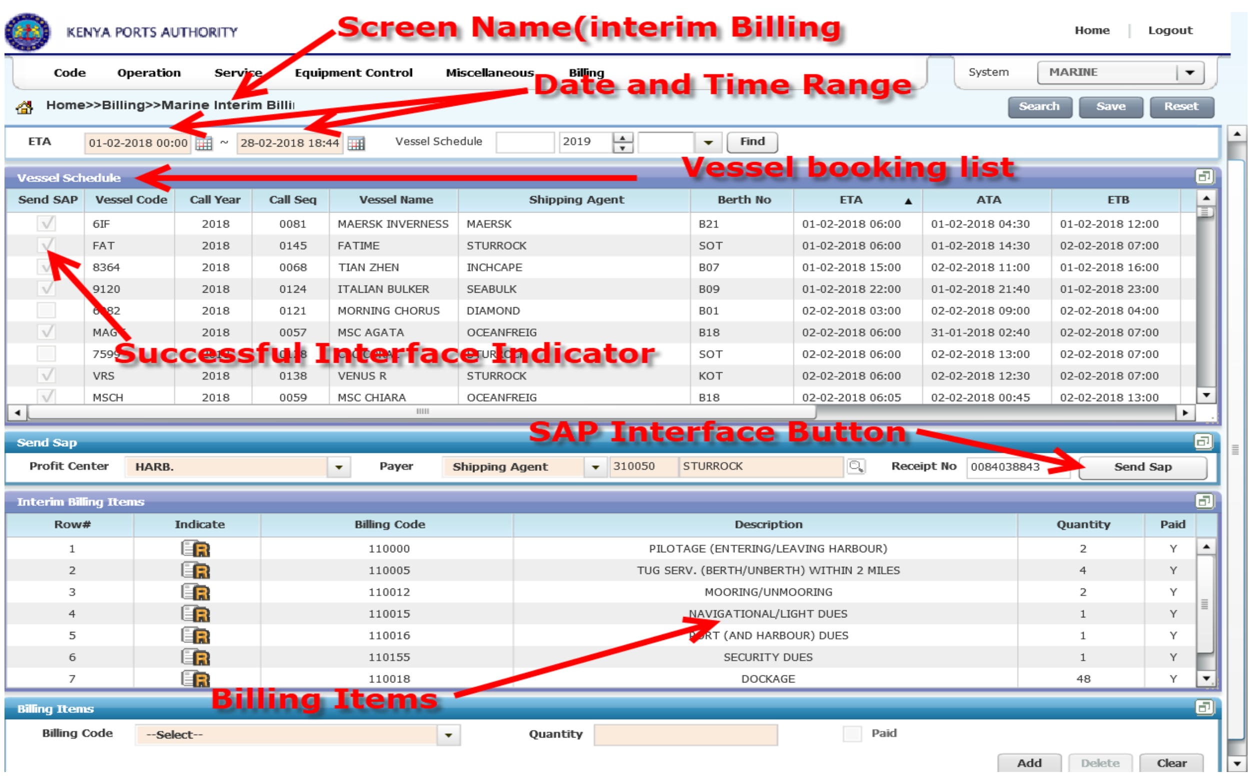


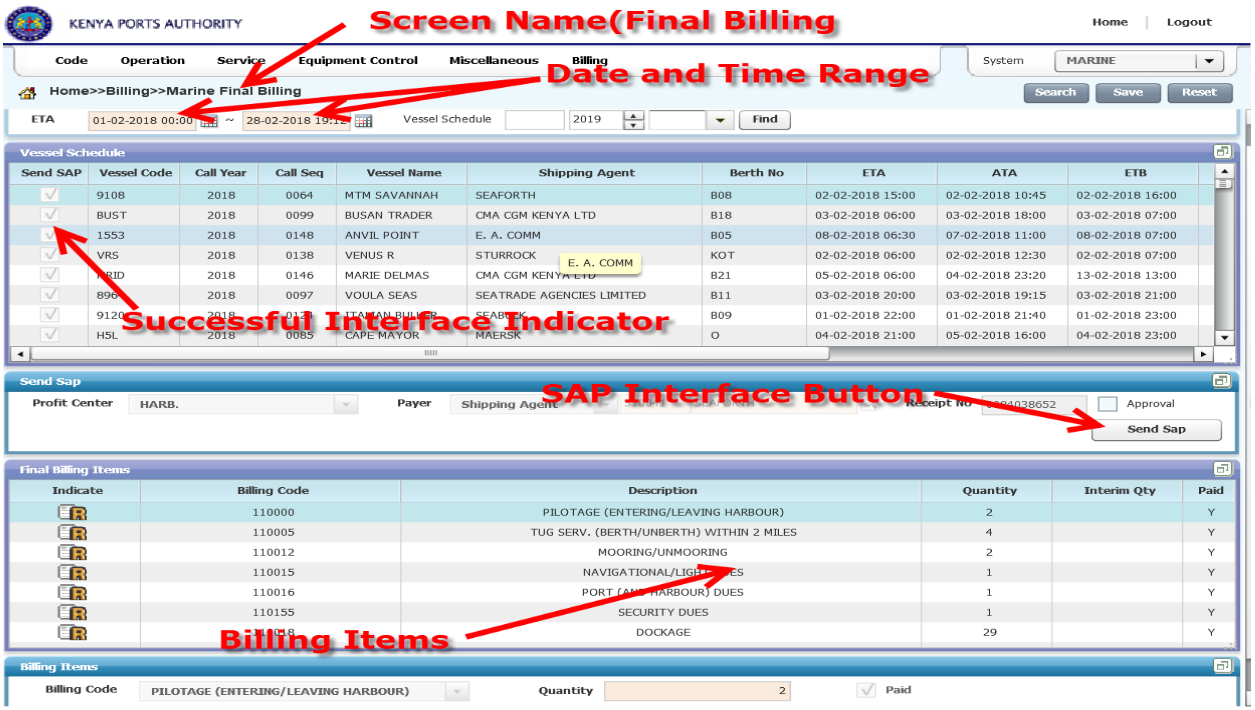
(iii)Screen number three is the SAP interface screen which receives information from the two previous screens from the Marine module: (CATOS & SAP Doc No List).



Further, see below screenshots for period before June 2018 as evidence that the module was operational.







Committee Observations and Recommendation.

3062. **The Committee noted that the explanation offered by management was satisfactory as the marine billing system was confirmed to be working. The matter was resolved.**

RECEIVABLES AND PREPAYMENTS (2017/2018)

Long Outstanding Receivables

3063. As reported in the previous financial year, the receivables and prepayments balance of KSh.14,500,357,000 as at 30 June 2018, included KSh.287,231 ,000 owed by the Ministry of Transport (Treasury/Dredgco Limited) that had been long outstanding. However, the management had fully impaired this amount owed by the National Government.

3064. Further, included in the balance was trade receivables comprising of cargo, marine and rent receivables of KSh.91,256,373, KSh.827,938,040, KSh.45,076,821 respectively. A review of the aging analysis indicated that KSh.964,271,233 had been outstanding for more than 1 year while the Authority continued to be engaged in business with the debtors.

3065. Under the circumstances, the accuracy and completeness of the receivables and prepayments balance of KSh.14,500,357,000 as at 30 June 2018 could not be confirmed.

Management Response

3066. As reported earlier, the amount paid to Dredgco Ltd was a government directive through the Ministry of Transport and the National Treasury. The Authority was yet to receive approval from the National Treasury and the parent Ministry on the write-off or resolution of this matter. A follow-up letter was done in April 2019 regarding the same.

3067. Trade receivables totaling KSh 964,271,233 had been outstanding for more than 1 years, the amount constituted of cargo, marine and rental debtors of KSh. 827,938,040, KSh. 91,256,373 and 45,076,821 respectively. The debts had been outstanding due to disputed bills and some were subject to ongoing court of law proceedings. The Authority had constituted a debt recovery committee to aggressively pursue the debts and review the current operational challenges with an aim of reducing the overall disputes. Nonetheless and to ensure recovery, KPA continued to do business with them as it had seen cases where customers had gone to court seeking injunction compelling KPA to allow them to continue operating and estopping collection of debt. In view of this inefficiency the prudent thing to do was to negotiate, persuade and threaten. Demand notices were issued and currently a new credit policy had been approved by the Board but was awaiting adoption and sensitization of customers.

3068. Also, included in the amount was Kenol Kobil and Kobil Petroleum Ltd dispute of KSh. 134,684,891 and KSh. 431,289,649.09 respectively. The Authority filed legal proceedings to recover the debts, which total to KSh. 561,526,399 or over 58% of the outstanding trade debtors. The matter was still pending in court under cases Nos. HCC no 128 of 2004 and HCC no. 216 of 2009.

3069. On 17th December 2018, the Court directed that the case should be referred for mediation. On 15th January 2019, the Authority also 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.

3070. On 18th March 2021, the court directed that the matter be mentioned before the Deputy Registrar of the Commercial Division for direction after the parties confirmed that they were unable to agree.

3071. Further, Kenya National Shipping Line also had a debt of KSh. 25,485,396.93. The entity 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 could KNSL pay the debts due to its non-performance. The GOK was restructuring/reviving KNSL.

3072. Under rental debtors, Zynmat Energy Ltd (ZEL) stopped paying rent on parcels MN/VI/4407 and MN/VI/4408 due to the presence of squatters and KPA's rejection of consent to charge the parcel to raise collateral to finance the proposed development of the plot. By 2018 ZEL had accumulated arrears amounting to KSh. 25,822,735. A demand notice was issued to their last known address but was returned undelivered.

3073. The Authority advertised the termination through the local media and upon expiry set in motion the process of disposal of the interest. Since recovery of the rent arrears appeared to be remote and the lessee was so far untraceable, management had recognized a provision as per the existing impairment policy.

Committee Observations

3074. **The Committee made the following observations:**

(i) This matter was addressed in the PIC's 23rd Report that called KPA to expedite negotiations with the Kenol Kobil and stop trading with defaulting debtors.

(ii) It however emerged that negotiations with Kennol Kobil failed and the matter returned to Court where it had been in pending for a very long time (since 2009), but the amount of money still remained owing and therefore a loss to the taxpayer.

Committee Recommendations

3075. **The Committee recommends that:**

(i) The Judiciary expedites conclusion of matters touching on KPA's long outstanding debts.

(ii) **Going forward, the KPA should vet its debtors and only do business with those debtors that honour their debt obligations.**

Advance Lamu Creditors

3076. Note 22(b) to the financial statements for the year ended 30 June 2018 reflected advance Lamu creditors balance of KSh.2,703,552,000. However, this amount varied with Lamu Port advance payments balance of KSh.1,987,206,000 disclosed under Note 28 by KSh.716,346,000. The variance had not been explained nor reconciled.

3077. Consequently, the accuracy and completeness of advance creditors balance of KSh.2,703,552,000 as at 30 June 2018 could not be confirmed.

Management Response

3078. The variance was as a result of certificate no. 12 for work completed as at 31st March 2018 which was submitted on 10th July 2018 after the closure of the year 2017/2018, hence the same was accounted for in the financial year 2018/2019.

Committee Observations and Recommendation

3079. **Matter adequately addressed and resolved.**

LONG TERM INVESTMENTS (FY 2017/2018)

3080. The statement of financial position as at 30 June 2018 reflected long term investments balance of KSh.3,244,997,000 as disclosed in Note 20 to the financial statements which comprised fixed deposits of KSh.942,342,000, equities of KSh.29,100,000 and other investments (Chase Bank deposits) of KSh.2,273,555,000. The following observations were made:

Equities

3081. Note 20(b) to the financial statements for the year ended 30 June 2018 reflected equities with a nominal value of KSh.54,346,000 and shares with nominal value of KSh.100,000,000 in respect of Kenya National Shipping Line Limited and Kenya Ferry Services Limited respectively which were fully impaired. However, share certificates for Kenya National Shipping Line Limited availed for audit review indicated that Kenya Ports

Authority owned 70,023 shares with a nominal value of KSh.70,023,000, resulting to a variance of KSh.15,677,000.

3082. The variance had not been explained nor reconciled. Further, the impairment of these investments was contrary to International Accounting Standard No. 39 paragraph 59 which states that, *'a financial asset or a group of financial assets is impaired and impairment losses are incurred if, and only if, there is objective evidence of impairment as a result of one or more events that occurred after the initial recognition of the asset (a 'loss event') and that loss event (or events) has an impact on the estimated future cash flows of the financial asset or group of financial assets that can be reliably estimated'*. However, Kenya National Shipping Line Limited and Kenya Ferry Services Limited were still operational.

3083. Consequently, the accuracy of KSh.29,100,000 equities balance as at 30 June 2018 and validity of the impairment of KSh.154,346,000 could not be confirmed.

Management Response

3084. The Kenya National Shipping Line (KNSL), Board of Directors during the 187th Special Board meeting held on 11 July 1997 approved the restructuring of the company. The Board agreed on the devaluation of the par value of shares from KSh 1,000 to KSh 500 per share. During the same meeting, KPA was also allocated, through capitalization of existing debt, an additional 38,670 shares at KSh 500 each. Minutes of the Board resolution were shared, and extract were availed for audit verification. The variance mentioned was reconciled as shown below:

Shares	**Par value (KSh)**	**Total (KSh)**
70,023	1,000	70,203,000
Less: Reduction of par value		
70,023	500	(35,011,500)

	Sub Total	**35,011,500**
Additional Shares		
38,670	500	19,335,000
	Total	**54,346,500**

3085. Kenya National Shipping Line (KNSL) and Kenya Ferry Services Ltd (KFS) were state corporations which had been facing operational challenges and loss making in most of their operational years and facing significant financial difficulty. As at 30 June 2021, negotiation on reviving KNSL was still ongoing while KFS was dissolved and transferred to KPA.

3086. As per IAS 39.59, objective evidence of impairment was in turn defined as one or more events that had occurred and had an impact on the expected future cash flows of the financial instruments. Further, objective evidence could include observable data that had come to the attention of the holder (in this case KPA) of the financial instrument about certain events, amongst others. One being significant financial difficulty of the issuer or borrower. In as much as the two state corporations were operational, they were loss-making and the investment in them did not generate returns and hence, it was prudent and fair to impair them.

Committee Observations

3087. **The Committee made the following observations:**

(i) The variance between KPA and KNSL had been reconciled and explanation on impairment was satisfactory. It was however inconceivable that KPA devalued a company that it sought to acquire.

(ii) KFS had been wound up as a legal entity and its operations transferred to KPA. Vesting Order was sent to the National Treasury in the week commencing 18th Oct 2021. It was however not clear whether assets and liabilities of KFS had been transferred to KPA as at the time the Committee was compiling the report.

Other Investments

3088. Note 20(c) to the financial statements for the year ended 30 June 2018 reflected investment in Chase Bank of KSh.2,273,555,000 after impairment by KSh.757,852,000. Available information indicated that the impairment resulted from a moratorium on 25% of the deposits. The information further indicated that up to 50% of deposits taken up by State Bank of Mauritius be placed in fixed deposit and savings deposits account earning 6.65% per annum. However, this material matter had not been disclosed in these financial statements.

3089. Consequently, the accuracy and validity of other investments balance of KSh.2,272,555,000 as at 30 June 2018 could not be confirmed.

Management Response

3090. The Authority made appropriate disclosures in the Annual report and financial statements for FY2017/18. The following was stated under the Management discussions, critical accounting estimates and in the financial notes;

3091. Chase Bank Kenya was closed under receivership on 7 April 2016 by the Central Bank of Kenya (CBK) and was reopened on 27 April 2016 under a receiver manager. Cash deposits of KSh 3,031 million held by the bank, were reclassified to long term investments in the FY2016/17.

3092. During the year CBK had indicated that SBM Bank (Kenya) Ltd would take over 75% of deposits of CBLR while 25% of deposits was awaiting further resolution by Kenya deposits Insurance Corporation (KDIC). The Authority Board deemed it prudent to provide for an impairment of 25% of the deposits held in the reporting year.

3093. On 6 July 2018, the CBK announced through gazette notice no. 6833 that SBM Bank (Kenya) had commenced the acquisition of certain assets and the assumption of certain liabilities of CBLR, in line with the announcement of 17 April 2018. It also announced that this process would be completed on 17 August 2018.

3094. Following the gazettement by CBK of notice 6833 in FY2018/19, SBM Bank (Kenya) Ltd had remitted to the Authority cash deposits including interest as follows:

i. 27th February 2019 - KSh.1,122,161,722

ii. 11th April 2019 – KSh.52,899,296

iii. 18th July 2019 – KSh.2,006,055

iv. 20th August 2019- KSh.374,053,508

v. 21st August 2019- KSh.60,256,394

vi. 19th August 2020 – KSh. 413,865,124.50

vii. 20th August 2021- KSh. 394,118,581.00

3095. The SBM fixed deposits account were earning 6.30% per annum and not 6.65%. The deposits (25%) with Kenya deposits Insurance corporation (KDIC) amounting to KSh 748,107,815 were impaired in FY2017/2018. Disclosures on the investments with Chase bank (In Receivership) and SBM Bank were also provided in FY2018/19 and FY2019/20.

Committee Observations

3096. **The failure by Management of KPA's to make all material disclosures in the financial statements relating to investments in Chase Bank was a breach of the International Accounting Standards . The Chase Bank had since been fully taken over by the SBM**

Committee Recommendations

3097. **The Committee recommends that:**

(i) The accounting officer for the KPA should always adhere to Public Sector Accounting Standards on disclosure.

(ii) The accounting officer for the KPA should ensure that the authority's investments in Chase Bank are recouped from the SBM Bank.

STANDARD GAUGE RAILWAY (SGR) LOAN AGREEMENTS AND PAYMENT ARRANGEMENT AGREEMENT (FY 2017/2018)

3098. Records availed for audit review indicated that the Authority entered into a 'Payment Arrangement Agreement, which referred to two loans, for the Mombasa -Nairobi Standard Gauge Railway project with Kenya Railways Corporation (KRC), Government of Kenya and Export-Import Bank of China (China Eximbank) on 6 November 2014. The following observations were made:

Payment Arrangement Agreement – Disclosure

3099. Under clause 1.4 of the payment arrangement agreement, Kenya Ports Authority (KPA) and Kenya Railways Corporation (KRC) were required to enter into a Long Term Service Agreement which provided under paragraph(C) of the preamble that 'the repayment of the principal and payment of the interest and fees of the loans were to be secured, inter alia, by a Long Term Service Agreement with an aim of guaranteeing a minimum amount of freight throughout the term of the agreement to be charged and received by the operator for the Project, which shall be used to secure the repayment of principal and interest'.

3100. Further, the Long Term Service Agreement between KRC and KPA also provided under clause 7 (c) that *"that KPA shall make good any short fall arising either on account of failure to consign the minimum cargo as stipulated in Schedule 1 or to remit the amount of money commensurate with the volume of cargo so consigned and shall pay to Kenya Railways Corporation such an amount as is required to make good the short fall within a period of 30 days following the completion of reconciliation exercise"*. In the event of default by Kenya Railways Corporation to pay China Eximbank collected freight and service charges, Kenya Ports Authority would be compelled to deposit the amount due to Kenya Railways Corporation to bank account designated by the China Eximbank.

3101. However, this information was not disclosed in the financial statements, contrary to International Accounting Standards No. 1 paragraph 17(c) which states that, *'a fair presentation also requires an entity,to provide additional disclosures when compliance with the specific requirements in International Financial Reporting Standards is insufficient to enable users to understand the impact of particular transactions, other events and conditions on the entity's financial position and financial performance'.*

Management Response.

3102. The Minimum Freight Volumes and Turnaround Times in schedule 1 of the take or pay agreements envisaged that KPA would be required to start providing the minimum tonnage in the year 2020. The Authority was therefore not yet bound by the provisions of the Take or Pay Agreement until the effective/commencement date the year 2020. Disclosure in the financial statement commenced in June 2020.

Committee Observations

3103. **The Committee made the following observations:**

(i) Though management indicated that it begun disclosing information relating to loan Payment Arrangement Agreement with the Kenya Railways Corporation in 2020, this ought to have been disclosed from the time such agreement was signed.

(ii) Secondly, it was inconceivable that KPA could sign an agreement with the KRC agreeing to provide a certain tonnage of goods for transport through the SGR and be held liable in the event of failure in a free-market economy where transporters were at liberty to use any mode of transport including road.

(iii) Thirdly, it was not clear to the Committee what the KPA stood to gain by entering into such an agreement.

(iv) Fourthly, data from both KPA and KRC indicated that the required tonnage had not been met thus making KPA to pay for China Exim Bank, through KRC.

(v) The totality of this observations pointed towards a possible skewness of the agreement against the KPA.

Committee Recommendation

3104. **The Committee recommends that:**

(i) the National Treasury should renegotiate the entire Payment Arrangement Agreement with a view to discharging the KPA from the contract and replace it with the KRC.

(ii) The EACC should investigate the signing of the Payment Arrangement Agreement without approvals from the KPA Board, Mother Ministry and the Cabinet.

Payment Arrangement Agreement – Misrepresentation

3105. The Agreement in clause 17.5 referred to Kenya Ports Authority as a borrower, contrary to the aforementioned details that Kenya Ports Authority's only obligation was to facilitate/guarantee minimum freight volumes to meet the requirements of the Long-Term

Service Agreement. Under this Clause, the Agreement provided that "*each of the borrowers, in this case Kenya Railways Corporation and Kenya Ports Authority agrees that any proceedings against them or any of their assets (present or future) in connection with the Agreement, no immunity from such proceedings shall be claimed by it or with respect to its assets and they irrevocably waive any right of immunity whether characterized as sovereign immunity or otherwise'*.

Management Response

3106. Clause 17.5 must be read within the context of the entire Payment Arrangement Agreement for the Mombasa – Nairobi SGR Project. From the outset, the agreement described the Government of the Republic of Kenya as the borrower (refer to page 2 parties to the agreement). The Transaction Structure as given in clause 1 of the agreement also fortified the position that KPA was not a borrower. Moreover, KPA did not have capacity to hold sovereign authority and therefore could not plead sovereign immunity. Only the Government of Kenya had such capacity. The clause could not be enforced against KPA. This was a mistake apparent on the face of the record.

Committee Observations

3107. **The Committee made the following observations:**

(i) Management's response explaining that the agreement did not include KPA and KRC and that it was the government of Kenya's position could not be sustained as the contract itself had clear words terming the KPA and KRC as borrowers and that they should not claim immunity.

(ii) The drafters of the long-term Service Agreement should have foreseen this and clarified in the agreement if KPA's explanation was to be believed.

(iii) A reading the Agreement left no doubt that KPA and KRC were borrowers and therefore liable to repay the loan through their Assets without immunity. This put the assets of KPA at risk in the event of a default.

Committee Recommendation

3108. **The Committee recommends that the National Treasury should renegotiate the entire Payment Arrangement Agreement with a view to discharging the KPA from the contract and replace it with the KRC.**

Missing Loan Agreements

3109. According to the agreement, the Bank was the lender while the Government of Kenya was the borrower. The loan amount consisted of preferential credit loan agreement of 11 May 2014 for KSh.161.6 billion (US$ 1,600,000,000) and a buyer credit loan agreement of the same date for KSh.202.36 billion (US$ 2,003,584,028) all totaling to KSh.363.96 billion (US$.3,603,584, 028), from China Eximbank. These two loans had two separate loan agreements. However, the two loan agreements were not availed for audit review.

Management Response.

3110. KPA had no copies of the preferential credit loan agreement dated 11th May 2014 and the buyer credit loan agreement. This was because the Authority was not a party to these agreements. However, a request has been made through the parent Ministry for copies of the same.

Committee Observations

3111. **The Committee made the following observations:**

(i) **The impugned two loan agreements could not be produced for audit verification either to the Committee or Office of the Auditor General despite inherent powers granted to the two institutions under Article 125 and 229 of the Constitution respectively to demand production of such documents.**

(ii) **Both the KPA management and the KRC management claimed to have no access to such documents. In absence of such documents, the government entities having their custody were in breach of the law on disclosure and in contempt of Parliament.**

(iii) **The Committee's written requests to both the Attorney General and the National Treasury for submission of the said documents remained unanswered.**

Committee Recommendation

3112. **The Committee recommends that the Head of the Public Service should submit the two SGR loan agreements to the Office of the Audit General for audit verification during the 2022/2023 audit cycle.**

Payment Arrangement Agreement – Risks

3113. From analysis of the terms of the Agreements referred to above, the Authority faced he follows risks:

I. The terms of the payment arrangement agreement were unfavorable to Kenya Railways Corporation, Government of Kenya and Kenya Ports Authority as regards to the dispute resolution between them and the Bank since all disputes were to be referred to China International Economic and Trade Arbitration Commission as provided in the Payment Arrangement Agreement of 6th November 2014 under paragraph 17 on Governing Law and settlement of disputes. Paragraph 17.2 stated that, *"It is agreed that any dispute arising out of or in connection with this agreement or any non-contractual obligation arising out of or in connection with this agreement to which China Eximbank is party or in which China Eximbank is involved, which shall not be settled by mutual agreement of the parties, shall be referred by any party to China International Economic and Trade Arbitration Commission ("CIETAC") for arbitration in accordance with CIETAC's applicable rules. The place of arbitration shall be Beijing, PRC. The language of arbitration shall be English. Each arbitration award shall be final and binding on all parties'.*

II. The Payment Arrangement Agreement substantively meant that the Authority's revenue would be used to pay the Government of Kenya's debt to China Eximbank if the minimum volumes required for consignment were not met as per Schedule 1 Paragraph 7(c) of the Long Term Service Agreement between KPA and KRC which stated that, *'KPA shall be responsible to make good any shortfall arising either on account of the failure to consign the minimum volume of cargo as stipulated in schedule 1 or remit the amount of money commensurate with the volume of cargo so consigned and shall pay to KRC such an amount as is required to make good the shortfall within a period of (30) calendar days following the completion of the reconciliation exercise.'*

III. Kenya Ports Authority assets were exposed to risk of takeover by the lender since the Authority signed the Payment Arrangement Agreement. Clause 17.5 of the agreement states that, *'Each of the Borrower, KRC and KPA agrees that in any proceedings against it or any of its assets (present or future) in connection with this agreement no immunity (whether characterized as sovereign or otherwise) from such proceedings shall be claimed by it or in respect to its assets (present or future) and it irrevocably waives any right of immunity (whether characterized as sovereign immunity or otherwise)*' .

3114. Consequently, it appeared from the Payment Arrangement Agreements that Kenya Ports Authority's revenue and assets had expressly guaranteed the repayment of the loan amounting to KSh.363.96 billion financing the standard gauge railway, a material fact which had not been disclosed in the financial statements for the year ended 30 June 2018.

Management Response

3115. The Government of Kenya (GOK) was the borrower with National Treasury having full responsibility for settlement of the loan. KPA was only impacted negatively by the risk associated with the minimum guarantee volumes and the unlimited power of attorney to Exim Bank to access KPA Revenues in the event of default. It was not expected that GOK would default on loan repayment thus KPA risks were mitigated. KPA had advocated for a letter of guarantee from National Treasury specifically stating that any cash paid by KPA over and above what it had collected would be reimbursed by NT within three months.

3116. In order to reduce the KPAs obligation on the take or pay, some of the loan repayment for the SGR should be offset by the railway development levy and/or any other levies for the initial years or for specific periods of deficits.

Committee Observation

3117. **The Committee notes the risks raised in the audit on both the KRC and the KPA were still valid in the event there was a default.**

Committee Recommendation

3118. **The Committee recommends that the National Treasury should renegotiate the contract agreement with a view to discharging KPA from the agreement and replace it with the KRC.**

BUDGET CONTROL AND PERFORMANCE (FY 2017/2018)

Revenue Budget

3119. During the year under review, the Authority had a total revenue budget of KSh.42,434,260,000 against actual revenue collections of KSh.45,314,169, resulting to net over collection of KSh.2,879,909,000 or 7% as summarized below:

Details	Final Budget	Actual Collections for	Under Collection	Over Collection	%
	KSh '000'	KSh'000	KSh'000	KSh'000	
Operating Revenue	41,101,260	42,738,520	-	1,637,260	4
Finance Income	884,759	1,728,950	-	844,191	95
Other Incomes	444,684	891,023	-	446,339	100
Other Gains	3,557	(44,324)	47,881	-	-
Total	**42,434,260**	**45,314,169**	**47,881**	**2,927,790**	**7**

3120. The table able above indicates that the Authority realized 95% over collections on finance income, and 100% over collection on other income. Although the over collection on other incomes was due to accrued income on salvage operations of a ship which had run aground, no satisfactory explanation had been given for the significant variance in finance income. Further, excess collection of 7% could be a sign of under budgeting on the side of revenue, an indication that the entity had room for more revenue collection.

Management Response

3121. The variance of 95% under Finance income was caused by slow uptake of capital projects which allowed capital works funds to be held in the accounts. Some of the envisaged projects could not be undertaken due to approvals which were still being sought, a good example was berth 11-14. Some projects delayed in implementation like Kipevu Oil Terminal Project due to tendering and clearance procedures.

3122. The policy on procurement and the procedures therefrom slowed the processes that had to be completed before payments were released from accounts, hence the cash holding reserves.

3123. The size of funds at hand invested in banks on short term basis exceeded what was envisaged in the budget, hence the favourable finance income variance.

3124. The favourable variance of 7% had been largely influenced by finance income whose budget data varies with the process of capital works completed for payments to be done.

Committee Observation and Recommendation

3125. **The matter was adequately addressed and therefore resolved.**

Expenditure Budget

3126. During the year under review, the Authority had a total budget KSh.33,978,200,000 while expenditure totaled KSh.35,005,690,000 or 103%, resulting to a net over-expenditure of KSh.1,027,490,000 or 3% as detailed below:

	Final Budget	**Actual Expenditure 017/2018**	**Over expenditure**	**Under expenditure**	
Details	**KSh.'000'**	**KSh.'000'**	**KSh.'000'**	**KSh.'000'**	%
Administrative Expenses	3,491 ,817	3,450,148	-	41,669	1
Establishment Expenses	17,890,921	17,789,138	-	101,783	1

Operating Expenses	4,846,363	4,899,622	53,259	-	1
Depreciation & Amortization	7,400,000	7,658,763	258,763	-	3
Finance cost	319,099	170,624		148,475	47

	Final Budget	**Actual Expenditure for 2017/2018**	**Over expenditure**	**Under expenditure**	
Details	**KSh.'000'**	**KSh.'000'**	**KSh.'000'**	**KSh.'000'**	**%**
Impairment Loss	30,000	1,037,395	1,007,395	-	3,358
Total	**33,978,200**	**35,005,690**	**1,319,417**	**291,927**	**3**

3127. The over expenditure on impairment was mainly because of provision for loss on cash deposits in Chase Bank which went under after the budget had been approved. The Bank's unplanned liquidation may have curtailed the Authority 's ability to execute its mandate for the year ended 30 June 2018.

Management Response.

3128. As earlier reported, Chase Bank Kenya was closed under receivership on 7 April 2016 by the Central Bank of Kenya (CBK) and was reopened on 27 April 2016 under a receiver manager. On 6 July 2018, the CBK announced through gazette notice no. 6833 that SBM Bank (Kenya) would take over 75% of deposits of CBLR while 25% of deposits was awaiting further resolution by Kenya deposits Insurance corporation (KDIC). The Authority Board deemed it prudent to provide for an impairment of 25% of the deposits held in FY2017/2018.

Committee Observations

3129. **The over expenditure arose from the unexpected liquidation of Chase Bank and the attendant impairment of the Authority's investments in the said bank.**

Committee Recommendation

3130. **The matter was resolved**

RECRUITMENT (FY 2017/2018)

3131. Note 9 to the financial statements for the year ended 30 June 2018 and related human resource records indicated that during the year under review, the Authority recruited six hundred and thirty-five (635) new staff, comprising twenty-three (23) management positions and six hundred and twelve (612) unionisable employees. However, the management did not provide details of how the number recruited was determined and approval of the Board to recruit.

3132. Further, no application letters were availed for audit review while ninety-eight (98) new employees were not assigned specific roles after appointment, an indication that the Authority could have recruited excess staff with no value addition.

3133. Consequently, it was possible to ascertain that the recruitment of the staff was in line with establishment laws and regulations and that the same was in line with KPA establishment.

Management Response.

3134. The recruitment processes were approved by the Board of Directors as indicated below.

	Board Meeting	Date	Positions

1	332nd meeting	6.6.2017	10 Technicians 25 Artisans 40 Clerks 25 TT 20 M E Operators 100 Dockers 24 Fire Fighters 21 Fire Engine Drivers 9 Ambulance Attendants 50 Graduate Trainees
2	329th meeting	7.12.2016	50 GTs 9 Dockers ICDN
3	333rd meeting	1-2.9.2017	28 Clerks (OPS) 20 Dockers 44 Sec Operatives (10 HG1, 34 HG2) Medical Records & IT-1 13 Clerks HG2 Lab Technologists-11 Pharm Technologists-3 Pharm Attendants-3 Lab Attendants-3
4	344th meeting	6.4.2018	25 Clerks

			54 Dockers
5	304th meeting	27.8.2014	Medical Staff Estate & Rating Officer
6	MD Approval		Workshop Assistants (2) Asst Training Officer (Seamanship)-1 Training Officer (Nautical studies)-1 Marketing Executive-3
7	MD Approval		Senior Internal Auditor-4 Senior Quality Assurance Officer-1
8	330th meeting	10.2.2017	50 Sec Operatives 23 Dockers 20 Artisans

3135. Relevant documentation and approvals for the recruitment were availed.

- **Recruited Staff Designated as Supernumerary**

3136. While 98 of the 635 staff recruited in 2017-2018 were designated as supernumerary, it's important to note that the recruitment was on a necessity basis and dictated by the circumstances of the business notably the Port's expansion plan, growth in cargo through-put and infrastructure development, SGR, as well as equipment acquisition which all had considerable HR capacity requirements. The staff were assigned specific roles/duties to discharge in the port operations at Container Terminal 2, SGR and Inland Container Depot.

3137. The Authority had no excess capacity (as the staff strength of 7,012 - as of 30th June 2018, did not exceed the Authority's approved establishment of 7,972 positions).

3138. The Authority was also in the process of seeking approval for the implementation of the new Organization Structure that would accommodate the abovementioned developments.

3139. Approval to implement the new Authority's Organization Structure had since been granted by National Treasury and State Corporation Advisory Committee. The structure had been reviewed to align with the business needs and to accommodate the expanded operations. The expected effect would be that all supernumerary staff would be appropriately placed on positions in line with the dynamics of the business.

Committee Observations

3140. **The Committee notes that the fact that it was not in dispute that the management hired staff on supernumerary basis and that approvals for the KPA's organizational structure came from State Corporations Advisory Committee and Treasury indicates that the KPA was in breach of the law for hiring staff without approval.**

Committee Recommendations

3141. **The Committee recommends that:**

(i) The accounting officer for the KPA should always adhere to the lawfully approved organizational structure whenever recruiting staff.

(ii) **The accounting officer for the KPA should restructure the KPA's establishment to ensure that there are no staff on supernumerary employment.**

Gender Composition (FY 2017/2018)

3142. The biodata presented for audit review indicated that the Authority had 7,012 employees as at 30 June 2018, out of whom men were 5,586 (79.7%) while women were 1,426(20.3%). This contravened the Head of Public Service Circular No OP/CAB .13/5A of 7th November 2006 which directed that 30% of recruitments and promotions should be women to enhance gender equity. As such the Authority is in breach of the Law.

Management Response.

3143. It is important to note that the staff composition in the Authority in terms of gender was a result of recruitment trends in the Authority since its inception. This means that the staff composition before the Ministry directive effective November 2006 ought to be taken into consideration.

3144. For illustration, the following is evident (Please note that this does not consider staff wastages during the period from Nov 2006 to Jan 2019). The summary is shown in table 1 below.

a) As at the end of January 2019, the Authority had 6,864 staff. This comprised of 5,446 male staff (79%) and 1,415 female staff (21%).

b) As at the end of October 2006 (before the Ministry directive), the Authority had 4,727 staff which comprised 882 female employees (18.66%) and 3,845 male employees (81.34%)

c) 2,197 of the staff mentioned in (1) above were engaged with effect from Nov 2006. Of this figure, 544 are female staff (25%) whereas 1,653 are male staff (75%).

d) The figures indicated in (3) above was inclusive of the 635 staff who were engaged between July 2017 and June 2018. Out of this figure, 188 of the staff employed were females (29.61%) while 447 were males (70.39%). It is worth noting that more female staff recruited during this period were placed in administrative roles as shown in Table 2 below.

Table 1

Date	**Total**	**Male**	**Female**
Jan 2019	6,864	5,446 (79%)	1,415 (21%)
Oct 2006 (Before 30% Directive)	4,724	3,845 (81.34%)	882 (18.66%)
Recruited from Nov 2006	2,197	1,653 (75%)	544 (25%)
Recruited from July 2017 – June 2018	635	447 (70.39%)	188 (29.61%)

3145. This indicated that since the directive was issued the Authority had progressively improved on the gender balance as the figures above show. Below is data showing the Authority's staff by age and gender in 2017-2018 and 2019.

Table 2:-staff recruited from 2016-2018

Department/Position	**Recruited**	**Male**	**Female**	**Male %**	**Female %**
Insurance	1	1	0	100	0
Audit	4	3	1	75	25
Security	135	77	58	57.04	42.96
Marketing	4	1	3	25	75
MDs Office	4	2	2	50	50
Medical Services	16	9	7	56.25	43.75
Dockers	186	154	32	82.80	17.20
Clerks	101	43	58	42.57	57.43
Cadets	103	59	44	57.28	42.72
Equipment Operators	53	48	5	90.57	9.43
Engineering	85	84	1	98.82	1.18
Marine Ops Fire Service	51	45	6	88.24	11.76
	743	**526**	**217**		

3146. As the figures indicate, the number of females recruited in this period comprised about 29% of the total figure. However, in a bid to ensure that there was adequate representation of females especially considering that generally the nature of most port work favours men, for instance in equipment operations, Management made a deliberate attempt to have more females than males for certain positions. A good example is Clerical staff in which 57% of those recruited during this period were females. In marketing, 75% of those recruited were females even though the numbers in this case was small.

3147. It is also imperative to note that recruitment in the Authority and indeed anywhere else was influenced by several factors, some of which the Authority might have no control over, such as the following:-

- Candidate response- the majority of those who had applied for employment with the Authority whenever advertisement had been placed, have been male.
- Nature of work in the Authority- Many of the jobs within the Authority were skewed toward males e.g. dockers and equipment operators as the work is manual in nature. Females tended to shy away from these jobs and many other jobs as well, notably technicians, engineers, sailors and pilots.

3148. All the above jobs were found within the Operations Division which took bulk of positions in the organizational structure at 62%. This meant that the larger percentage of recruitments done were for filling positions within this division notably dockers, operations clerks, technicians and equipment operators.

3149. The Authority's E-recruitment platform in place would enable management to improve the male to female ratio in compliance with the Public Service Commission Human Resource Policy and Procedural manual for the Public Service 2015 on gender rule as the technology will help us to profile the candidates from the initial stages of the recruitment process.

Committee Observations

3150. **The Committee made the following observations:**

(i) Despite recent targeted initiatives by the KPA, female gender numbers were still low.

(ii) It is a constitutional imperative under both Articles 27 and 232 of the Constitution that gender inclusivity is observed.

Committee Recommendation

3151. **The Committee recommends that going forward, the KPA Board should adopt a recruitment policy that ensures gender parity.**

SHORT TERM DEPOSITS (FY 2017/2018)

3152. The statement of financial position as at 30 June 2018 reflected short-term deposits balance of KSh.17,988,504,000. Records availed for audit review indicated that the management made call deposit investments in commercial banks for periods between 1-182 days during the period under audit review. This was contrary to the National Treasury Circular No.13/2017 paragraph 34 which prohibits state corporations from investing surplus funds in any financial institution without prior approval of the National Treasury other than when the investment was in Treasury bills or bonds.

3153. The management engaged in this practice despite having KSh.3 billion locked in a collapsed commercial bank with a probable loss of over KSh.757,852,000 as disclosed in note 16 to the financial statements.

Management Response

3154. The Short-Term deposits of KSh.17,988,504,000.00 as at 30th June 2018 was all invested in Treasury Bills. However, during the period FY2017/2018, management made call deposits ranging from 1-75 days, most call deposits ranged between 1 to 12 days. No deposits ran up to 91 days to qualify for the purchase of Treasury Bills. All the call deposits were made in banks approved by the National Treasury. In addition, the call deposits were earmarked for some near future payments like Instalment Tax, Salaries, P.A.Y.E, and Creditors etc. The main aim of setting aside these funds was to cater for the heavy commitments the Authority had at that time hence channelling the funds to call deposits.

Committee Observations

3155. **The Committees notes that the KPA management was in breach of Treasury Circular that barred investments without approval from the National Teasury.**

Committee Recommendations

3156. **The Committee recommends that the accounting officer for the KPA should always adhere to the law and government policies on investments.**

OPERATING REVENUE (FY 2018/20219)

Undercharging of Revenue from Storage of Empty Containers

3157. Included in the operating revenue of KSh.52,758,959,000 was an amount of KSh.697,600,000 in respect of storage of empty containers. Records availed for audit review indicated that the Authority billed a total of USD83,655 (KSh.8,532,810) for storage of five thousand six hundred and sixty (5,660) empty containers. However, the calculated total revenue collectable or billable after expiry of the free storage period amounted to USD1,231,860 (KSh.125,649,720), thus undercharging the storage revenue on the empty containers by USD1,148,205 (KSh.117,116,910).

3158. Further, the records indicated that the Authority released fifty-four (54) empty containers with storage charges of KSh.36,950,383 before billing and securing of the revenue during the financial year 2017/2018. Instead, storage was billed and captured in 2018/2019 financial year, thus overstating the revenue for the year under audit review by KSh.36,950,383.

3159. Under the circumstances, the accuracy and completeness of revenue from storage of empty containers of KSh.697,600,000 for the year ended 30 June, 2019 could not be confirmed.

Management Response.

3160. Out of the 5,560 empty container cited, only 41 containers were shared by the auditor for our review and from KPA records, the 41 containers were billed. Refer to the attached. Further, reviews and reconciliation were done for the entire period, 2018/2019 and all pending charges were billed. KPA had further streamlined the process to ensure billing was done timely by:

(i) Staff numbers both for Managers and unionisable staff had been added at the entity's documentation unit. All shifts are adequately managed.

(ii) Reconciliation of tallies and other transactions including billing information was being submitted within 24hrs.

(iii) The introduction of free pooling system where shipping lines were allocated designated areas within the yards to stack empties based on their volumes had created smooth handling and good record capturing in our yards.

(iv) Supervision had been enhanced with all shifts.

Committee Observations

3161. **The Committee made the following observations:**

(i) This query arose because of management's failure to provide documents for audit verification. Evidence of storage charges for containers was belatedly provided and verified by the Office of the Auditor General.

(ii) The matter was resolved.

Committee Recommendation

3162. **The Committee recommends that the accounting officer for the KPA should always submit documents for audit within the statutory timelines failure to which the sanctions provided under the Public Audit Act 2015 ensues.**

Un-Confirmed Licenses Revenue

3163. The operating revenue of KSh.52,758,959,000 included an amount of KSh.128,677,000 in respect of licenses revenue, out of which KSh.92,566,974 related to revenue earned on Liquified Petroleum Gas (LPG) handled by African Gas and Oil Company Limited. A review of the License Agreement dated 21 September, 2007 between the Kenya Ports Authority (KPA) and African Gas and Oil Company Limited indicated that the Company was to pay license fee in US Dollars equal to twenty-five percent (25%) of the Company's revenue derived directly from each tonne of LPG discharged, payable on a quarterly basis. However, records availed for audit review indicated that KPA charged license fees of US Dollars 22.65 instead of US Dollars 22.64, a difference of US Dollars 0.01 without providing documentary evidence to confirm that this was the service fee charged by the

Company. Further, the Management did not provide details of all the LPG quantities handled at the facility by the Company during the year under review.

3164. Consequently, the accuracy, completeness and regularity of the license fee of KSh.92,566,974 for the year ended 30 June, 2019 could not be confirmed.

Management Response

3165. Africa Oil and Gas Ltd remits to the Authority on a quarterly basis a Quarter of their annual revenue share generated from the use of the facility. The figures of the handled units were certified by an independent surveyor before submitted to KPA to recognize the revenue. The schedule of the figures submitted for the revenue computation was attached. Also provided were extracts of the contracts.

3166. Additional documents relating to licenses issued to Africa Gas and Oil Co. Ltd operations was availed vide our letter Ref. GMF/1/15 dated 21st December 2021.

Committee Observations

3167. **The Committee made the following observations:**

(i) This query arose because of management's failure to provide documents for audit verification.

(ii) The matter was resolved.

Committee Recommendation

3168. **The Committee recommends that the accounting officer for the KPA should always submit documents for audit within the statutory timelines failure to which the sanctions provided under the Public Act 2015 should apply.**

BASIC SALARY PAID FOR HOURS NOT WORKED (FY 2018/2019)

3169. Included in the establishment expenses of KSh.19,992,244,000 was an amount of KSh.7,207,572,000 in respect of basic salary. Audit review of time management records revealed that basic salary was paid based on the hours worked as captured in the time management system. However, the Management approved a payment of KSh.223,346,182 for 390,379 hours not worked as staff left work before time and KSh.3,334,689 for 5,672 hours also not worked when staff came to work late. This resulted in an over-payment of salaries amounting to KSh.226,680,871 for hours not worked.

3170. Under the circumstances, the accuracy of the basic salary's expenditure of KSh.7,207,572,000 for the year ended 30 June, 2019 could not be confirmed.

Management Response

3171. Management had over time noted the need to improve on time management systems to improve its performance, have checks in place and ensure that there was no misuse. Attached is Communications dated 5th January 2018 on Improvement of Time Management System.

3172. Management later in 2019 directed deactivation of staff attendances-piecework, paid-off and authority to leave early with effect from 1st July 2019. However full implementation was realized as at 9th July 2019. All managers and staff had since complied and the system was stable.

Committee Observations

3173. **The Committee made the following observations:**

(i) Considering that management concurred with the audit observation that KSh. KSh.223,346,182 was paid for hours not worked for, this was a nugatory expenditure and an indictment of management on wastage of public resources.

(ii) Further and even though the system had been streamlined to avoid such errors in payment, management had not initiated any recovery process on the paid monies.

Committee Recommendation

3174. **The Committee recommends that the accounting officer for the KPA should adhere to Salaries and Remuneration Commission's approved circulars on remunerative allowances at the KPA.**

ADMINISTRATIVE EXPENDITURE (FY 2018/2019)

Wrong Charge to Development Studies Expenditure

3175. The administrative expenses of KSh.4,044,431,000 included an amount of KSh.291,033,000 in respect of development studies. The latter balance included an amount of KSh.33,880,500 paid to two different vendors for the transfer of containers within KPA premises and charged to development studies. However, the related budget and procurement plans were not availed for audit review. Although the Management indicated that this was done on behalf of the Kenya Railways Corporation (KRC), evidence of a request from KRC Management or of non-availability of the Authority's equipment to undertake the operation was not availed for audit review.

3176. Further, no explanation was provided on why KRC did not engage the service providers directly and why the expenditure was charged to development studies. In addition, details of the number of containers moved, dates it was done and equipment transporting the containers were not availed for audit review to confirm the amount charged and paid. The Management did not also provide details of how the service providers were identified and how the rates charged for the transfer of containers were determined.

3177. Consequently, the accuracy, propriety and validity of KSh.33,880,500 spent on development studies for the year ended 30 June, 2019 could not be confirmed.

Management Response

3178. The main role of development studies votes included research activities, port logistical support activities, comparative studies, port improvement activities, conferences related to corporate development amongst others. The cost of transferring empty containers EX ICDN from Port Reitz marshalling area to the Port related to port logistical support activities, hence the charge to development studies.

3179. During the year 2018/2019 SGR made its entrance into the logistics and transportation chain, causing an uncomfortable imbalance as a competitor to road transporters. Containers railed were deposited back at the ICD Nairobi to be railed back to the Mombasa port. The containers railed in the year 2018/2019 were 245,074.

3180. There was no goodwill from the players in encouraging the use of SGR, causing an uncomfortable imbalance as a competitor to road transporters. Due to the terms of the contract of the SGR between KPA and KRC, it was the responsibility of KPA to provide cargo, and without the wagons to load, this would not have been possible. It was upon KPA to smooth out the process and allow for continuity of operations at Port Reitz yard. Extracts of the 340th EXCOM meeting that approved transfer of empty containers was availed in our letter Ref. GMF/1/15 dated 22nd December 2021.

3181. The tariff was being reviewed to accommodate the last mile on containers railed back under the Through Bill of Landing (TBL) agreement to ensure timely and convenient evacuation to the vessels.

Committee Observations

3182. **The Committee made the following observations:**

(i) Though management was able to explain why KPA had to move the containers and the specific area of the procurement plan it was provided for (port logistical support activities), it however failed to explain the amount of cargo transferred, when, cost of each and the choice of the procurement method.

Committee Recommendation

3183. **The Committee recommends that:**

(i) The KRC to repay the KPA the KSh.33,880,500 spent in transfer of containers belonging. To KRC.

(ii) The accounting officer for the KPA should always adhere to the procurement laws whenever procuring for goods and services.

Insurance Premiums

3184. Included in the administrative expenses of KSh.4,044,431,000 was an amount of KSh.427,873,000 in respect of insurance premiums. The following observations were made:

Unconfirmed Plant All Risk Policy Insurance

3185. Included in insurance premiums of KSh.427,873,000 for the year ended 30 June, 2019 was an amount of KSh.64,139,998 in respect of premiums for policy number WES/ECPM/POL/4001814 - plant all risk policy. However, records availed for audit review indicated that insurance on various assets was not based on insurance valuation or asset book values. Further, two hundred and thirty-five (235) assets included in the list of insured assets did not have asset numbers, hence it was not possible to confirm if all the Authority's assets were insured or those covered by the policy belonged to the Authority.

3186. Consequently, the propriety of insurance premiums of KSh.64,139,998 on plant all risk policy for the year ended 30 June, 2019 could not be confirmed.

Management Response

3187. This category of insurance entailed insurance coverage for all Plant and Machinery belonging to the Authority. As a result, Plant All Risks cover was arranged on replacement basis which ideally meant that if there was partial or total loss, the insurer would compensate Authority with a new machine or equipment similar to the one that was damaged. In addition, in instances where repairs were to be undertaken then old spare parts were replaced with new ones. Therefore, sum insured was the purchase price net book value of the machine.

3188. In issuing insurance covers for these machines and equipment, all assets insured under the policy had identification numbers which were initially provided by engineering team immediately they were acquired for purposes of declaration for insurance covers. Thereafter, the Asset Section assigned each machine and equipment a specific number that was used to insure the property. In addition, any machine or equipment lacking asset number could not be insured until the asset number was provided. A schedule of all machines and equipment detailing asset number and corresponding values.

Committee Observations

3189. **The Committee made the following observations:**

(i) **It was inconceivable that KPA assets could be issued at purchase price without considering depreciation. Premiums paid were based on misleading figures.**

(ii) **Further, the KPA had failed to provide a schedule of all the unique numbers that identified all the insured assets at the time of audit.**

(iii) **This schedule has however been belatedly submitted and verified.**

Committee Recommendation

3190. **The Committee recommends that:**

(i) The KPA management should insure its assets based on their true values after depreciation.

(ii) The accounting officer for the KPA should always adhere to statutory timelines on submission of documents for audit.

Variation of Staff Group Cover Insurance

3191. Included in insurance premiums of KSh.427,873,000 for the year ended 30 June, 2019 was an amount of KSh.58,608,008 annual premium for provision of Staff Group Assurance Scheme cover. However, the service provider requested for variation of the premium by KSh.14,652,002 or 25%, citing increase in the number of projected claims. This was approved by the Management without justification. Consequently, the propriety and validity of insurance premiums of KSh.58,608,008 on staff group cover for the year ended 30 June, 2019 could not be confirmed.

Management Response

3192. The Authority had taken up Group Life Assurance Cover for members of staff to compensate staff and their dependents in the event of death or chronic illness while in the service of Authority. Initially, this aspect of risk was being handled under KPA pensions but the benefit was quite low hence, KPA board made a resolution to procure Group Life cover for members of staff.

3193. During the period under review, the number of deaths had exponentially increased warranting the underwriter to vary insurance premium. As a result, there was formal request written per the under writer seeking for settlement of additional premium as per the details of the letter dated 5th October 2018.

3194. The key point in the letter was that there was adverse increase in the number of claims or deteriorating loss ratio as opposed to the projected loss ratio of 65% prompting review of the premium charged and taking cognizance of provisions set out in the Public Procurement and Asset Disposal Act, 2015 section 4(e).

3195. In light of the above, management proceeded to prepare a memo dated 1st November, 2018 detailing justification for insurers request which was subsequently discussed and approved by the EXCOM on 23rd May 2019**.** In addition, minutes of deliberation before

EXCOM approval was equally attached and excerpt of the policy document (**clause 6.3)** that underwriter was invoking to charge additional premium is also attached.

Committee Observations

3196. **The Committee made the following observations:**

(i) The matter was adequately addressed as there was a provision in the policy document allowing for variation.

(ii) Had this information been provided during audit, this query should not have arisen.

Committee Recommendation

3197. **The accounting officer for the KPA should always adhere to statutory timelines on submission of documents for audit within the required timelines.**

Unsettled Claims

3198. Further included in insurance premiums of KSh.427,873,000 for the year ended 30 June, 2019 was an amount of KSh.11,826,722 in respect of premiums paid to a company for motor vehicle insurance. However, records availed for audit review indicated that the company failed to settle claims promptly, resulting to termination of the contract. The Management did not provide evidence to confirm refund of insurance premium paid for the outstanding period nor evidence of full settlement of claims lodged.

3199. Consequently, the propriety, validity and value for money of insurance premiums of KSh.11,826,722 for the year ended 30 June, 2019 could not be confirmed.

Management Response

3200. AMACO Insurance company had won the tender of insuring Authority vehicles within the review period and as usual, the insurance covers ran from 1st January to 31st December of each year. However, they were unable to settle insurance claims prompting cancellation of their insurance covers. During this period, they had settled some claims but at the same time were unable to settle the remaining balance of claims.

3201. In view of cancellation of insurance cover, it therefore, followed that if insurance contract had to be cancelled then, refund premium would be availed on prorate basis but if there were claims which had been lodged and paid within the same period then refund premium would not suffice.

3202. Regarding settlement of claims, KPA paid garages repairs costs using part of the withheld premium to enable the Authority vehicles to be released from the garage in view of the fact that the vehicles were required for the operation of the Authority and any delay would hamper critical operations areas that would potentially result to losses. Premium statement for Amaco Insurance capturing the total amount of premium outstanding and whose balance was used to offset payments to the motor vehicles garages were provided.

Committee Observations

3203. **The Committee made the following observations:**

(i) The Committee noted KPA's explanations that part of the paid premiums was used to settle some claims. It could have been prudent for KPA to initiate legal proceedings against the company for unsettled claims rather than exposing the Authority to losses.

(ii) The outstanding amount was KSh 1.5 million.

(iii) It was further not clear on the exact amount spent on garages against the outstanding premium.

Committee Recommendation

3204. **The Committee recommends that the KPA should sue AMACO for recovery of the premiums paid.**

Insurance for Kenya Ports Authority Pension Scheme Assets

3205. The insurance premiums of KSh.427,873,000 included an amount of KSh.9,020,051 in respect of premiums for provision of insurance services to cover assets valued at KSh.11,723,412,000 belonging to the Kenya Ports Authority Pension Scheme which was an independent entity with its own budget and the Authority did not have an insurable interest.

3206. Consequently, the propriety and validity of insurance premiums of KSh.9,020,051 for the year ending 30 June, 2019 could not be confirmed

Management Response

3207. Due to lack of expertise and capacity, KPA Pension Scheme traditionally had been using Insurance Branch to arrange for their insurance covers. During this time, KPA settled insurance premiums on behalf of KPA Pension scheme. However, when the issue was brought to management attention, there were modalities developed to ensure that premium paid were recovered from pension scheme. As a result, Management had requested KPA Pension to refund amounts paid on behalf KPA Pension. No refunds had been received. In addition, it was important to point out that going forward, no insurance premium had been paid on behalf of KPA pension.

Committee Observations

3208. **The \committee notes that the amount paid on behalf of KPA pension scheme was irregular and ought to be recovered.**

Committee Recommendation

3209. **The Committee recommends that the accounting officer for the KPA should recover all the monies paid as insurance for the KPA pension Scheme.**

Licenses and Computers Cost not Capitalized (FY 2018/2019)

3210. Included in the administrative expenses of KSh.4,044,431,000 was an amount of KSh.666,278,000 in respect of licenses and computers, out of which KSh.10,000,000 was a part payment for procurement of IDEA data analytics and monitoring software valued at KSh.15,812,830. However, the cost of the software was expensed instead of being capitalized as an intangible asset as required by International Accounting Standard No. 4 which states that- *when the software is not an integral part of the related hardware, computer software is treated as an intangible asset.* Further, records availed for audit review indicated that part of the software cost amounting to KSh.3,162,566 was charged to development studies budget.

3211. In addition, the Authority procured the software through direct procurement method and no evidence was availed to confirm that the software required compatibility with previously acquired technology or services to warrant direct procurement.

3212. Consequently, the legality and value for money spent on software amounting to KSh.15,812,830 and the accuracy of licenses and computers expenditure of KSh.666,278,000 for the year ended 30 June, 2019 could not be confirmed.

Management Response

3213. The decision to go for direct procurement of IDEA data analytics and monitoring software was due to Internal Audits department need to acquire a quality analytics tool from a local reputable firm/distributor. KPMG Kenya had been the sole distributors of IDEA in Kenya for many years and thus led to the choice. There were official letters from Caseware for KPMG endorsement as the sole territorial distributors of IDEA software.

3214. The approved procurement budget of KSh. 10,000.00.00 to be debited to cost center 71330101 GL 600755 (Licenses) was an estimate and upon completion of the tendering process, the figure increased. This led to posting of the additional cost of KSh. 3,162,566.00 (inclusive of VAT) to Development Studies GL 600641 under the Managing Directors which Internal Audit and Risk Management is under.

Committee Observations and Recommendation

3215. **The response given was sufficient on direct procurement as the manufacturer of the impugned software was the sole distributor. The matter was resolved.**

Unsupported Sports Expenditure (FY 2018/2019)

3216. The administrative expenses of KSh.4,044,431,000 also included an amount of KSh.96,015,000 under sports which related to salaries, subsistence allowances, transport and other activities during various tournaments both locally and overseas by eleven (11) different teams of the Authority. However, the Management did not provide details of how the team management units' employees and non-employee players were selected to participate in various tournaments and the subsistence allowances paid determined. Further, an approved policy on the terms of engagement with team management units, employees and non-employee players was not availed for audit review.

3217. In addition, included in the sports expenditure is KSh.17,588,162 paid to staff to attend football matches of Bandari Football Club. However, it was not clear how and why the

Authority issued imprests to staff in the football cheering team given that the club was an independent entity and has its own budget.

3218. Consequently, the propriety of sports expenditure of KSh.96,015,000 for the year ended 30 June, 2019 could not be confirmed.

Management Response

3219. The Authority did not pay any salaries or transport allowance to the members of the teams. Players for the various teams were scouted and engaged in competitive trials by the technical bench of the various teams and selected to join/play for the KPA teams based on performance while the officials are appointed based on their qualifications and technical knowledge of the discipline. Additionally, players were selected during the inter-departmental games to form the KPA teams for the KECOSO games. Employees were also invited for the teams' trials.

3220. On payments, the players were paid games allowances for training and competition days for games held outside station and competition days for matches played in station as provided for under the Collective Bargaining Agreement in force. The players were only paid subsistence allowances when transiting to the games' venue (nights/days) at the lowest grades (HG3/HG4), for two (2) travelling nights/days.

3221. On the Terms of engagement, the selected players signed registration forms with the respective team, which were thereafter submitted to the concerned Federations for processing (samples were provided). The signed registration forms served as contractual agreements between the players and the teams for the period of the respective season.

3222. Regarding the policy, Management was in the process of reviewing the Sports Policy which would enable the players to be engaged on performance-based sports contracts.

3223. Bandari FC was autonomous and through recommendation from the Executive Committee Board's 212nd meeting held on 27th September, 2013, the club was registered as an independent entity vide registration certificate No. 107 on 25th June 2019 through the Sports Registra. KPA was the sponsor manages the sponsorship fund under Corporate Social Responsibility vote (CSR GL account 600792) under the Managing Director who is the Patron and not the Sports vote (GL 600633). The fans duty travel costs were catered for under the CSR vote where Bandari FC falls. KPA as the main sponsor had an interest in ensuring funds were properly utilized for the benefit of improving and encouraging talent and progression in youngsters in the Coast. Equally, KPA was also interested in making sure the club won matches. To this end KPA had been sponsoring fans to cheer up the club as football was about cheering and winning matches and KPA was an interested party. Those who had been sponsored to cheer up the team had been utilizing CSR vote.

Committee Observations and Recommendation

3224. **This matter was adequately addressed and therefore resolved.**

OPERATING EXPENSES (FY 2018/2019)

Overcharge on Uniforms and Clothing Expenses

3225. Included in the operating expenses of KSh.5,976,959,000 was an amount of KSh. 354,579,000 in respect of uniforms and clothing, out of which KSh.86,029,240 was in respect of uniforms and staff protective equipment. Included in the latter balance of KSh.86,029,240 was an amount of KSh.49,871,496 for supply of high visibility overalls. Records availed for audit review indicated that the Authority procured seven thousand two hundred and sixty (7,260) high visibility overalls costing KSh.47,008,500 at a unit cost of KSh.6,475. The award letter indicated a unit cost of Canada-imported overalls of KSh.6,475 while locally made overalls were priced at KSh.2,325 or a total of KSh.16,879,500 for 7,260 overalls. However, physical verification of the items revealed that the overalls received had a local manufacturer's label. Further, importation documents (Import Declaration Forms) to confirm that the high visibility overalls were from Canada were not availed for audit review.

3226. The Authority, therefore, overpaid the supplier by KSh.30,129,000 for the locally made overalls.

3227. Consequently, the propriety and value for money amounting to KSh.49,871,496 spent on high visibility overalls for the year ended 30 June, 2019 could not be confirmed.

Management Response

3228. This was a public tender advertised under Ref Number KPA/049/2011-12/PSM. The Authority does indeed procure and issue two types of Overalls. (a) General overalls issued mostly to engineering and workshop staff and (b) High visibility Orange Overalls issued out to operations staff.

3229. Both of these items were won competitively by M/s Zocom and a contract awarded at a cost of KSh. 6,475 and KSh. 2,325 respectively.

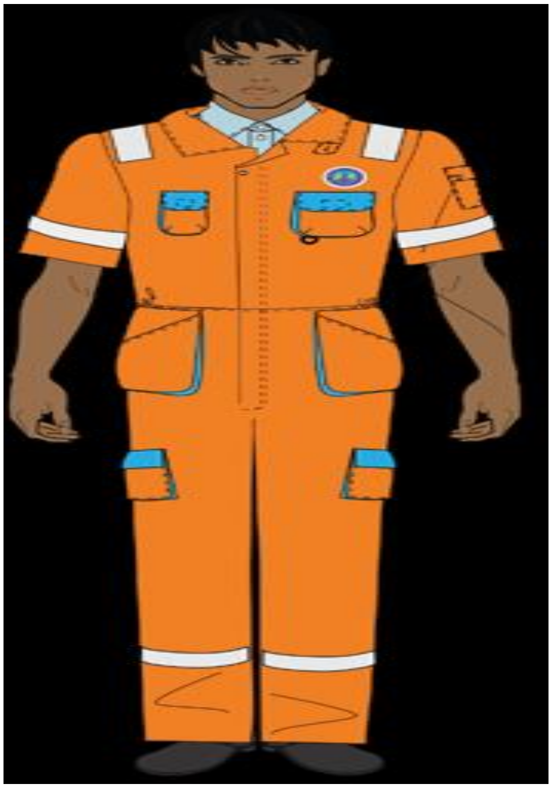
3230. The two overalls were for different applications and specifications were different. The high visibility was issued to operation staff who worked at night and at time in rainy weather where they needed to be visible to avoid accidents and protect against the elements i.e. rainwater and oil spills. The tender documents and contract were provided. Specifications were also provided as indicated below:

a) <u>High visibility Orange Overalls issued out to operations staff</u>

1. OVERALL ORANGE HI-VIS ANTI STATIC (XXXL) 5524907024
2. OVERALL ORANGE HI-VIS ANTI STATIC (XXXXL 5524907026
3. OVERALL ORANGE HI-VIS ANTI STATIC (S) 5524909002
4. OVERALL ORANGE HI-VIS ANTI STATIC (L) 5524909004
5. OVERALL ORANGE HI-VIS MEDIUM W/KPA LOGO 5524909011
6. OVERALL ORANGE HI-VIS LARGE W/KPA LOGO 5524909012
7. OVERALL ORANGE HI-VIS X-LARGE W/KPA LOGO 5524909013
8. OVERALL ORANGE HI-VIS XX LARGE W/KPA LOGO 5524909014
9. OVERALL ORANGE HI-VIS XXX-LARGE W/KPA LOGO 5524909015
10. OVERALL ORANGE HI-VIS SMALL W/KPA LOGO 5524909016
11. OVERALL ORANGE HI-VIS XX XX-LARGE W/KPA 5524909058

Specifications

Work overalls designed to meet offshore industry demands; long lasting and can survive the riggers of offshore industry made of T/C twill 655 polyster 35% cotton 210g/m3 orange fabric treated with Telfon finish to provide oil and water repellency. Concealed 7 stud fastening front, elasticated action back for ease of movement, 2 YKK zips concealed chest pockets, knee & elbow padded, two side swing self-fabric pockets with trouser access, two hip patch pockets with rule pockets with rule pocket in right leg pen pocket on sleeve. Fabric to conform to EN531 (E2) EN 470 -1 and ENV50354. Overall, with Retro Reflective with 2 Band and brace tape configuration and 2 bands positioned above the knee for enhanced visibility conforms to EN 471:2003 class 2 and GO/RT/3279.



The difference in cost is clearly to do with the specifications

b) General overalls issued mostly to engineering and workshop staff

Material ordinary cotton

OVERALL WHITE COTTON(BOILER SUIT) MEDIUM	EN	5524919144
OVERALL WHITE COTTON(BOILER SUIT) XXL	EN	5524919148
OVERALL WHITE COTTON(BOILER SUIT)LARGE	EN	5524919146
OVERALL WHITE COTTON(BOILER SUIT)SMALL	EN	5524919145
OVERALL WHITE COTTON(BOILER SUIT)X-L	EN	5524919147
OVERALL WHITE (L) WITH KPA LOGO	EN	5524909017
OVERALL WHITE (M) WITH KPA LOGO	EN	5524909020
OVERALL WHITE (XL) WITH KPA LOGO	EN	5524909018
OVERALL WHITE (XXL) WITH KPA LOGO	EN	5524909019
OVERALL WHITE (XXXL) WITH KPA LOGO	EN	5524909029
OVERALL WHT PURE COTTON WITH KPA LOGO	EN	5524909055
OVERALL YELLOW WITH KPA LOGO LARGE	EN	5524909024

OVERALL DRILL YELLOW KPA LOGO (L)	EN	5524909040
OVERALL DRILL YELLOW KPA LOGO (M)	EN	5524909039
OVERALL DRILL YELLOW KPA LOGO (XL)	EN	5524909041
OVERALL DRILL YELLOW KPA LOGO (XXL)	EN	5524909042
OVERALL DRILL YELLOW SPARKS RESIST (L)	EN	5524909044
OVERALL DRILL YELLOW SPARKS RESIST (M)	EN	5524909043
OVERALL DRILL YELLOW SPARKS RESIST(XL)	EN	5524909045
OVERALL NAVY BLUE WITH KPA LOGO XXL	EN	5524909034
OVERALL NAVY BLUE WITH KPA LOGO (XL)	EN	5524909033
OVERALL NAVY BLUE WITH KPA LOGO (L)	EN	5524909032
OVERALL NAVY BLUE WITH KPA LOGO (M)	EN	5524909031
OVERALL N/BLUE WITH KPA LOGO (XXXL)	EN	5524915276

3231. In conclusion, both overalls were manufactured locally one of the key elements of the high visibility overall was the reflective tape which is the most expensive material. This part was manufactured by 3M company of Canada which had factories in several countries including China.

3232. As explained to the auditors there was no requirement in the contract to vet the importation of the manufacturers input materials but the completed overalls against KPA's approved samples. The samples were available at the central stores new Services areas clearly displays for purposes of Inspection and Acceptance. Additionally, inspection included visits to the factory to check on the stitching process and general workmanship.

Clearly there was no contractual or legal obligation to request for any importation documents.

Committee Observation

3233. **In absence of the evidence of importing the impugned uniforms, the Committee could not arrive at a contrary conclusion from the audit observation.**

Committee Recommendation

3234. **The Committee recommends that the EACC should investigate the procurement of the impugned uniforms with a view to preferring charges on any person that may be found culpable.**

UNCONFIRMED PORT INFRASTRUCTURE REPAIRS (FY 2018/2019)

3235. The operating expenses of KSh.5,976,959,000 included an amount of KSh.1,528,600,000 relating to port infrastructure repairs. The latter balance includes an amount of KSh.208,046,902 in respect of waterproofing works contract at KPA Headquarters Blocks I and II awarded through biennial framework contract for waterproofing works. However, details of how the contractor was selected from the list of contractors awarded the biennial contract were not availed for audit verification.

3236. Further, the Bills of Quantities for the works included removal of old screed paving and water proofing material, replacement of the same with 38mm tropicalized roof finish, application of bituminous aluminum, application of Dunlop flexible membrane, laying of synthetic reinforced net backing and application of penetron admix for the whole roof surface. However, during a physical verification in the month of October, 2019, it was noted that a large section of the roof appeared unrepaired as evidenced by leakages observed whenever it rained.

3237. Under the circumstances, the propriety, occurrence and value for money of KSh.208,046,902 on repairs of port infrastructure for the year ended 30 June, 2019 could not be confirmed.

Management Response

3238. KPA management confirmed that the work was done per the specification and the contractor was identified as provided in the law. Debris collected from the surface runoff during rainy periods contributed to the overflow of downpipes that contributed to the ingress of water into the structure due to delayed periods in the evacuation of stagnant flow. This matter could be arrested by the inclusion of all rooftop areas within the maintenance contracts for cleaning services that included routine clearance of debris and any other unwarranted materials from all the Authority's rooftops to mitigate against such failures.

Committee Observations

3239. **The Committee made the following observations:**

(i) Physical verification at the time of audit showed that the works were not done as provided in the BOQs but the contractor was called upon to repair during the defect liability period of one year.

(ii) Further, management failed to respond to the issue of procurement of the contractor raised in the audit observation and as such, it remained as queried.

(iii) The matter was under investigations by the EACC.

Committee Recommendation

3240. **The Committee recommends that the EACC expedites its investigations on the award and execution of the contract with a view to ascertaining whether the KPA management adhered to the law and that all the works were executed as per the Bill of Quantities.**

RECEIVABLES AND PREPAYMENTS (FY 2018/2019)

Debt Recoverability

3241. The statement of financial position as at 30 June, 2019 reflected receivables and prepayments balance of KSh.15,946,216,000 representing an increase of KSh.1,445,859,000 or 10% from the balance of KSh.14,500,357,000 reported in 2017/2018, an indication of ineffective debt collection strategies by the Authority.

Management Response

3242. The Authority had in place a robust debt collection strategy and ensured prompt debt collection notwithstanding the disputed ones. The debt collection strategies in the year were affected by Covid-19 pandemic which affected the truck turnaround. This operational challenge resulted into congestion and accumulation of debts mainly on additional storage charges. Storage charges forms a major component of dispute cases being addressed

3243. The disputes were being negotiated with the customers for settlement. The Authority continued trading with these customers as a way of enforcing recovery as we have seen cases where customers have gone to court seeking injunction compelling KPA to allow them to continue operating and estopping collection of debt. In view of this, the prudent thing to do is to negotiate, persuade and threaten.

3244. The Authority had also established a dispute resolution committee which is tasked to expedite on dispute resolution. Other measures in place to help alleviate/deal with the problem of debtors and ensure debts and also disputes cleared within a reasonable period include;

- Carrying out regular reviews and aging of balances.
- Carrying out reconciliation of accounts and ensuring existence of proper debtors
- Continuous follow up of overdue accounts and blocking of overdue accounts until payments are paid / arrangements made for payment.
- Finalizing disputed cases

3245. Further, included in the receivables were balances from Kenya National Shipping Line of KSh. 25,485,396.93. Both parties agreed about the existence of the debt. But 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. Negotiation on restructuring the KNSL by GoK were ongoing.

3246. The Authority had also filed legal proceedings to recover debts of Kenol Kobil and Kobil Petroleum Ltd of KSh. 134,684,891 and KSh. 431,289,649.09 respectively. The matter was still pending in court under cases Nos. HCC no 128 of 2004 and HCC no. 216 of 2009 attempts to have out of court settlement were made however the parties were yet to agree.

Committee Observations

3247. **Though the explanation on increase of debt and payables having been caused by Covid-19 pandemic was adequate, the Committee noted with concern that other debts remained outstanding for long.**

Committee Recommendation

3248. **The Committee recommends that the accounting officer for the KPA should pursue all KPA debtors and ensure that they honour their debts.**

Long Outstanding Debt — National Treasury

3249. As reported in the previous financial year, the receivables and prepayments balance of KSh.15,946,216,000 as at 30 June, 2019, included KSh.287,231,000 owed by the Ministry of Transport (Treasury/Dredgco Limited) that had been long outstanding since 1994. Although the Management had fully impaired this amount owed by the National Government it was not clear why The National Treasury had failed to pay the debt.

Management Response

3250. Management concurred with the audit observation on the KSh. 287M owed by the Ministry of Transport. As previously reported, despite numerous correspondence between the Authority, Ministry of Transport and the National Treasury neither funds nor approval to write off the amount had been received.

Committee Observations and Recommendation

3251. **This is a repeat paragraph from the 2017/2018 Financial year.**

Doubtful Debts

3252. The receivables and prepayments balance of KSh.15,946,216,000 included an amount of KSh.4,877,632,000 in respect of trade receivables comprising trade cargo, trade marine and rental receivables of KSh.4,343,245,000, KSh.450,793,000, and KSh.83,594,000 respectively. An audit review of the ageing analysis revealed that an amount of KSh.964,271,233 had been outstanding for more than one (1) year while the Authority continued to engage in business with the debtors. No explanation had been provided for the failure to collect the amount.

Management Response

3253. The KSh 964 million debts had been outstanding mainly due to court cases, disputed invoices and amount recommended for write off. Below is the breakdown;

- Balances that have cases in court – KSh 574,877,883.41
- Balances Recommended for write-offs – KSh 74,112,539.51
- Balances that are disputed

3254. Cases in court include Kenol Kobil and Kobil Petroleum Ltd as well as Ms Zynmatt KSh 26 million and the University of Nairobi KSh 46 million.

The below table shows the uncollectable amount with pending court case.

A/c no.	**A/c name**	**KSh**
210119	Kobil Petroleum Ltd	431,289,649.09
210112	Kenol Kobil Ltd	134,684,891.20
101126	Ramsford Freight Forwarders Ltd	7,454,186.03
410074	Joseph Mwalukuku	1,449,157.09

3255. The Authority was doing business with customers with disputes as it collected the amounts gradually. The current Credit Policy allows clients to continue engaging in business with the Authority until such a time that their disputes were resolved. The process of adopting a new credit policy is ongoing. Management was enforcing the following measures to enhance collection;

- Issuance of demand letters to clients and having/enforcing agreed payment plans

- Operationalized the dispute committee - This had facilitated issuance of credits notes which then facilitates collection,

Committee Observations

3256. **The Committee notes that this matter was still outstanding (debts) despite recovery efforts from management.**

Committee Recommendation

3257. **The Committee recommends that the accounting officer for the KPA should continue pursuing recovery of the pending debts due to the KPA.**

LAMU PORT HOUSING (FY 2018/2019)

Unconfirmed Project Cost

3258. Records availed for audit review indicated that the Ministry of Transport, Infrastructure, Public Works, Housing and Urban Development advertised and awarded contract No. 9712C - Proposed Lamu Port Police Station and Management Housing for KSh.615,848,997 in the financial year 2012/2013. The Kenya Ports Authority entered into an agreement on 23 November, 2017 to take over the works and avail funding of KSh.842,683,022 through the government grant for Lamu Port after a Board approval on 10 November, 2017. The total funding comprised KSh.340,532,154, being claims by the contractor for delay in handing over of the site and other factors provided for in the contract and KSh.502,150,868 for outstanding and additional works.

3259. An audit review of the agreement revealed that the project was 45% complete as at the time the Kenya Ports Authority undertook to finance the same and indicated that the total amount required for completion was KSh.961,003,022 as detailed below.

Details	Amount (KSh.)
Project Contract Sum	615,848,997

Claim for delay and compensation	340,532,154
Total	956,381,151
Amount paid to contractor by the Ministry up to (Dec 2017)	(267,196,753)
Amount required to complete the houses	689,184,398
Cost of Presidential launch	153,498,624
Total Amount due to Contractor	842,683,022
Additional facilities	118,320,000
Total Required	**961,003,022**

3260. However, Project data provided in the same agreement indicated that the total amount certified and paid to the contractor as at 23 November, 2017 was KSh.346,222,507 which varied by KSh.79,025,754 with the amount of KSh.267,196,753 used in calculating the amount required to complete the project. The variance had neither been explained nor justified. Further, the amount of KSh.346,222,507 was not recognized as a capital grant in the Authority's financial statements.

3261. Under the circumstances, the project cost of KSh.961,003,022 for Proposed Lamu Port Police Station and Management Housing and cost of KSh.267,196,753 incurred by the Ministry of Transport, Infrastructure, Public Works, Housing and Urban Development on the same project could not be confirmed.

<u>Management response</u>

3262. The Authority was directed by the Cabinet Secretary, Ministry of Transport, Infrastructure, Housing and Urban development to take over the construction of Lamu Port police and Staff housing in letter Ref. MOT&I/C/Rail/007/1 VOL.XI(23) of 21st March 2017.

3263. Further, the State department of Public Works advised the Authority that the cost of implementing the project was KSh 961,003,002.52 in letter Ref. QD59/9712C/(60) dated 9th October 2017.

3264. The role of the Ministry in the project was to provide technical consultancy and management of the project while KPA was to provide the funding and be represented in the project management. All claims/payments certificates were evaluated by the State department of public works and forwarded to KPA for payments.

3265. The KPA Board in its 335th Regular Board meeting held on 10th November 2017 approved the take over and further directed that the State Department of public works to be responsible for any audit clarifications pertaining to the procurement and implementation of the contract. Thereafter State Department of Public Works was requested to respond to the Auditor-General observation vide our letter Ref. MCS/4/7/373 dated 22nd November 2021.

3266. On recognition of the grant in the financial statement, the asset was still work in progress and would only be recognized once the project was completed and handed over to the Authority. Upon completion of the project, the Authority would account for the grant in accordance with IAS 20 by deducting the grant from the Asset carrying amount.

<u>Committee Observations</u>

3267. **The Committee made the following observations:**

(i) All the audit queries relating to this matter remained un responded to i.e the reasons for the transfer of the project financing responsibility to the KPA, delayed implementation, variance in amounts paid as reported ostensibly because KPA was not privy to this project before handover from the mother ministry.

(ii) In the absence of all this information, the Committee was unable to dispense of with the matter.

<u>Committee Recommendation</u>

3268. **The Committee recommends that the Office of the Auditor should conduct a Special Audit on the Lamu Port Housing Project.**

<u>Irregular Variation of the Contract Price</u>

3269. The State Department for Public Works issued a variation order number 1 of KSh.494,030,778 to KSh.1,109,879,775 for the works, representing 80% of the original contract sum of KSh.615,848,997. However, the variation was contrary to Section 139(4)e of the Public Procurement and Asset Disposal Act, 2015 which states that any variation of a contract shall only be considered if the cumulative value of all contract variations did not result in an increment of the total contract price by more than twenty-five percent (25%) of the original contract price.

3270. Consequently, the contact variation of KSh.494,030,778 was contrary to the Law.

Management Response

3271. NO RESPONSE

Committee Observations

3272. **The Committee made the following observations:**

(i) This matter was not responded to and therefore still outstanding.

(ii) It was not clear whether KPA queried the variance of 80% and claims from the contractor when KPA was taking over the project from public works.

(iii) Further, it was a conflict of interest for public works to initiate and supervise works at the same time.

(iv) It was inconceivable that over KSh 150 million was used for a presidential launch.

Committee Recommendation

3273. **The Committee recommends that the Office of the Auditor should conduct a Special Audit on the Lamu Port Housing Project.**

Unverified Works

3274. The variation order number 1 of KSh.494,030,778 included an amount of KSh.153,498,624 for emergency works in respect of the Presidential launch of the Lamu Port comprising the following:

	Details	Amount (KSh.)
1	Bush Clearing and parking	45,627,560
2	Access roads	15,930,000
3	Temporary police camp	1,330,590
4	Plaque stands	2,695,000
5	Ramp to landscaped area	43,250
6	Works at the navy base	51,000,000

3275. However, during site visit in the month of September 2019, no permanent works that qualify as assets of the Authority were verified. Further, it was not clear why works costing KSh.51,000,000 at the Navy Base were financed and disclosed as part of the Authority's assets.

3276. Consequently, the existence of work in progress of KSh.153,498,624 as at 30 June, 2019 could not be confirmed.

Management response

3277. As stated above, all certificates were evaluated by the State department of Public Works and forwarded to KPA for payments. During the 335th Regular board meeting held on 10th November 2017, management disclosed that in 2015 the State department of works project engineer issued site instructions to the contractor to carry out emergency works in respect to the proposed Heads of State official launch of Lamu port in May 2015. This was in line with information from the Office of the President that five Heads of State were expected at the launch. Preparations were then made to clear and create access at the Port site, Naval Base airport, the interconnecting roads and building of a Helipad. The preparation cost the State Department of works KSh. 153,498,624 and rates used were as per the contract BQ.

3278. The State Department of Public Works was requested to respond to the Auditor-General observation vide our letter dated 22nd November 2021.

Committee Observations

3279. **The Committee made the following observations:**

(i) There was no evidence adduced to show that any work was done for the amount claimed.

(ii) Works done at the navy base should not have been included in the project.

(iii) The matter remained unresolved.

Committee Recommendation

3280. **The Committee recommends that the Office of the Auditor should conduct a Special Audit on the Lamu Port Housing Project.**

Unverified Project Motor Vehicle and Maintenance Costs

3281. A project vehicle acquired at a cost of KSh.5,800,000 was grounded and was held at a police station off the site for safety reasons. However, the contractor continued to claim vehicle maintenance and driver's cost totalling KSh.1,377,764 (KSh.44,444 per month for 31 months extended period) for a vehicle which was not in use.

3282. Consequently, the existence of project assets of KSh.5,800,000 and vehicle maintenance cost of KSh.1,377,764 as at 30 June, 2019 could not be confirmed.

Management Response.

3283. As stated above, all certificates were evaluated by the State department of Public Works and forwarded to KPA for payments. The State Department of Public Works was requested to respond to the Auditor-General observation vide our letter Ref. GMF/1/15 dated 22nd November 2021.The matter was also subject to EACC investigations.

Committee Recommendation

3284. **The Committee recommends that the Office of the Auditor should conduct a Special Audit on the Lamu Port Housing Project.**

CONSTRUCTION OF THREE BERTHS AT MANDA BAY-LAMU PORT (FY 2018/20190

Overpayment of Advance

3285. The contract provided for 10% advance payment which translated to USD 25,944,174 (foreign currency portion) and KSh.1,899,241,992 (local currency portion). However, the Management approved and paid an advance of KSh.2,000,000,000 for the local component which was KSh.100,758,008 more than KSh.1,899,241,992(10%) provided by the contract. No explanation was provided for the excess payment of advance.

3286. Further, interim payment certificate No. 17 dated 12 June, 2019 indicated that the foreign currency portion of the advance had been fully recovered while outstanding local currency advance was KSh.569,958,754. However, Note 22(b) to the financial statements for the year ended 30 June, 2019 reflected advance Lamu creditors of KSh.1,523,067,000, resulting to a variance of KSh.953,108,246 which was not explained or reconciled. In addition, the Management availed a bank guarantee from a local bank for KSh.1,352,950,669, an indication that advance payment of KSh.170,116,331 may not have been secured by a bank guarantee.

3287. Consequently, the accuracy of advance Lamu creditors balance of KSh.1,523,067,000, recoverability of KSh.170,116,331 and validity of KSh.100,758,008 advance payment as at 30 June, 2019 could not be confirmed.

Management response

3288. The Payments were executed in accordance with the directive of the Ministry of Transport, and Infrastructure through letter reference MOT/C/RAIL/007/1 Vol. VIII (33) dated 20th September 2014.

3289. The variance in the advance payments was a result of certificate no 17 which was accounted for in financial year 2019/2020 and not financial year 2018/2019. The delay in accounting for the certificate was due to delayed disbursement from the National Treasury.

Committee Observations

3290. **Considering that the KPA had requested for a response on this matter from the mother ministry and had failed to get it, the Committee was unable to dispense with the issues raised in the audit report.**

Committee Recommendation

3291. **The Committee recommends that the Office of the Auditor should conduct a Special Audit on the Lamu Port Housing Project.**

Unapproved Temporary works

3292. Included in KSh.27,731,781,192 for the construction of Lamu Port were temporary works item 1.2 of the Bills of Quantities valued at USD.4,465,062 and KSh.792,032,072 which were supported with a breakdown of items and amounts. However, evidence that the proposed breakdown of the temporary works of USD.4,465,062 and KSh.792,032,072 was submitted to the Engineer and taken into account was not availed for audit verification. Further, the Management did not provide evidence of measurement of the temporary works lump sum of USD.4,465,062 or KSh.792,032,072.

3293. Under the circumstances, the existence of temporary works and validity of lump sum payment of KSh.792,032,072 as at 30 June, 2019 could not be confirmed.

Management response

3294. As stated above, all certificates were evaluated by the State department of Public Works and forwarded to KPA for payments. The State Department of Public Works was requested to respond to the Auditor-General observation vide our letter Ref. GMF/1/15 dated 22nd November 2021.

Committee Observations

3295. **Considering that the KPA had requested for a response on this matter from the mother ministry and had failed to get a response, the Committee was unable to dispense with it.**

Committee Recommendation

3296. **The Committee recommends that the Office of the Auditor should conduct a Special Audit on the Lamu Port Housing Project.**

Unconfirmed Insurance and Security

3297. The Bill of Quantities for Lamu Port project provided for USD.6,733,012 (KSh.688,585,137) and KSh.114,073,998 for insurance and security of the project which was fully paid for as at 30 June, 2019. Review of the insurance policy documents revealed that the insurance period was 1,734 days from 17 April, 2015 to 14 January, 2020. However, this was contrary to Clause 18.5 of the General Conditions of Contract Amendment which required the contractor to maintain a professional indemnity insurance in full force and effect until five (5) years after the takeover certificate. Further, evidence of premium payments by the contractor was not provided for audit review

3298. Under the circumstances, the accuracy and value for money of KSh.USD.6,733,012 (KSh.688,585,137) and KSh.114,073,998 insurance costs and insurance cover for Lamu Port work in progress of KSh.27,731,781,192 as at 30 June, 2019 could not be confirmed.

Management response

3299. As stated above, all certificates were evaluated by the State department of Public Works and forwarded to KPA for payments. The State Department of Public Works was requested to respond to the Auditor-General observation vide our letter Ref. GMF/1/15 dated 22nd November 2021.

Committee Observations

3300. **Considering that the KPA had requested for a response on this matter from the mother ministry and had failed to get a response, the Committee was unable to dispense with it.**

Committee Recommendation

3301. **The Committee recommends that the Office of the Auditor should conduct a Special Audit on the Lamu Port Housing Project.**

Unsupported Engineers expense

3302. The Bills of Quantities included item number 1.9.1 for establishment of Engineers' office and supply of office equipment and office furniture at initial cost of USD.114,129 and KSh.39,975,089 which had been paid in full as at 30 June, 2019. However, the Management did not provide details of what the amount was spent on. A physical verification of the project site in the month of September 2019 revealed that the Engineers were housed at Lamu Port Headquarters that was built by the State Department for Public Works.

3303. Consequently, the accuracy and propriety of works in progress of USD.114,129 (KSh.11,671,973) and KSh. 39,975,089 could not be confirmed.

Management response

3304. As stated above, all certificates are evaluated by the State department of Public Works and forwarded to KPA for payments. The State Department of Public Works was requested to respond to the Auditor-General observation vide our letter Ref. GMF/1/15 dated 22nd November 2021.

Committee Observations

3305. **Considering that the KPA had requested for a response on this matter from the mother ministry and had failed to get a response, the Committee was unable to dispense with it.**

Committee Recommendation

3306. **The Committee recommends that the Office of the Auditor should conduct a Special Audit on the Lamu Port Housing Project.**

Unsupported Accommodation Expenses

3307. The Bills of Quantities included item number 1.9.5 for Engineers' accommodation at a total cost KSh.26,617,290, out of which KSh.16,846,689 had been spent as per interim certificate number 17 dated 12 June, 2019. However, details of the expenditure were not provided for audit review.

3308. Consequently, the propriety of accommodation allowances totalling KSh.16,846,689 included in work in progress for the year ended 30 June, 2019 could not be confirmed.

Management Response

3309. As stated above, all certificates were evaluated by the State department of Public Works and forwarded to KPA for payments. The State Department of Public Works was requested to respond to the Auditor-General observation vide our letter Ref. GMF/1/15 dated 22nd November 2021.

<u>Committee Observations</u>

3310. **Considering that the KPA had requested for a response on this matter from the mother ministry and had failed to get a response, the Committee was unable to dispense with it.**

<u>Committee Recommendation</u>

3311. **The Committee recommends that the Office of the Auditor should conduct a Special Audit on the Lamu Port Housing Project.**

<u>Omitted Lamu Port land</u>

3312. The Property, Plant and Equipment balance of KSh.241,554,138,000 included an amount of KSh.49,201,730,000 under works in progress, out of which an amount of KSh.27,731,781,192 was in respect of Lamu Port Project funded by National Government Grants. However, and as previously reported, the Lamu Port land costing KSh.1,925,347,735 was not included in the property, plant and equipment balance of KSh.241,554,138,000 as at 30 June, 2019. Further, a physical verification in the month of October 2019 revealed that the Project Affected Persons (PAPs), were still occupying the land despite receipt of full compensation amounting to KSh.1,925,347,735. In addition, the Authority was yet to obtain a title deed for the land.

3313. Consequently, the accuracy and completeness of the property, plant and equipment balance of KSh.241,554,138,000 and the ownership of the land could not be confirmed.

<u>Management Response.</u>

3314. Verification of the PAPs was carried out by the NLC in liaison with County Government of Lamu while the valuations were undertaken by valuers from Ministry of Lands.

3315. KPA disbursed a total of KSh. 1,925,347,734.70 to the NCL for the compensated Lamu Port area and link road. Upon the compensation, NLC was to facilitate preparation of freehold title in favour of KPA. The processing and issuance of title for the Port land to

KPA was work in progress and KPA was engaging the NLC, LAPSSET and Ministry of Lands to progress and fast-track the process.

3316. Correspondence with the ministries and details of disputes was availed to the committee vide our letter Ref. GMF/15 dated 12th November 2021.

Committee Observations

3317. **The Committee made the following observations:**

(i) It was a dereliction of duty and a breach of the International Public Sector Accounting Standards from KPA management in not recognizing the land for the Lamu Port as work in Progress.

(ii) It was further not clear why it had taken inordinately long to secure the title to the Lamu Port land.

Committee Recommendation

3318. **The Committee recommends that the Cabinet Secretary for the Ministry of Lands and Physical Planning should issue the KPA with the title to the Lamu Port land within the 2022/2023 financial year.**

MANUFACTURE OF CONCRETE BARRIERS (FY 2018/2019)

3319. Included in work in progress balance of KSh.49,201,730,000 as at 30 June, 2019 was basic constructions amount of KSh.41,198,142,000, out of which KSh.233,938,333 was in respect of manufacture of concrete barriers. The following observations were made:

3320. Kenya Ports Authority issued Local Purchase Orders to 11 firms for manufacture of 15,180 concrete barriers costing KSh.1,202,192,252.95 inclusive of Value Added Tax for road barricading and traffic flow management within the Port. However, the works were awarded under the biennial tender for concrete works KPA/083/2015-2016/CE which was meant for repairs and maintenance works of concrete infrastructure at the Port and not for procurement of capital projects. Further, two Local Purchase Orders (LPOs) for 2,760 barriers for KSh.218,587,008 had not been delivered as at 30 June, 2019 while the remaining nine (9) LPOs for 12,420 barriers costing KSh.983,605,244.95 (KSh.79,195.27 per barrier VAT inclusive) had been partially delivered or serviced.

3321. Audit review of the Bills of Quantities revealed that one thousand three hundred and eighty (1380) barriers required 5778 cubic meters of concrete to manufacture, translating to 4.2 cubic meters per barrier. However, during physical verification in the month of October 2019, measurements taken indicated that each barrier was approximately 0.65 cubic meters in volume which was less than the volume provided in the Bills of Quantities. This is an indication that the total cost of concrete barriers to be delivered as per calculated volume and prices in the Bills of Quantities should have been KSh.151,323,884, (KSh.12,184 per barrier) and not KSh.983,605,244. Therefore, the cost may have been inflated by approximately KSh.832,281,360.71 (KSh.67,011 per barrier).

3322. In addition, the Management did not avail approved budget and procurement plan to support the manufacture of concrete barriers, contrary to Section 53 (9) of the Public Procurement and Asset Disposal Act, 2015 which states that *an Accounting Officer who knowingly commences any procurement process without ascertaining whether the good, work or service is budgeted for, commits an offence under the Act'.*

3323. Furthermore, the Management did not avail user procurement requisitions indicating the need and locations of these barriers, contrary to Section 53 (9) of the Public Procurement and Asset Disposal Act, 2015 (3) which states that any public officer who knowingly recommends to the Accounting Officer excessive procurement of items beyond a reasonable consumption of the procuring entity commits an offence under the Act.

3324. Under the circumstances, the propriety of KSh.233,938,333 in respect of manufacture of concrete barriers could not be confirmed.

Management Response

3325. The Barriers were a maintenance procurement intended to control traffic flow within the Operational Areas and to enhance safety within the Ports Road and SGR corridor. Their nature of composition served the purpose of procurement as maintenance works as previously procured in 2016.

3326. Barriers were treated as consumables that underwent massive wear and tear from daily use within operational areas and vehicular interaction and were not allocated Asset No.'s or fall under a category to be qualified as an Asset to the Authority. Thereby, the allocation for procurement of Barriers as Procurement of Capital Projects was not foreseen as a requirement to be qualified but a nature of maintenance works of concrete infrastructure.

3327. Management had taken disciplinary action against the staff that were involved in the malpractice. The actions taken included terminating the services of one and suspending the services of the other since he had a court appearance over the case.

3328. Further, the process of recovery of overpaid contractors had since commenced in-order to recover public funds that have been overpaid.

3329. The substantive tenders were public tenders. The matter was subject to DCI investigations and ongoing judicial process. The original documentation was with DCI.

3330. The procurement requisitions and maintenance orders generated during the procurement of concrete barriers were availed to the auditor for audit. The barriers were meant to be used as indicated. Information on the requisitions and areas done was also indicated on the LPO texts.

<u>Committee Observations</u>

3331. **The Committee made the following observations:**

(i) The fact that the Management failed to provide procurement plans in which the budget for erecting concrete barriers was domiciled and absence of a requisition from the user department indicates that the management was in breach of Section 53 of the Public Procurement and Asset Disposal Act 2015 on commencement of a procurement without a budget.

(ii) Further, it was not clear whether any verification of the concretes was done before payments were made.

(iii) Finally, it was not clear to the Committee whether recoveries had been done for the overpaid monies and status of the DCI investigations that had been going on the matter.

<u>Committee Recommendation</u>

3332. **The Committee recommends that the DCI expedites conclusion of investigations it begun on procurement and payments for concrete barriers at KPA and prefer charges to all persons that may be found culpable.**

Excavation and concrete works on KRC Makongeni goodshed-LR No209/8197

3333. Included in work in progress balance of KSh.49,201,730,000 as at 30 June, 2019 was basic construction amount of KSh.41,198,142,000, out of which KSh.746,548,065 was in respect of concrete works at Makongeni Inland Container Depot in Nairobi. However, the work in progress support schedule indicated a total value of orders issued of KSh. 587,475,320, resulting to a variance of KSh.159,072,745 which was not explained or reconciled. Further, the expenditure was not provided in the approved capital budget for the Authority for the year under audit.

3334. Further, the Authority issued Local Purchase Orders to various companies amounting to KSh.587,475,320 under biennial contracts for excavation and concrete works Ref: KPA/083/2015-2016/CE. However, the biennial contracts were for repair works and not for capital works at Makongeni Yard LR No.209/8197. During physical verification in the month of September 2019, it was noted that the yard was not demarcated to identify areas to be excavated and concreted by the various contractors. It was therefore not possible to ascertain if each of the contractors delivered the works as per the purchase orders and Bills of Quantities. In addition, the Authority was in occupation of the property without a lease and had un-procedurally and without approval of KRC, uprooted a railway line while undertaking excavations, an indication of irregular investment of public funds on a third party's property.

3335. Consequently, the accuracy and propriety of work in progress of KSh.746,548,065 as at 30 June, 2019 could not be confirmed.

Management Response

3336. The Authority awarded 9 contractors works in Makongeni Goods Shed totalling to KSh. 587,475,319.51 as per the table below.

BIENNIAL CONTRACT FOR EXCAVATION AND CONCRETE WORKS,KPA/083/2015-16/CE CONCRETE WORKS AT MAKONGENI, NAIROBI						
ITEM	COMPANY NAME	ZONE	LPO NO.	ESTIMATED CONCRETE AREA(M2)	CONTRACT SUM	AMOUNT PAID (KSHS.)
1	NJUCA CONSOLIDATED LTD	1	4500081733	2.798	108,401,297.50	0.00
2	M/S TRANSMAR LTD	2	4500081516	2.761	112,127,394.87	98,256,462.85
3	M/S GRAND LOGISTICS LTD	3	4500081540	5.183	110,718,448.50	97,021,812.74
4	M/S MASTERSTROKE LTD	4	4500081517	2.393	48,189,773.80	43,085,731.77
5	M/S SALWA(K) LTD	5	4500081535	1.336	35,243,679.99	34,121,827.82
6	M/S STAR GENERAL CONTRACTORS LTD	6	4500081731	1.478	33,668,682.74	29,503,634.48
7	M/S SALWA(K) LTD	7	4500081535	1.381	33,402,495.51	28,574,384.14
8	M/S JUMBO INTERLINKS LTD	8	4500081771	1.079	33,571,962.81	28,180,189.80
9	M/S HAAFAH EAST AFRICA LTD	9	4500081772	1.192	72151583.79	63,225,676.29
	TOTAL			19.60	587,475,319.51	421,969,719.89

3337. The works were investigated by the Ministry of Public Works and DCI and communication made to the Authority vide letter number. CID/SEC/4/3/1/VOL. XLI/4. Some discrepancies were found between the work done and the amounts paid against the work done. Legal and administrative actions were taken against the perpetrators. The case is still in court.

Committee Observations

3338. **The Committee made the following observations:**

(i) **The management failed to respond to specific issues raised in the audit observation i.e why there was a variance of KSh 159 million that had not been explained, why the work was not done to standard, why the authority uprooted the Railway line and why it had occupied KRC land without a lease.**

(ii) **Though the current management of KPA indicated that the legal opinion from KPA legal department advised that the works should not proceed, the then accounting**

officer for the KPA overruled it and allowed the works pointing towards a possible interest.

(iii) It emerged that works done were in KRC land which subsequently chased KPA out of it without compensating KPA for spending over KSh 587 million.

Committee recommendation

3339. **The Committee recommends that the Directorate of Criminal Investigations should expedite investigations on the matter and prefer charges on any person that could been culpable.**

BANK AND CASH BALANCES VARIANCE (FY 2018/2019)

3340. As disclosed in Note 24 to the financial statements, the statement of financial position reflected a bank and cash balance of KSh.859,114,000 as at 30 June, 2019. Included in the bank and cash balance of KSh.859,114,000 was petty cash balance of KSh.3,708,000, out of which KSh.830,414 was in respect of Rwanda office imprest.

3341. However, the cash count certificate as at 30 June, 2019 indicated a balance of KSh.37 (Rwandese Franks 369), resulting to a variance of KSh.830,377 which had not been explained or reconciled.

3342. Consequently, the accuracy and completeness of bank and cash balance KSh,859,114,000 as at 30 June, 2019 could not be confirmed.

Management Response

3343. Bank Recoupment Rwanda 1000/202047 Kes (326,249). KSh 640,000.68 was for payment for PAYE sent to Rwanda Office. The amounts of KSh 335,634.19 and KSh 38,249.27 were cleared vide document 1039727.

Committee Observation and Recommendation

3344. **The variance has been confirmed as recoupment. The matter was resolved.**

LONG TERM INVESTMENT (FY 2018/2019)

3345. As previously reported, the statement of financial position as at 30 June, 2019 reflected long term investments balance of KSh.1,748,887,000 comprising fixed deposits of

KSh.1,719,787,000 and equities of KSh.29,100,000. However, Note 20(b) to the financial statements for the year ended 30 June, 2019 reflected equities with a nominal value of KSh.54,346,000 and shares with a nominal value of KSh.100,000,000 in respect of the Kenya National Shipping Line Limited and the Kenya Ferry Services Limited respectively which were fully impaired. However, share certificates for the Kenya National Shipping Line Limited availed for audit review indicated that the Kenya Ports Authority owned 70,023 shares with a nominal value of KSh.70,023,000, resulting to a variance of KSh.15,677,000. The variance had not been explained or reconciled.

3346. Consequently, the accuracy of equities balance of KSh.29,100,000 as at 30 June, 2019 could not be confirmed

Management Response.

3347. As previously explained, KNSL and Kenya Ferry Services Ltd (KFS) are state corporations which have been facing operational challenges and have been loss making in most of their operational years and facing significant financial difficulty. A multi-agency technical Committee was established by GOK to advise and negotiate on the Revival of KNSL while KFS has been dissolved.

3348. As per IAS 39.59 objective evidence of impairment is in turn defined as one or more events that have occurred and have an impact on the expected future cash flows of the financial instruments. Further, objective evidence can include observable data that has come to the attention of the holder (in this case KPA) of the financial instrument about certain events, amongst others. One being significant financial difficulty of the issuer or borrower. And in as much as the two state corporations are operational, they are loss-making and the investment in them is not generating returns and hence, was only prudent and fair to impair them.

3349. Further, the KNSL Board of Directors at various meeting held in 1997 deliberated on the financial situation of KNSL. The Board agreed on the devaluation of the par value of shares from KSh 1,000 to KSh 500 per share. During the same meeting, KPA was also allocated, through capitalization of existing debt, an additional 38,670 shares at KSh 500 each. Hence, the KSh.15,677,000 mentioned is reconciled as follows;

Shares	Par value (KSh)	Total (KSh)
70,023	1,000	70,203,000
Less: Reduction of par value		
70,023	500	(35,011,500)
	Sub Total	**35,011,500**
Additional Shares		
38,670	500	19,335,000
	Total	**54,346,500**

3350. And in as much as the Authority is represented in the Board of these two entities, it has no ability to direct activities at Kenya National Shipping line. KPA has no power over the Boards of the parastatal and as such no control of the activities of the entities.

Committee Observations and Recommendation

3351. **This matter was addressed in the 2017/2018 financial year.**

UNCONFIRMED BORROWINGS OBLIGATION (FY 2018/2019)

3352. As disclosed in Note 29 to the financial statements, the statement of financial position as at 30 June, 2019 reflected borrowings of KSh.33,549,967,000, out of which KSh.23,373,808,000 was an outstanding loan from Japan International Cooperation Agency for construction of Container Terminal 2 at the Port of Mombasa. Available information indicated that the Cabinet approved the revival of the Kenya National Shipping Line Limited (KNSL) and the Government was to ensure that KPA and KNSL negotiated an arrangement through which KNSL would operate from the Port of Mombasa, reserve all government cargo for carriage by KNSL and streamline operations at the Port to make it more efficient and effective. Further, the KPA Board was also to appoint KNSL as the sole provider in respect of control, operations, maintenance and management of the terminal

(Second Container Terminal). However, the Management did not indicate whose obligation it was to settle the outstanding loan balance upon completion of the envisioned transfer and handing over of the Second Container Terminal.

3353. Consequently, the repayment and obligations of borrowings balance of KSh.23,373,808,000 as at 30 June, 2019 and revenue rights associated with Container Terminal 2 could not be confirmed.

Management Response

3354. A multi-agency Technical Committee was established to advise and negotiate on the value proposition offered by MSC on the Revival of KNSL. The committee drew membership from the National Treasury, the State Department for Shipping & Maritime, the State Department for Transport, the Office of the Attorney General, Blue Economy Standing Implementation and Kenya Ports Authority.

3355. The Agreement to be signed for purposes of KPA handing over the Second Container Terminal (CT2) to Kenya National Shipping Line (KNSL) would bear clauses with respect to Fees to be made by KNSL to KPA as consideration. This would comprise both a Fixed fee and Variable Fee. With respect to Phase 1, the fixed fee payable annually in the First Period would be JPY 863,026,000.00 per year, non-escalated by an inflation index. This would be in addition to variable fees of USD 6,000,000.00 for the first 12 months; USD 7,500,000.00 for the 13th to 24th month; USD 9,000,000.00 from 25th to 36th month and USD 9,000,000.00 from the 37th month adjusted at the end of each year by the previous year's US Consumer Price Index, for as long as the first period lasts.

3356. The Fixed and Variable Fees for the Second Period would comprise sums payable for both Phase 1 and Phase 2. The Fixed Fees would be comprised of an annual amount of JPY 1,916,008,000.00 non-adjusted by an inflation index, plus an annual amount of USD 7,000,000.00 payable in the first 12 months of the Second Period and thereafter adjusted at the end of each year by the previous year's US Consumer Price Index for as long as the Second Period lasts. Further, for the Second Period, the variable fee for both phases would be an amount equivalent to 20% of the Gross Revenue per calendar, provided that a minimum volume of 525,000 Boxes has been handled by the Terminal in that calendar year. There will be no upper limit or capping of the Variable Fee in the Second Period.

3357. These Fees would sufficiently cater for the repayment of the outstanding loan to JICA.

Committee Observations

3358. **The Committee made the following observations:**

(i) Though management was able to explain that the KNSL would take over the costs of the borrowing and make good its repayment, it was not clear to the Committee whether the value proposition in which MSC was to revive KNSL was ever finalized as at the time of compiling this report.

(ii) Secondly, it was not clear what was to be offered to MSC for it to revive KNSL and its implications to Kenyan taxpayers.

Committee Recommendation

3359. **The Committee recommends that:**

(i) The financial rejuvenation plan the KNSL should be disclosed to the public

(ii) National Treasury should only enter into an agreement with the MSC to run the operations of KNSL if that arrangement is financially beneficial to the taxpayers and Kenya's strategic interests.

BUDGET CONTROL AND PERFOMANCE (FY 2018/2019)

3360. During the year under review, the Authority had a total revenue budget of KSh.46,158,386,000 against actual revenue collections of KSh.55,444,977,000 or 120%, resulting to over collection of KSh.9,286,591,000 or 20%. Similarly, the Authority had a total budget of KSh.38,766,468,000 while expenditure totaled KSh.41,559,472,000, resulting to a net over-expenditure of KSh.2,793,004,000 or 7.2%. The Management attributed the significant over collection to increased storage and remarshaling operations at the Inland Container Depot in Nairobi (ICDN). The over expenditure which was mainly on depreciation and amortization was attributed to revaluation and acquisition of new assets.

3361. There was need therefore for the Authority to increase its revenue targets and budget in light of improved collections at the ICDN and allocate more resources to projects that will enhance its operational efficiency and service delivery to port users

Management Response

3362. The wider growth margin on revenue compared to budget was due to storage. Storage revenue performance was KSh 12,608 million in 2018/19. Storage revenue was not a core revenue activity and is usually highly discounted during the budgeting process being a sign of inefficiencies.

3363. On over expenditure, the Management will endeavor to ensure that the above items are adequately budgeted for.

Committee Observations

3364. **The Committee made the following observations:**

(i) Increase in revenue should have been foreseen with the operationalization of Inland Container Depot in Nairobi.

(ii) Further, admitting from the management that it over-spent indicated that budgeting at the KPA had a problem.

Committee Recommendation

3365. **The Committee recommends that the accounting officer should always ensure that budgeting is accurately done.**

STAFF ESTABLISHMENT (FY 2018/2019)

Irregular Payment of Acting Allowances

3366. Human resource records indicated that seventeen (17) employees had been serving in acting positions for more than six (6) months. This is contrary to Paragraph B11(f}I of Kenya Ports Authority Human Resources Manual, 2017, which stated that acting appointments shall be limited to six months at any given time. As a result, a total of KSh.1,955, 126 was paid to staff as monthly acting allowances beyond the six months period during the year under review.

3367. Consequently, the validity of acting allowances of KSh.1,955,126 for the year ended 30 June, 2019 could not be confirmed.

Management Response

3368. The positions fell vacant after the Cabinet Secretary Ministry of Transport, Infrastructure, Housing & Urban Development directed and announced changes in the KPA management team in March 2018 and the Board at its 342nd Special meeting held on 8th March 2018 ratified the changes which resulted in vacant positions. Subsequently, the Board also appointed staff to act on those posts left vacant pending competitive filling of the posts through interviews in line with policy. The seventeen employees continued to act while awaiting the substantive filling of the positions through a competitive interview process.

3369. The Authority awarded a contract for provision of Recruitment Services to M/s. Deloitte & Touche for a period of three years with effect from 2018 and the following vacant positions were first advertised for competitive filling as directed by the Board in 2018.

a) Head of Administration, Grade HE2, Post No. 330-1001

b) Head of Information & Communication Technology, Grade HE2 Post No. 730-1001

c) Head of Human Resources, Grade HE2 Post No. 310-1001

d) Head of Ethics & Integrity, Grade HE2 Post No. 230-1001

e) Head of Marine Engineering, Grade HE2 Post No.530-1001

f) Senior Medical Officer, Grade HM1 Post No. 340-1002

g) Senior Medical Officer, Grade HM1 Post No. 340-1003

h) Hospital Administration Officer, Grade HM2 Post No. 340-1004

i) Senior Legal Officer (Contracts & Conveyancing), Grade HM2 Post No.220-1003

j) Senior Accountant (Management Information), Grade HM2 Post No.620-2002

k) Senior Civil Engineer (Marine Structures), Grade HM2 Post No.810-3002

3370. This was undertaken with the understanding that the Authority commences with filling of the vacant positions at Grade HE2 as filling of each vacancy creates vacancies at a lower level, and other key Senior Management positions that were vacant then. However, in January 2019, having sought direction from the Board on filling of all vacant positions, the Managing Director directed that M/s. Deloitte & Touche undertakes the recruitment process for all vacant positions at Grade HM2 and above.

3371. The process commenced with advertising of the positions in February 2019 and the positions that had been advertised earlier were re-advertised. The recruitment process having been outsourced, commenced with filling the vacant positions of Heads of Department Grade HE2 which had already been completed and the following positions filled.

a) Head of Information & Communication Technology, Grade HE2 Post No. 730-1001

b) Head of Human Resources, Grade HE2 Post No. 310-1001

c) Head of Ethics & Integrity, Grade HE2 Post No. 230-1001

d) Head of Marine Engineering, Grade HE2 Post No.530-1001

e) Senior Medical Officer Grade HM1 Post No. 340-1002

f) Senior Legal Officer (Contracts & Conveyancing), Grade HM2 Post No.220- 1003

g) Senior Accountant (Management Inform) Grade HM2 Post No.620- 2002

h) Senior Civil Engineer (Marine Structures), Grade HM2 Post No.810-3002

3372. The recruitment process for the positions at Grade HM1- HM2 (more than 40 positions) had since been completed and the observation that the staff acted for longer periods than what is provided in the HR Manual was attributed to diverse factors indcluding:

1. The process was handled externally by M/s Deloitte & Touche
2. The substantial number of applications being handled bearing in mind that the firm was dealing with fifty-four (54) vacant positions
3. The Interviews being done in two phases that is, by Deloitte & Touche and the Board.

3373. However, management will endeavor to adhere to the regulations as provided under Section B12 (e) of the Human Resource Manual 2017. A succession plan is also in place to ensure proper succession procedures are implemented in ensuing potential vacancies.

Committee Observations

3374. **The Committee made the following observations:**

(i) **Though the explanation offered was valid, management was in breach of the law on the duration within which one has to serve in an acting capacity.**

(ii) **Further, it was not clear why the accounting officer for the KPA cancelled an ongoing recruitment process and directed its outsourcing and whether the said decision was approved by the KPA Board.**

Committee Recommendation

3375. **The Committee recommends that both the accounting officer and the KPA Board should always ensure that KPA officers appointed in acting capacities should not exceed the timelines of service in acting positions provided in law.**

IRREGULAR PAYMENT OF SPECIAL DUTY ALLOWANCES (FY 2018/2019)

3376. An audit review of the payroll revealed that fourteen (14) employees undertook special duties for more than six (6) months. This was contrary to Paragraph B.12 (h) of the Kenya Ports Authority Human Resource Manual, 2017 which states that Special Duty Allowance will not be payable to an officer for more than six (6) months. As a result, special duty allowances of KSh.714,767 was paid contrary to the Policy.

Management Response

3377. The Authority paid duty allowance to staff who did not qualify for the higher positions against which they had been recommended to act. This was critical for continuity of work. Management will endeavour to adhere to the regulations as provided under Section B12 (e) of the Human Resource Manual 2017. A thorough review of the HR Manual 2017 was under way.

Committee Observations

3378. **Management was in breach of the law.**

Committee recommendation

3379. **The Committee recommends that the then accounting for the KPA should be reprimanded for irregularly paying special duty allowances to certain officers for more than six months.**

PAYMENT OF BONUS CONTRARY TO THE POLICY (FY 2018/2019)

3380. Included in the staff allowances of KSh.2,210,961,000 as an amount of KSh.477,179,000 relating to accrued staff bonus. Further, the Authority paid an additional KSh.53,969,800 to various staff for seven (7) months from July 2018 to January 2019 as bonus. However, the bonus payments were not based on individual evaluated performance but on one-month basic salary for all employees, contrary to Paragraph 3.4.3 of the Public Service Commission Rewards and Sanctions Framework May, 2016 which requires 13-month basic salary to be paid as bonus based on individual evaluated performance and respective contribution to the institutional performance. The Authority was therefore, in breach of the Law.

Management Response

3381. The bonus paid for 2016/2017 was based on the achievement of targets as set out in the performance Contract for the Organization and not pegged on individual staff performance. As an area of improvement, Performance Contract deliverables have since been cascaded and included in individual employees' scorecards. All staff were guided and facilitated to develop individual scorecards using a standard scorecard template.

3382. Further, an improved appraisal system had been automated. The Authority was in the process of ensuring all staff are under Performance Management System. Consequently, future bonus payments will be pegged on individual staff performance. The system has been rolled out. Staff circular HR/2/1/04PM dated 22nd June 2021 on End of Year Staff Performance Appraisal and a report for the year ended June 2021 is an evidence of strategies put in place.

Committee Observations

3383. **Though management indicated that it had since put in place mechanisms to measure performance and therefore eligibility for staff to get bonus, previous bonus payments was abused and without any clear measurable outputs.**

Committee Recommendation

3384. **The matter was resolved.**

HOSPITAL AND REFERRAL BILLS NOT SUPPORTED BY A POLICY (FY 2018/2019)

3385. Included in the establishment expenses of KSh.19,992,244,000 was an amount of KSh.620,907,000 relating to hospital and referral bills. The following observations were made:

3386. The Management through Circular Ref HR/1/6/66 dated 01 February, 2018 suspended the provision of Paragraph E.1(b) of the Kenya Ports Authority Human Resources Manual, 2017 which required staff medical benefits to be subject to certain limits set by the Board from time to time, thus allowing medical benefits for staff and their dependents without any limit. However, Ministerial approval as required by Section 11 (c) of the Kenya Ports Authority Act, Cap 391 which gives powers to the Minister to approve any major alterations in salaries, wages or other terms and conditions of service of employees was not availed for audit review. This resulted in one employee's dependant accumulating a medical bill of KSh.40,467,906, which according to the Circular, had to be settled by the Authority.

3387. The same Circular suspended the Authority's Human Resources Manual, 2017 provision limiting dependants per employee to one spouse below sixty (60) years in age and four (4) children below twenty-two (22) years. The suspension resulted in enrolment of 1,006 dependants, out of whom twenty-eight (28) spouses were above the age of sixty (60) years and twelve (12) children were above the age of twenty-two (22) years hence an addition cost of KSh.5,777,300 in medical expenses.

3388. Included in the hospital and referrals bills was an amount of KSh.1 10,981,363 in respect of private inpatient fees for employees in management positions and their dependants. However, this was not provided for in the Kenya Ports Authority Human Resources Manual, 2017 nor were details of employees who are eligible for private hospital services provided for audit verification.

3389. Consequently, the propriety and validity of hospital and referral bills of KSh.116,758,663 for the year ended 30 June, 2019 could not be confirmed and Authority was therefore, in breach of the Law.

Management Response.

Referral Bills

3390. On the issue of limits, KPA formed a taskforce to look at all possible ways of implementing the same.

Irregular Registration of Dependents

3391. The Medical Policy that limited treatment of spouses over 60 years and up to 4 children was not approved by the Board. KPA had since formed a taskforce to look at all possible ways of implementing the same. Currently, all our HR instruments were due for submission to and approval from SCAC.

Unapproved Private Inpatient Expenses

3392. All KPA employees were admitted to private hospitals when needing in-patient care. The room provision in these hospitals is as per the grade of the employee. Private hospitals were pre-qualified to provide medical services through a procurement process. KPA use government institutions for some services.

Committee Observations

3393. **The Committee made the following observations:**

(i) The response from the KPA management did not address the audit reservations i.e failure to obtain ministerial approval on any change of benefits to the employees, reason for suspending limit of dependents per employee and documentary evidence on who benefited to be admitted in private hospitals.

(ii) In the absence of such explanations, the Committee was unable to make any decision on the matter.

Committee Recommendation

3394. **The Committee recommends that the EACC should investigate the legality of the changes that were done on medical and referral bills and prefer charges on any person that may have caused loss of public money through his/her actions on suspensions of limits imposed on dependents of beneficiaries.**

OVERTIME ALLOWANCES (FY 2018/2019)

Overpayment of Overtime Allowances

3395. Included in overtime allowances of KSh.3,162,857,000 for the year ended 30 June, 2019 was KSh.1,719,928,799, being overtime allowances paid in excess of 30% and 20% for operations and administrative employees respectively, contrary to Paragraph C.9 (h) of the Kenya Ports Authority Human Resource Manual, 2017 which requires overtime hours payable at the applicable rates to be limited to a maximum of thirty per cent (30%) enhanced time of the normal monthly working hours for operational employees and twenty per cent (20%) for administrative employees.

3396. Consequently, the propriety and validity of overtime allowances of KSh.1,719,928,799 for the year ended 30 June, 2019 could not be confirmed.

Management Response

3397. There were occasions when Port operations and security areas demand that the provided limits be exceeded. User Departments have however been advised to adhere to the set overtime control measures by strictly applying the 30% and 20% overtime ceilings for Operational and Administrative areas respectively.

3398. The port being a 24/7 working area requires that all operational and security areas are catered for except on labour day and Christmas day. Based on the current 7/2 working arrangements which caters 4 shifts instead 3 shifts, staff are required to rest for two days in any seven days of the week. Current staff numbers necessitate recalling staff to cater the eight recall days falling over the weekend. New business areas were created including ship data clerks, transhipment and empties, SGR Mombasa Section, and transfer of staff from Conventional cargo and Container Operations to the new Naivasha ICD and revitalized Nairobi ICD further created staff shortages at Mombasa port.

3399. The Head of ICT has also implemented system locks to only pay overtime within the 30% cap with effect from March 2020 and any overtime hours worked above the set limit must be approved by the Managing Director for payment. Attached is a memo Ref: HRAM/1/6/20 of 19th November 2019 on System Configuration and Implementation of

20% & 30% Overtime limits to ICT and Staff Circular MMN/9/2/03 26th August 2021 on Overtime Management.

Committee Observations and Recommendation

3400. **This matter was addressed in the financial year 2017/2019.**

Overpayment of Third Shift Allowances

3401. Included in the establishment expenses of KSh.19,992,244,000 was an amount of KSh.3,162,857,000 in respect of overtime allowances, out of which KSh.368,972,447 relates to third shift allowance. An audit review of payroll records indicated that some 1,801 employees whose basic salary totalling KSh.1,394,437,766 were paid third shift allowances of KSh.250,268,695, against KSh.209,165,665 or 15% of basic salary payable resulting to an overpayment of third shift allowances by KSh.41,103,030. This is contrary to the Collective Bargaining Agreement of 2018/2019 Paragraph 14(e) which states that, 'third shift is regarded as a normal shift like the first and second shifts but due to the odd hours worked, the compensation is 15% of the basic monthly salary'.

3402. Consequently, the propriety and validity of third shift allowances of KSh.368,972,447 for the year ended 30 June, 2019 could not be confirmed.

Management Response

3403. KPA clarifies that clauses 14C and (f) of the Collective Bargaining Agreement (CBA) (2018/2019) as currently reflected, was correctly translated and implemented when payment was effected.

(i) Clause 14(e) of the CBA of 2018/2019 states that "Third Shift is regarded as a normal shift like the first and second shifts. However, due to the "Unsociable Hours" worked during the third shift, a compensation of 15% of the basic monthly salary shall be paid in addition to the monthly salary provided that":

- The employee had been rostered to work on the shift; and
- The employee had worked for at least one full week of the third shift within the month he was rostered.

(ii) Clause 14(f) further elaborates that “Repeated third shift will be paid at 15% of the basic monthly salary”.

(iii) This implies that if an employee is rostered to work repeat third shift within the month he was rostered, the employee is entitled to another 15% of the basic salary.

(iv) However, if an employee works for less than one full week within the month he was rostered, the employee is paid third shift allowance of 3% of the basic salary per night (on prorated basis).

3404. Further, it was possible for an employee to work on third shift twice in one month based on the working arrangements. Monthly overtime work plans are currently prepared and approval to work overtime is sort in advance and payments done on actual attendance.

Committee Observations and Recommendation

3405. **This matter was addressed in the financial year 2017/2019.**

Overtime Allowances Paid to Employees on Training Grades (FY 2018/2019)

3406. Further, included in the overtime allowances of KSh.3,162,857,000 for the year ended 30 June, 2019 is an amount of KSh.101,579,108, being overtime allowances paid to employees on training grades, contrary to Paragraph C.9 (h) of the Kenya Ports Authority Human Resource Manual, 2017 which prohibits payment of overtime allowances for this category of employees.

3407. Consequently, the propriety and validity of overtime allowances of KSh.101,579, 108 for the year ended 30 June, 2019 could not be confirmed.

Management Response

3408. Management noted that recovery of the overtime payments would potentially lead to industrial unrest given that the staff in question had already worked during the referenced periods and should therefore be paid as stipulated in labour laws, Labour Institutions Act, No.12 of 2007, Employment Act, 2007, Regulation of Wages (General) Order 1982).

3409. In compliance with the provisions of the Human Resource Manual and as cited by the Auditor General, Management had made a decision to confirm the trainees or revert them to their substantive positions on a case-by-case basis in accordance to the HR instruments. This was concluded by the Human Resource Committee at its 15th meeting held on 19th and 31st August 2021.

Committee Observations

3410. **The Committee made the following observations:**

(i) **Management concurred with the audit observations that allowances were paid irregularly to officers in training.**

(ii) **Considering that the trainees in question were subsequently confirmed, the matter should be put to rest.**

Committee Recommendation

3411. **The Committee recommends that the going forward, the accounting officer for the KPA should only pay lawfully approved allowances.**

Duty Travel Allowances (FY 2018/2019)

3412. Included in the establishment expenses of KSh.19,992,244,000 was an amount of KSh.437,891,000 in respect of duty travel. Records availed for audit review indicated that the Principal Secretary, State Department for Transport on 4 October, 2018 requested the Authority to facilitate air tickets and subsistence allowances amounting to KSh.1,371,730 for two officers while visiting China and USA on Kenya Ports Authority related matters. However, the purpose of the trip was not disclosed in the letter. Further, on 29 November, 2018, the Principal Secretary vide another letter stated that the two officers extended their stay in China by seven (7) days and requested for payment of additional subsistence allowances for the extended period amounting to KSh.821,725. However, documentary evidence of travel and the source of funding were not availed for audit review.

3413. Consequently, the propriety of duty travel allowances of KSh.2,193,455 for the year ended 30 June, 2019 could not be confirmed.

Management Response

3414. Please find enclosed herein the letters dated 4th October 2018 and the subsequent one dated 29th November 2018 both from the PS Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works requesting the Authority to facilitate the travel of the Cabinet Secretary and his Personal Assistant; Nairobi – Hong Kong – New York.

3415. The expenses for the travel and the costs for the tickets was expensed in the Development studies vote under the Managing Director budget.

Committee Observations

3416. **The Committee made the following observations:**

(i) This query arose due to the management's failure to provide documents for audit verification during the audit cycle.

(ii) Secondly, it was not clear why the Cabinet Secretary's travel expenses together with his staff had to be borne by the KPA and not the mother Ministry.

(iii)Further, it was not clear whether the vote in which the impugned expenditure was charged had a specific budget for the Cabinet Secretary's travel expenses together with his entourage.

Committee Recommendation

3417. **The Committee recommends that the accounting officer for the KPA should adhere to statutory timelines in provision of documents for audit.**

Gender Composition (FY 2018/2019)

3418. The biodata presented for audit review indicated that the Authority had a total of 6,791 employees as at 30 June, 2019, out of whom 5,386 (79.21%) were male while 1,405 (20.69%) were female. This contravened Paragraph B.22 (2) of the Public Service Commission Human Resource Policies and Procedure Manual, 2016 which provides that the Government will endeavour to have a gender balanced Civil Service by ensuring that not more than 2/3 of positions in its establishment were filled by either gender. Consequently, the Authority was in breach of the Law.

Management Response

3419. The observations on Gender composition were noted. However, despite the Port and Shipping industry being one of the most male-dominated industries in the world, the

Authority had made great efforts to enact the gender provisions contained in the PSC HR Policy and procedural manual for Public Service 2015.

3420. It was imperative to look at the recruitment trends of the gender composition of the Authority's staff before and after the 30% gender rule came into effect.

Table 1: Trends in Gender Composition

Date	**Total**	**Male**	**Female**
Oct 2006 (Before the 30% Directive)	4,724	3,845 (81.34%)	882 (18.66%)
30th June 2019	6,791	5,386 (79.21%)	1,405 (20.69%)
30th June 2020	6,654	5,232 (78.63%)	1,422 (21.37%)

3421. The table above illustrates that since the directive was issued, the Authority had progressively improved on the gender balance as the figures above show. It was also imperative to note that recruitment in the Authority and indeed anywhere else was influenced by several factors, some of which the Authority might have no control over, such as the: -

(i) Candidate response- the majority of those who have applied for employment with the Authority whenever advertisement have been placed, have been male.

(ii) Nature of work in the Authority- Many of the jobs within the Authority are skewed toward males e.g. dockers and equipment operators as the work is manual in nature. Females tend to shy away from these jobs and many others, notably technicians, engineers, sailors and pilots.

3422. Consequently, for reasons indicated above, it had been a challenge to meet the required gender quotas, but the Authority had progressively and deliberately continued working towards having a balanced workforce. With the implementation of the e-recruitment platform the Authority will be in a better position to improve the male to female ratio in compliance with the Public Service Commission Human Resource Policy and Procedural manual for the Public Service 2015 on gender rule as the technology will help us to profile the candidates from the initial stages of the recruitment process.

Committee Observations

3423. **Though management concurred with the Audit observations and indicated that it was in the right trajectory to comply with the law on gender representation, it was however in breach of both Articles 27 and 232 of the Constitution and also National Cohesion and Integration Act 2008.**

Committee Recommendation

3424. **The Committee recommends that the KPA board should introduce affirmative action programmes to adhere to the gender representation.**

Ethnic Composition (FY 2018/2019)

3425. The biodata presented for audit review as at 30 June, 2019 indicated that the Authority had 2,165 employees in management positions and 4,626 on permanent terms, giving a total to 6,791. Included in management positions was one ethnic community with a total of 1,874 (40.51%) employees, contrary to Section 7(2) of the National Cohesion and Integration Act, 2008 which states that no public establishment shall have more than one third of its staff from the same ethnic community. Consequently, the Authority was in breach of the Law.

Management Response

3426. The observations had been noted and do admit to the imbalanced ethnic representation at the Authority. The Authority was renewing efforts to ensure compliance with Section 7(2) of the National Cohesion and Integration Act, 2008. The KPA staff numbers and composition were historical in nature i.e. the dominant community may over time have had more representation especially before the Act came into existence in 2008.

3427. It should also be appreciated that rectifying the situation to ensure the numbers conform to the Act would take some time but is achievable and the Authority endeavours to comply with the Act.

Committee Observations

3428. **Though management concurred with the Audit observations and indicated that it was in the right trajectory to comply with the law on ethnic composition, it was however in breach of both Articles 27 and 232 of the Constitution and also National Cohesion and Integration Act 2008.**

Committee Recommendation

3429. **The Committee recommends that the KPA board should introduce affirmative action programmes to adhere to the gender representation.**

Over commitment of salary (FY 2018/2019)

3430. Payroll records availed for audit review indicated that in the month of June, 2019, the Authority paid basic salary to two hundred and forty-six (246) employees who had committed their salaries beyond two-thirds of the basic salary. This was contrary to Section C.1 (3) of the Public Service Commission Human Resource Policies and Procedures Manual, 2016 which states that "*a public officer shall not over-commit their salaries beyond two thirds (2/3) of their basic salaries and Heads of Human Resource Units should ensure compliance.*" Consequently, the Authority was in breach of the Law.

Management Response

3431. The employees earning below a third of their basic salaries were reducing. The reasons that caused that were varied and some were temporary. Employees earn below a third due to the following reasons including

(i) Court Attachment -These deductions can neither wait nor be spread to cover a longer period.

(ii) Staff who have increased their Shares deduction. The staff will be advised to reduce the shares.

(iii) Increase of House rent

(iv) Medical bills

(v) Staff on sick leave/Admission

(vi) Staff on long training (20% of basic salary and lose of all allowances for oversees & 10% of basic salary and lose of all allowances- as per HR Manual 2017.

(vii) Staff on duty travel not maintained in the system on time

3432. The above notwithstanding, the Authority will further engage financial institutions (Co-operatives and Banks) towards having KPA staff, who were their clients restructure the terms of the loans in order to avoid the risks associated with over commitment of salary as well as meet the requirements of the Act. In addition, the staff who were earning below a third were being reminded and a circular was being sent out to all staff to caution and underscore the need of complying with the Human Resources Manual 2017 and the Employment Act 2007.

Committee Observation

3433. **Though management satisfactorily explained the matter, it was a pecuniary embarrassment for an employee to overcommit his or her salary.**

Committee Recommendation

3434. **The matter was resolved.**

Publicity and Advertising (FY 2018/2019)

3435. As disclosed in Note 8 to the financial statements, the statement of profit and loss and comprehensive income reflects an expenditure of KSh.4,044,431,000 under administrative expenses which included an amount of KSh.462,850,000 in respect of publicity and advertising. Included in publicity and advertising expenses was an amount of KSh.23,474,184 paid to various companies in the Democratic Republic of Congo and Burundi for media services. However, evidence of competitive bidding for the contracts was not provided for audit review.

3436. Under the circumstances, it was not possible to confirm whether the Authority got value for money from the amount of KSh.23,474,184 spent on publicity and advertising.

Management Response

3437. In FY 2018/2019, KPA did not have a contracted agency for media buying in Burundi and DRC. Accordingly, guided by the media landscape in the EAC region, local billboard site owners were engaged directly to provide publicity and advertising services in a bid to ensure maximum reach to KPA's target market. In this regard strategic billboard sites in Bujumbura, Goma and Bukavu were identified which were under two companies namely AFMO and Pan-African Advertising.

3438. The media houses involved in the provision of radio, print and TV services had working relationships with select media agents in Burundi. This dynamic compelled use of Navripz media as guided by the various media houses that had been earmarked for execution of the publicity and advertising campaign in Burundi.

3439. The select media houses used were among the list of pre-qualified companies by Investment Promotion Authority (API) which was Burundi's investment promotion authority agency. Being one of the prequalified vendors by a Burundi government agency, Navpriz media was deemed appropriate for the job.

3440. To address the matter of media buying in the EAC region when running advertising campaigns, KPA currently have procured services of a contracted creative and advertising agency for a 3-year contract dated 8th October 2020 as per the extracts of contract No KPA/148/2019-20/MKTG.

Committee Observation

3441. **The explanation offered was satisfactory.**

Committee Recommendations

3442. **The Committee matter was resolved.**

Corporate Social Responsibility Expenditure (FY 2018/2019)

3443. Included in the administrative expenses of KSh.4,044,431,000 was an amount of KSh.125,229,000 relating to corporate social responsibility. The latter balance included an amount of KSh.6,086,934 in respect of payments for construction of two hostels at Makahani Secondary School in Kilifi County at a contract sum of KSh.8,297,562. However, records availed for audit indicated that the Authority procured the works through requests for quotations, contrary to the First Schedule of the Public Procurement and Disposal Regulations, 2006 which sets the maximum amount of KSh.2,000,000 for a Class A procuring entity for use of requests for quotations for works.

3444. Under the circumstances, the Authority may not have obtained value for money on corporate social responsibility expenditure of KSh.6,086,934 and was in breach of the Law.

Management Response

3445. The non-compliance with internal procedure was noted on this case. KPA had since streamlined the process going forward.

Committee Observation and Recommendation

3446. **Considering that management owned up violating the procurement Act, the then accounting officer for the KPA and his then head of the procurement function should be reprimanded**.

Unsupported Training Expenditure (FY 2018/2019)

3447. The administrative expenses of KSh.4,044,431,000 also includes an amount of KSh.447,245,000 in respect of training, out of which KSh.8,325,900 related to occupational health safety training and KSh.6,890,400 consultation fees for training teachers on the new pre-school curriculum. Audit review of available records revealed that the consultants were selected through requests for quotations and no evidence was availed to confirm that a Local Service Order was issued or a contract agreement for provision of the service signed. Further, details of how the trainees were identified and selected were not availed for audit review. In addition, the consultants were not in the register of suppliers.

3448. Further, the procurement was higher than the KSh.1,000,000 maximum amount allowed for use of requests for quotations by the First Schedule of the Public Procurement and Disposal Regulations, 2006. The procurement also contravened Section 105 (a) of the Public Procurement and Asset Disposal Act, 2015 which provides that a procuring entity may use a request for quotations from the register of suppliers for a procurement if the estimated value of the goods, works or non- consultancy services being procured is less than or equal to the prescribed maximum value for using requests for quotations as prescribed in Regulations.

3449. In the circumstances, the legality and validity of training expenditure of KSh.15,216,300 for the year ended 30 June, 2019 could not be confirmed.

Management Response

3450. The Occupational Safety and Health Act 2007 requires employers to provide information, instruction, training and supervision to ensure the safety and health at work of every person employed. The Act further requires that Safety and Health committees are established at the workplace and members of committees undertake a prescribed basic training course that must be carried out by an institution approved by the Directorate of Occupational Health and Safety Services.

3451. In fulfillment of this requirement, the Authority through the Safety Branch conducts safety and health awareness within the organization and had in place Safety and Health committees in various Departments within the organization.

3452. The trainees for the NEBOSH certificate were drawn from the Safety Branch and select members of various Departmental safety committees to build health and safety capacity at all levels of the organization.

3453. On the training of teachers on the new school curriculum, The Ministry of Education introduced Competency Based Curriculum (CBC) for Early Years Education throughout the Country in the year 2017 where pilot project was carried out in 4,700 Government schools, this also involved training of a few teachers in the same schools.

3454. In 2018, the Ministry of Education required all schools to comply with the directive immediately. The training was not in the training plan for the year under review as the Government directive regarding this matter was not foreseen. None of the prequalified suppliers for provision of training had indication that they were qualified to offer training for Early Years Education (ECD). Therefore, given the urgency of the matter, three (3) consultants were invited to give their quotations for the job and M/s. Alfa Consulting Services emerged the lowest bidder.

Committee Observations

3455. **The Committee made the following observations:**

(i) **Despite the long narrative from the management, the issues raised in the audit i.e failure to provide Local Service Orders and contracts entered for audit and violation of the procurement law by calling for quotations remained justifiably unaddressed.**

(ii) **The KPA therefore stood convicted as charged.**

Committee Observation and Recommendation

3456. **The Committee recommends that the then Accounting Officer for the KPA and his then head of the procurement function should be reprimanded for violating the procurement Act.**

Electrical Services Expenditure (FY 2018/2019)

3457. As disclosed in Note 10 to the financial statements, the statement of profit and loss and comprehensive income reflected an expenditure of KSh.5,976,959,000 under operating expenses which included an amount of KSh.513,504,000 in respect of electrical services. Records availed for audit review indicated that the Authority entered into biennial framework contract on 3 November, 2016 for provision of electrical services for two (2) years expiring on 2 November, 2018. An approval for extension of the contract was given on 12 February, 2019. However, examination of records revealed that Local Purchase Orders for electrical works amounting to KSh.342,385,717 were issued during the period when the framework contract had expired and before approval of the extension.

3458. The Management therefore undertook direct procurement contrary to Section 103 (1) of the Public Procurement and Asset Disposal Act, 2015 which provides that a procuring entity may use direct procurement as allowed under sub-section (2) as long as the purpose is not to avoid competition. Consequently, the Authority was in breach of the Law.

Management Response

3459. The 14 biannual contractors were notified of award of the tender captioned above on 3rd November 2016 vide letter PSM/CTC/1/01(007) VOL.1. The Authority therefore subsequently invited them for contract signing and execution. As expected, the biannual contractors did not all come and sign their contracts at the same time with some delaying over 3 months. The contracts did not therefore expire on the same time with some contracts running up to March 2019 and therefore eligible to be awarded jobs as per contractual law.

3460. To ensure works progression and so that KPA did not disadvantage those whose contracts had expired, an extension of contract was sought from the Managing Director. The extension was supposed to cover from the period the contract expired on 2nd November 2018 for three months or up to when a new contract shall have come in force. Instructions to issue LPOs for all the captured works in the annex were therefore issued during the three months' period from 2nd of November to 2nd of February 2019.

Committee Observations

3461. **The explanation could not be substantiated by way of documentary evidence on exactly when approvals for extension were sought and granted and therefore management was in violation of the law.**

Committee Observation and Recommendation

3462. **The Committee recommends that the then Accounting Officer for the KPA and his then head of the procurement function should be reprimanded for violating the procurement Act.**

Lamu Port Housing Project (FY 2018/2019)

3463. As disclosed in Note 11 to the financial statements, the statement of financial position reflected a balance of KSh.241,554,138,000 under property, plant and equipment operating expenses which included an amount of KSh.49,201,730,000 in respect of work in progress. The latter balance included an amount of KSh. 503,124,577 relating to Lamu Port Police Station and Staff Housing. The following anomalies were noted:

Procurement by the Parent Ministry

3464. Records availed for audit review indicated that the Ministry of Transport, Infrastructure, Public Works, Housing and Urban Development through a letter reference QD59/9712C/69 dated 04/10/2017 requested the Kenya Ports Authority to make payments amounting to

KSh.110,647,368 to the contractor for Certificate Number 9. The Authority's Board on 10 November, 2017 indicated that the works required an amount of KSh.961,003,002 to complete and approved an expenditure of KSh.340,532,154 although the project was not provided for in the Authority's annual budget.

3465. Considering the foregoing, initiation, tendering and awarding of the contract by the parent Ministry is a pointer to override on the Management's budget preparation and implementation which could negatively impact on the Authority's budget and cash flows.

Management Response

3466. The Authority was directed by the CS Ministry of Transport, Infrastructure, Housing and Urban development to take over the construction of Lamu Port police and Staff housing in letter Ref. MOT&I/C/Rail/007/1 VOL.XI(23) of 23rd March 2017.

3467. As stated above, all certificates were evaluated by the State department of Public Works and forwarded to KPA for payments. The State Department of Public Works had been requested to respond to the Auditor-General observation vide our letter dated 22nd November 2021. The matter was also subject to EACC investigations.

Committee Observations

3468. **The Committee made the following observations:**

(i) It was irregular for the KPA to take over a project from the mother ministry that the KPA had not budgeted for nor procured for.

(ii) It was further not clear why the mother ministry directed KPA to take over a project that it had no information on.

Delayed Completion of the Project and Missing Details

3469. During physical verification of the project in the month of September 2019, it was observed that major works including parking for the police station, landscaping and fencing of the housing estate, pit latrine at the dispensary and guard house among other works were incomplete yet the expected revised completion date was 8 August, 2018. Therefore, the project was behind schedule by fourteen (14) months.

3470. Further, the contract for the staff police station and staff housing was varied through use of 200mm machine cut coral stones instead of 250mm blocks and decra type roofing material instead of clay tiles. However, instructions from the Project Manager for the changes and approval by the employer were not provided for audit review.

3471. In addition, the staff housing estate comprising twenty-four (2 bedroom) flats, eight — (3 bedroom) flats and two (3 bedroom) bungalows were fully occupied but details of the occupants, allocations and payments of rents were not availed for audit verification. This was contrary to Kenya Ports Authority's Human Resources Manual Paragraph L.3 which states that an employee by Virtue of his employment may, subject to availability, be allocated a house owned by the Authority. The Manual further stated that an employee allocated an Authority owned house would be charged rent at market rate and will be required to enter into an agreement with the Authority and will be entitled to one house at any given time.

3472. Under the circumstances, the Authority was in breach of the Law and value for money amounting to KSh.503,124,577 on the project could not be confirmed.

Management Response

3473. This project was originally undertaken by the Ministry of Public Works KPA was directed to salvage the project. All funds that KPA had expended into the project had been fully accounted for as per the works certified by the Ministry. Police officers were the occupants of the housing unit; no KPA employees were housed in the units.

3474. The State Department of Public Works had been requested to respond to the Auditor-General observation vide our letter dated 22nd November 2021.

Committee Observations

3475. **Issues relating to delayed implementation of the project and change of scope of the project could only be responded by the State Department for Public Works which had not done so. In the absence of this response, the Committee could not dispense with the query.**

Committee Recommendation

3476. **The Committee recommends that the Office of the Auditor General should conduct the conceptualization and implementation of the Lamu Port Project.**

Port Infrastructure and Electrical Repairs

3477. Records availed for audit review indicated that the Authority incurred expenses amounting to KSh.3,879,963,385 on port infrastructure repairs and KSh.646,357,753 on electrical repairs, all totalling to KSh.4,526,321,138. However, the expenditure was incurred and classified as recurrent expenditure, yet it was capital in nature. Further, the amount was subsequently reclassified as Work-in-Progress. However, the approved budget for the capital expenditure was not availed for audit review.

Management Response.

3478. Part of the expenditure related to concrete barriers and works done in Makongeni yard to support the expansive development needs at the time. The concrete barriers and Makongeni works as earlier explained is subject to DCI investigations.

Committee Observations

3479. **The management failed to respond to the issues raised in the query i.e failure to submit approved budget for review and capturing the said expenditure as classified expenditure instead of being capitalized.**

Committee Recommendation

3480. **The Committee recommends that the accounting officer for the KPA should ensure adherence to the International Public Sector Accounting Standards and also submit documents for audit within the statutory timelines.**

Kisumu Port (FY 2018/2019)

3481. Documents availed for audit review indicated that the Management issued three (3) purchase orders for a total of KSh.349,184,884, against a budget of KSh.110,500,000 for capital works at Kisumu Port, out of which KSh.103,953,185 had been paid as at 30 June, 2019. However, the works were procured under the biennial framework contracts for repairs and maintenance while these were capital works in nature. Further, the Management initiated and procured capital works at a total cost of KSh.349,184,884 exceeding the budget by KSh.238,684,884, contrary to Section 44(2) of the Public Procurement and Asset Disposal Act, 2015 which requires an Accounting Officer to ensure that procurements of goods, works and services of a public entity are within the approved budget of that entity.

3482. Further, the works and procurements incurred were not in the procurement plan for the financial year 2018/2019, contrary to Section 45(3) of the Public Procurement and Asset Disposal Act, 2015 which states that all procurement processes shall be within the approved budget of the procuring entity and shall be planned by the procuring entity concerned through an annual procurement plan. The Authority was therefore, in breach of the Law.

Management Response.

3483. The first three (3) LPOs issued for Kisumu Port revitalization project were for a total amount of KES. 381,642,558.90 of which KES. 120,795,219.30 had been paid as at 30th June 2019 as tabulated below: -

	CONTRACTOR	**LPO NO.**	**LPO DATE**	**AMOUNT**	**PAID AS AT 30/06/2019**
1	Pomona Const. Co. Ltd	4500082245	29.04.2019	176,791,274.88	24,568,965.50
2	Associated Electrical	4500082559	12.06.2019	111,702,320.76	53,325,325.80
3	Ricco Contractors Ltd	4500082333	8.05.2019	93,148,964.20	42,900,928.00
	TOTALS			**381,642,559.84**	**120,795,219.30**

3484. The Authority was directed to ensure the port refurbishment was expedited in time for opening of the port in the same year. The works involved concreting the yard and refurbishment of warehouses and other facilities. Given that the budget allocation for the year was only 100 million the Authority had to utilise Repairs vote which had been allocated KSh 643 million for biennial and other repair works. The repairs vote is recurrent in nature and some of those works undertaken were analysed to be of capital nature. A budget for Kisumu was approved in the subsequent year and the total budget including consumption for Kisumu was as follows:

Yearly Budget Allocations	**Amount (KSh.)**
2017/2018	50,000,000
2018/2019	100,000,000
2019/2020 – Original Budget	500,000,000
2019/2020 – Supplementary Budget	950,000,000
Total Budget	**1,600,000,000**
Budget Consumption	
Rehabilitation works	(794,358,671)
Dredging funds	(260,000,000)
Payments to NYS	(71,767,166)
Total Consumption	**(1,126,125,837)**
Balance as at October 2021	**473,874,163**

<u>Committee Observations</u>

3485. **The Committee made the following observations:**

(i) It was established that the KPA's procurement plan did not have the budget for the Kisumu Port but the authority was directed to expedite the completion of the port.

(ii) It further emerged that the budgets for the works were regularized in the subsequent financial year.

<u>Committee recommendation</u>

3486. **The Committee recommends that the accounting officer for the KPA should always adhere to the procurement law when procuring goods and services.**

Unconfirmed Storage Revenue (FY 2018/2019)

3487. As disclosed in Note 6 to the financial statements, the statement of profit and loss and comprehensive income reflected an income of KSh.52,758,959,000 under operating revenue which included amounts of KSh.9,906,122,000 and KSh.697,600,000 in respect of storage of full containers and storage of empty containers respectively, all totaling to KSh.10,603,722,000. Records availed for audit review indicated that the Kenya Ports Authority signed agreements with nine (9) companies for provision of containers storage facilities in Nairobi. However, details of how the companies were identified, selected and awarded the service provision contracts were not provided for audit review.

3488. Further, audit review of the service provision agreement revealed that the Kenya Ports Authority granted the companies rights to handle, hold or store and deliver containers at the company's storage facility. The agreements further provided that the volumes of containers to be provided by the Kenya Ports Authority for storage was dependent on current holding capacity at the storages facility, un-availability of stacking space within the Inland Container Depot, Nairobi, growth in trade, any legal framework in place and gazettement and continued gazettement of the storage facility as a customs area. However, evidence that the companies awarded the service provision contracts were gazetted as customs storage areas was not provided for audit review.

3489. In addition, during audit inspection in the month of September 2019 at the Inland Container Depot Nairobi, details of the number of containers transferred to the storage warehouse per day and evidence of un-availability of space at the Depot before approval of transfer of the containers were not provided for audit verification.

3490. Consequently, the completeness of the storage revenue of KSh.10,603,722,000 and validity of the contracts for warehouse storage facilities awarded to the nine companies and whether containers were transferred due to lack of storage space at the Depot could not be confirmed.

Management Response

3491. The operationalization of the Standard Gauge Railway at ICD Nairobi made the depot experience rapid growth in handling cargo. To ease the holding capacity, the Authority urgently needed to commence procurement for warehouse services to control the rapid growth of cargo.

3492. The Authority selected firms through a restricted tender and invited bids through Memo No. 029/2018-19 dated 17th September, 2018. The choice of restricted tender for the provision of warehouse service at ICD Nairobi was for the following reasons;

(i) There was urgency in having to engage service providers so as to manage cargoflow and operations

(ii) Open tendering would have been timely and costly.

(iii)The service providers needed to be in proximity to ICD Nairobi to effectively and efficiently execute the service being provided.

3493. The award was done through a tendering process vide Tender No. KPA/021/2018-19/ICDN – Provision of Container Warehouse Services in Nairobi. Copies of Tender document nos. KPA/021/2018-ICDN, Invitations letters, Statement of Professional opnion, copies of Gazette notices amongst others are attached.

3494. Indeed the storage facilities helped in averting congestions at ICD Nairobi. Details of containers transferred. Also attached an analysis of the ICDN yard capacity and a copy of the Standard Operating Procedure for the PSFs developed in June, 2020 was also provided.

3495. As at the time of appearance before the Committee, KPA was loading directly from truck where clients complete document process by submitting Pre-Advises. A number of units (ex-GOK and Small Scale Traders) were still stacked due to non-completion of the import leg.

3496. Further to the response on ICDN storage area, KPA were transferring units with over 21days.This had ensured fluidity and efficiency as less remarshalling was involved and more stacking area availed.The dwell time has also improved from an average of 12 days in 2018 to 4.6 days in 2021 (January 2021-August 2021)

Committee Observations

3497. **The Committee made the following observations:**

(i) This query arose due to management's failure to provide documents on procurement of service providers of storage of containers for audit verification which had since been provided to the Committee.

(ii) Further, there was no explanation as to whether the service providers of storage had been gazetted as provided in the contract agreement on such service.

Committee Recommendation

3498. **The Committee recommends that the accounting officer for the KPA should always adhere to statutory timelines on submission of documents for audit.**

Irregular Procurement and Creation of a Vendor in Systems, Applications and Products (SAP) System (FY 2018/2019)

3499. Review of procurement and payment records and Systems, Applications and Products (SAP) which was the Authority's main finance software revealed that included in the SAP vendors' list was a vendor who was created on 14 October, 2014 without evidence that it was recommended by any user department. The vendor was also not in the list of prequalified suppliers of the Authority. As such, it was not clear how the vendor was identified and created in the SAP system.

3500. The records further indicated that the vendor undertook Local Purchase Order (LPO) financing of various suppliers of the Authority and was paid a total of KSh.237,899,724 directly by the Authority for goods and services delivered by the suppliers or contractors for a period of three years from 2014/2015 to 2016/2017 financial years. However, it was noted that the Authority did not have an approved policy on LPO financing by financial institutions.

3501. Under the circumstances, the validity, propriety and legality of payments amounting to KSh.237,899,724 to the vendor for the three years up to 30 June, 2017 could not be confirmed.

Management Response

3502. On 14.10.2014, an LPO financing company was included in the vendor master to Finance companies that were under Women, youth and person with disabilities. The company had been under investigation for irregularly transacting with the Authority since 2016. In early 2017, all transactions relating to the company were stopped. Currently, the company and Authority's officers who created the company were subject of court case and investigation by EACC.

3503. A letter dated 1st September 2020 in respect of a Court Case instituted by the Ethics and Anti-Corruption Commission under the Reference *CF: 2/2020 – Republic vs Patrick Wambugu Nyoike & Others* supports this assertion. The Board of Directors had also commenced disciplinary proceedings.

Committee Observations

3504. **The Committee made the following observations:**

(i) It was curious that a vendor was put into the KPA system and traded with the KPA for several years before stoppage without anybody noticing the anomaly.

(ii) Further, it was not clear of the status of the case instituted and the specific charges preferred on everyone.

(iii) Further, the KPA may have lost unknown money courtesy of the transactions undertaken by the said vendor.

Committee Recommendation

3505. **The Committee recommends that the EACC should expedite pursuing the case in question to its logical conclusion and ensure justice is done.**

Services and Systems - Unconfirmed Installation (FY 2018/2019)

3506. The property, plant and equipment balance of KSh.241,554,138,000 included an amount of KSh.10,737,789,000 under services and systems, out of which an amount of KSh.221,333,738 was in respect of Trunking System — Marine Operations as indicated in the Authority's assets register.

3507. Records availed for audit review indicated that Kenya Ports Authority through open tender No. KPA/022/2015-16/MO identified and contracted a vendor to supply, install and commission VHF digital radio trunking system at a cost of KSh.45,487,563(USD.445,869). Part of the user requirement was that the system be integrated with the Integrated Security System already installed and in use by the Authority. Further, the Authority used direct procurement for the tender and engaged the same vendor for Phase II - deployment of digital radio communication system. This was based on the requirement of conformity as provided in Section 103(2)d of the Public Procurement and Asset Disposal Act, 2015 which states that the procuring entity, having procured goods, equipment, technology or services from a supplier or contractor, determines that additional supplies shall be procured from that supplier or contractor for reasons of standardization or because of the need for compatibility with existing goods, equipment, technology or services. However, the system was entered in the asset register differently while the procurement was for a different system and therefore direct procurement was not applicable.

3508. Further, the contract was awarded at a contract sum of KSh.96,722,145 (USD.957,645) inclusive of all taxes as per the tender documents. The delivery period was four (4) months and warranty period of one (1} year with notification of award being sent on 31 May 2017. Available records indicated that the vendor requested the Authority to review the contract price claiming that the VAT element was omitted from the tender documents. However, the tender documents had clearly indicated that prices quoted should be VAT inclusive. Subsequently, the Authority varied the contract price upwards by KSh.15,475,826 (USD 153,226) or 16% to KSh.112,197,971(USD 1,110,873).

3509. In addition, the Authority on 18 May, 2018 granted approval of another Variation from a contract sum of KSh.112,197,971(USD.1,110,873) by 25% (KSh.28,049,518 or USD 277,718) to KSh.140,247,691(USD 1,388,591). Since the contract had been signed on 31 May, 2017, the approval was contrary to Section 139(3) of the Public Procurement and Asset Disposal Act, 2015 which states that no contract price shall be varied upwards within twelve months from the date of the signing of the contract. Further, the Management did not avail the implementation status of the Phase II - deployment of digital radio communication system.

3510. Under the circumstances, the propriety, existence, value for money and status of services and systems balance of KSh.185,735,254 as at 30 June, 2019 could not be confirmed.

Management Response

3511. The Authority switched from Analog VHF radio Communications to Digital Radio Communication system when we commissioned VHF digital radio trunking system in Mombasa and ICDN and thereafter Phase II - deployment of digital radio communication system (HYTERA SYSTEM). This had since opened up opportunities in increased no of frequencies and channels available to the Authority and reduction in License fees paid to the regulator.

3512. Noting that VHF Radio Communication was limited to a maximum of 30 kilometers, Radio communication between our stations in Mombasa and Nairobi was not possible without a Digital Radio Link system between the two Clusters. That was what informed the need to acquire a Digital Radio Link System to enable.

3513. Further its important to mention that KPA Strategic Plan explicitly under Strategic Objective 1: Improve Port Services - Strategy 1: improve and integrate ICT systems the Authority plans to Install digital radio link between Mombasa port, Nairobi ICD, Shimoni, Kilifi and Malindi Harbour.

3514. Hytera Radio Link system existed to provide at one end conversion of Digital sound signal into a format that can be transmitted over a fibre optic medium and be able to reconvert the same signal back to digital sound signal. Hytera Digital Radio Link was separate and independent of Trunked - Hytera digital radio Comm system.

Committee Observations

3515. **The Committee made the following observations:**

(i) **Management failed to respond to specific questions raised in the audit i.e wrong entry of the acquired asset in the asset register, adjustment of contract sum upwards by KSh 15 million to cater for VAT when tender documents were categorical that VAT was inclusive of the contract sum, violation of Section 139(3) of the Public Procurement and Asset Disposal Act 2015 in introducing a variation of KSh 28 million within 12 months of signing a contract and failure to submit documents on implementation of the project for audit verification.**

(ii) The totality of this leaves the Committee without a clear explanation of what transpired and therefore unable to dispense with the query.

Committee Recommendation

3516. **The Committee recommends that the EACC should investigate the procurement and commissioning of VHF digital radio trunking system with a view to preferring charges on any individuals who may have breached the law.**

Weak Controls on Management of Overtime (FY 2018/2019)

3517. A four-month analysis of the time management system and payroll reports from November 2018 to February 2019 revealed that a hundred and three (103) employees whose workstation was within the Port were paid overtime of KSh.26,588,009 for 68,880 hours. However, an audit review of the Integrated Security System report that records access to the Port indicated that the hundred and three (103) employees accessed the Port for 2,624 hours of overtime equal to KSh.956,787, resulting to a variance of KSh.25,631,221 which has not been explained nor reconciled.

3518. Further, it was observed that overtime requests and allocations were done by sixteen (16) unionisable employees in grades HG1 and HG3, contrary to Kenya Ports Authority Time and Attendance Policy which designates such responsibility to supervisors in management positions. Therefore, the sixteen (16) unionisable employees requested and allocated overtime for self and their seniors in management amounting to KSh.10,597,780. This was a pointer to weakness in controls where unionisable staff approve own overtime and that of their seniors or supervisors.

3519. Consequently, the validity of overtime of KSh.36,229,001 for the year ended 30 June, 2019 could not be confirmed and effectiveness of the controls for overtime could not be ascertained.

Management Response

3520. The time management system and integrated security system were not synchronized to check the movement of staff IN and OUT of the port.

3521. It was acknowledged that during the said period, unionisable staff overtime requests and allocation was done by staffs in lower grades. However, this has since been reversed to only allow for staff at management cadre to perform such tasks.

Committee Recommendation

3522. **Considering that management owned to irregularities in payment of overtime allowance, the accounting officer of the KPA should always adhere to the Salaries and Remuneration Commission on payment allowances.**

Manual Processing of Overtime (FY 2018/2019)

3523. Time management reports availed for audit review indicated that one hundred and fifty-seven (157) employees were exempted from clocking in and out to work. This was contrary to Kenya Ports Authority Time Management Procedure Manual, which stated that overtime was paid based on hours worked as per the 2018/2019 Collective Bargain Agreement and Human Resources Manual 2017 and exemption from clocking was not applicable during overtime.

3524. As a result, the Management manually processed and paid a total of KSh.51,869,574, being overtime paid to employees exempted from clocking. Further, details of overtime requests, approvals and evidence of actual overtime hours worked were not availed for audit review.

3525. Consequently, the propriety, accuracy and validity of overtime of KSh.51,869,574 for the year ended 30 June, 2019 could not be confirmed.

Management Response

3526. The role out of online overtime and allocation processes was ongoing at the time. Currently they are locations not covered by the biometric system hence staff overtime or normal shift payments are processed using manual attendance register and allocations maintained by authorized immediate supervisors upon verification. KPA also wished to clarify the following:

i. Management had provided for some exceptional cases which allow for maintenance of manual overtime payments during the period under review which include;

a) Staff working out of station beyond planned working time and employees with disabilities (visual & limb impairment); and

b) Staff who work in Authority premises that were not provided with ICT infrastructure which includes biometric time readers to facilitate online processing of overtime.

ii. In the financial year 2020/2021 all payments were synchronized to be done online through the ESS Overtime Pre-Approval system in liaison with the outer ports.

Committee Observations

3527. **The Committee made the following observations:**

(i) Though manual recording of overtime had been stopped, its previous use might have been prone to abuse and therefore conferring benefits to some dishonest employees.

(ii) Therefore, KPA may have lost money through such a porous system.

Committee Recommendation

3528. **The matter was resolved.**

2.30 NATIONAL HOUSING CORPORATION (NHC) (FYS 2012/13 TO FY 2016/17)

EXAMINATION OF REPORT OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF THE NATIONAL HOUSING CORPORATION (NHC) FOR THE FINANCIAL YEARS 2012/13 TO 2016/17

Mr. Andrew Saisi, the Managing Director of the National Housing Corporation, accompanied by Ms. Nancy Ochego (Ag. General Manager, Finance), Mr. John Agutu (Ag. General Manager, Estates), Mr. Robert Ambuku (Ag. General Manager, Technical) and Mr. William Keitany (Ag. Corporation Secretary) appeared before the Committee to adduce evidence on the audited accounts of the Corporation for the financial year 2012/13 to financial year 2016/17.

AVOIDABLE EXPENDITURE FY 2012/13 TO FY 2014/15

3529. The committee heard that the Corporation advertised for expression of interest (EOI) on 13th December 2012 for purchase of prime land in Nairobi. Nineteen (19) bidders responded and after evaluation, the Management settled on a parcel of land LR No.209/19715, measuring 10 acres, located in Imara Daima at an offer price of KSh.800,000,000.

3530. However, M/s Diamond Trust Bank informed the Corporation that the land identified for purchase was under charge with the Bank for a loan of KSh.340,000,000 advanced to an investment Company which at that time, had outstanding balance of KSh.42,499,772.18. The Corporation was also informed that a live high voltage power line passed through the land and that the actual size of the land was 9.87 acres, not 10 acres as indicated by the seller. In addition, a Company of Advocates had issued a caveat emptor on the land on the grounds that whereas the seller had purchased the land from another company, its title was imperfect because initial seller‘s purported grant was fraudulently acquired.

3531. On 25th April 2013, the NHC requested the Ministry of Lands to carry out a valuation on the land. The Ministry gave the land a value of KSh.730,000,000 and was paid a fee of KSh.920,000 vide bankers’ cheque No.027831 dated 7th June 2013. This particular expenditure had since been included in the consolidated statement of comprehensive statement of comprehensive income figure of KSh.10,245,250 in respect to Consultancy General under Other Operating Expenses.

3532. Although the Management stated the valuation process was a critical matter that formed the basis for negotiation, the Corporation ended up spending Khs. 920,000 that could have been avoided had the Corporation exercised due diligence.

Management Response

3533. During the negotiations on the purchase of Prime Land held on 26th June 2013 at NHC Headquarters between NHC and M/s Bangal, the seller of the land, it was agreed as follows: -

- That the sale and transfer of the property would be subject to discharge of the charge registered against the title. This therefore meant that the outstanding balance of the loans was to be paid off by the seller as a condition to the sale agreement.
- A further condition to the sale was that M/s Bangal was to take full responsibility of re-routing the power line at their own cost.
- The negotiation report confirmed that the acreage of the land was 9.87 acres.
- The search carried out indicated that the land was owned by M/s Bangal Trading Company.

3534. The Corporation did not purchase the prime land as intended because the vendor did not meet the agreed conditions such as re-routing of the high voltage power line at their cost, among other conditions precedent. The KSh. 920,000 referred to in the audit observation was the valuation fee paid to the Ministry of Lands for valuation of work done on the land to facilitate price negotiations. This valuation was critical as it formed the basis for negotiation on the price of the Land.

3535. The valuation figure of KSh. 920,000 paid was a saving to the Corporation. This is in comparison to the standard market rate of KSh. 1,845,000 that NHC would have incurred.

Committee Observations

3536. **The Committee made the following observations:**

(i) The Corporation did not purchase the prime land as intended because the vendor did not meet the agreed conditions.

(ii) However, KSh. 920,000 had been spent in valuation of the property as part of the due diligence process.

Committee Recommendation

3537. **The explanation offered was satisfactory and therefore the query was resolved.**

STALLED PROJECTS FY 2012/13 To FY 2014/15

Proposed Changamwe Infill Phase II – FY 2012/13 to FY 2013/14

3538. The Committee heard that the contract for the Changamwe Infill Phase II was awarded to M/s Dickways at a contract price of KSh. 189,698,208 for a contract period of 52 weeks commencing on 14th August 2012 to be completed on 11th September 2013. However, in September 2012, the National Environment Management Authority (NEMA) stopped the project citing failure by the Corporation to carry out and submit an Environmental Impact Assessment Report.

3539. The Corporation paid NEMA KSh.96,362.30 to obtain a license for the assessment and engaged M/s Mazingira and Engineering Consultants to carry out and submit the assessment at a fee of KSh,174,000. The consultant advised that assessment required wider public consultation and an in-depth analysis both of which would take a long time.

3540. Since then, the project had remained suspended. As at the time of suspension, the contractor had been paid a total of KSh.38,367,434. The expenditure included in the figure of KSh.911,914,296 Housing Schemes in progress in the consolidated statement of financial position.

3541. No explanation was provided for incurring expenditure before obtaining impact Assessment Certificate from NEMA. The Corporation, therefore, did not obtain value for money for payments so far made towards the project.

Management Response

3542. The accounting officer informed the Committee that the contract for the Changamwe Infill Phase II was awarded to M/s Dickways at a contract price of KSh. 189,698,208 for a contract period of 52 weeks commencing on 14th August 2012 to be completed on 11th September 2013. On 11th September, 2012, on instigation by existing tenants, NEMA issued a stop order and requested for submission of an EIA report. The Corporation submitted the report on 12th October 2012 and the construction works continued. However, on 8th November 2012, the same tenants went to the High Court and procured temporary injunction against further construction pending determination of a case H.C.C NO. 5 OF 2012.

3543. The contractor was paid a total of KSh. 38,387,434 for value of work done against certificate number (01). The EIA consultant, M/s Mazingira and Engineering Consultants were engaged twice; the first engagement required preparation of a project report at a fee of KSh. 174,000 and second assignment was to carry out a full EIA study at a fee of KSh. 232,000. The requirement to carry out a full study was communicated by NEMA owing to emerging issues from the residents; otherwise in normal developments a project report would have been sufficient.

3544. Whereas the NEMA license was obtained on 28th January 2014 and the construction approved, the court injunction issued on 8th November 2012 was still in place as the case was fixed for hearing on 7th August 2014.

3545. As at 30th June 2013, the amount of money paid to NEMA was KSh. 96,362 which was 0.05% statutory fees, while M/s Mazingira had been paid KSh. 174,000 for first engagement. Together with money paid to the contractor, this brought total expenditure to KSh. 38,657,796.

3546. Delays in completion of this project was occasioned by factors beyond the Corporation. Court injunction brought up by the residents was the principal reason for the delays.

Status

3547. The court case was determined in favor of the Corporation and therefore the contractor was instructed to commence the works. The project was ongoing as at the time of appearance before the Committee.

Committee Observations

3548. **The Committee made the following observations:**

(i) **The Corporation had failed to carry out the requisite due diligence, including Environmental Impact Assessment and public participation, before commencing the project. This would have avoided the dispute with residents which led to litigation and cancellation of the project.**

(ii) **The first contract for construction of 48 houses at a cost of KSh. 189,698,208 was cancelled due to the dispute. The contractor sued the Corporation and after arbitration, NHC paid the contractor KSh. 45,000,000 inclusive of an initial claim of KSh. 30,000,000 for work done.**

(iii) **A second contractor took over the project in September 2017 with an expanded scope of 84 houses at a contract sum of KSh. 384,000,000.**

Committee Recommendation

3549. **The Committee recommends that:**

(i) **The Committee recommends that the then Managing Director of the NHC should be reprimanded for commencing a project before critical approvals such as NEMA certificate.**

(ii) **In future, public participation should be done (including with tenants and the locals) before implementation of a housing project.**

Proposed Nyeri Housing Scheme – FY 2012/13 to FY 2013/14

3550. The Committee heard that in May 2010, the Corporation awarded a contract to M/s Westcon Contractors for construction of 45 housing units under the Nyeri Mortgage Housing Scheme Phase II at a contract sum of KSh.112,530,500 commencing on 14th May 2010 to be completed in 13th June 2011.

3551. However, after several extensions, the firm was unable to complete the project and the Corporation subsequently terminated the contract on 30th March 2012. As at the time of termination, the contractor had been paid a total of KSh.57,932,759.90.

3552. The contract was awarded to another contractor, M/s Island Home Developers at a contract sum of KSh.61,345,345,731.70 commencing on 22nd October 2012 to be completed on 5th June 2013. Consequently, the total contract cost rose to KSh.119,279,491.80; KSh.5,598,991.60 higher than the original cost of KSh.112,990,500. As 30th June 2013, the contractor had been paid a total of KSh.14,979,441 vide payment voucher number 1315 (cheque No.019955) and 2086 (cheque No.020714) for KSh.5,702,115,20 and KSh.9,277,327.80 respectively, charged under Housing Scheme in progress figure of KSh.911,974,296 in the Consolidated Statement Financial Position. As at the date of audit, the project was incomplete although the completion period had elapsed.

Management Response

3553. The Project was awarded to M/s Westcon Contractors and the works commenced on 14th May 2010 and was scheduled for completion on 13th June 2011. For some reason, the M/s Westcon Co. Ltd. was not able to perform and progress the works diligently thus by 30th March 2012, the progress was 50% against 150% of expired contract time. The contractor's production deteriorated every passing month despite default warnings and notices as provided for in the contract. Furthermore, the contractor totally failed to maintain a valid performance bond and hence falling into fundamental breach of contract. The contract was eventually terminated on 30th March 2012 as an action of the last resort.

3554. The project was re-tendered. A second contractor, M/s Island Home Developers was awarded the contract and commenced work on 22nd October 2012. However, the performance of the second contractor also became erratic. Nevertheless, every effort was made to explore alternative ways and means to progress the project to completion.

3555. The construction period lapse of two years resulted in an escalation of costs owing to inflation.

Status

3556. The project had since been completed as per the attached copy of certificate of completion.

Committee Observations

3557. **The Committee made the following observations:**

(i) **The contract sum for the project exceeded the original sum due to non-performance by contractors.**

(ii) **The Corporation's response was vague and lacking in details such as amounts paid for the different contracts.**

(iii) **The management of the NHC failed to conduct due diligence on the contractors before awarding them a contract.**

Committee Recommendation

3558. **The Committee recommends that the EACC should investigate the award and implementation of the two contracts with a view to preferring charges against officers who may have been complicit in the entire process.**

Proposed Langata IV – V Housing Scheme (2013/14)

3559. The Committee heard that the above contract was awarded to M/s Lemma International Inc. at a contract sum of KSh.902,146,260, commencing on 29th December 2010 to be completed on 27th December 2011. The contract period was later extended to October 2012 for Phase IV and April 2013 for Phase V. In July 2011, the Corporation paid the contractor an advance amount of KSh.180,000,000.00. The contractor was paid a further KSh.100,000,000 vide payment voucher number 67 (cheque number 001029) dated 21.11.12 bringing the total payments to KSh.280,000,000 also included in the figure of KSh. 911,974,296 – Housing Schemes in Progress.

3560. A progress report dated 25th July 2013 indicated that although the contract period had elapsed, only 64.52% of the work had been completed. No explanation was given for failure to complete the projects as scheduled and no evidence was provided in support of extension of contract period.

Management Response

3561. The accounting officer informed the Committee that the project was tendered in two options i.e., conventional-financing and contractor-financing models. The contract was awarded to M/s Lemna International at a contract sum of KSh. 902,146,260.00 based on the contractor-financing model.

3562. The project commenced on 29th December 2010 and the expected completion date was 29th December 2011. The contractor was handling projects at two different sites with phase 4 progressing faster than phase 5. The project experienced a number of challenges as indicated below:

(i) M/s Lemna was an international developer and therefore new in the market. This was evident as on award, a number of issues had to be put in place that there were not initially anticipated namely, complexity of contractor finance contract between local and international company and requirements of international finance. This delayed commencement of the project by 12 weeks thus the actual work on site commenced in April 2011.

(ii) M/s Lemna International was a developer and thus had to source for a local sub-contractor to undertake the works. This took time hence delay in commencement of the works.

(iii) Increased scope by construction of additional units on block 89. This was necessitated by the fact that the block was attached to block 84 and could have compromised the foundation of block 84 in case it was to be constructed later. A total of ten, three bed roomed additional units were constructed thus increasing access to housing by deserving Kenyans.

(iv) The site terrain for part of phase 4 and the entire phase 5 necessitated redesign of some blocks to utilize lower ground floors. This led to increase of scope by creation of an additional 5 units that also gave value for money to the Corporation through the sale of the lower ground floor units.

<u>Committee Observations</u>

3563. **The Committee made the following observations:**

(i) Delays in implementation of the project was due to negligence of the NHC by not undertaking a feasibility study to determine the scope of work and also shoddy due diligence on the part of the contractor.

(ii) The contract sum of KSh. 902,146,260.00 was for construction of 230 units. The project scope was increased by an additional block of 10 units which necessitated a variation of the contract sum.

(iii) The contractor claimed an extra KSh. 505,929,699.30 for the project and after arbitration, they got an award of KSh. 119,361,021.94.

(iv) The project was completed in December 2012.

Committee Recommendation

3564. **The Committee recommends that the EACC should investigate the award and implementation of the two contracts with a view to preferring charges against officers who may have been complicit in the entire process.**

PROPERTY PLANT AND EQUIPMENT FY 2012/13

Land and Buildings

3565. The Committee heard that the Property, Plant and Equipment balance of KSh.2,856,006,973 as at 30th June 2013 includes a Land and Building balance of KSh.2,248,441,701. The figure included KSh.248,286,555.54 being the value for Likoni serviced plots and the EPS Factory at Mavoko amounting to KSh.17,269,600 and KSh.231,016,955.54 respectively. However, no ownership documents were made available for audit verification for both the Likoni serviced plots and Mavoko Land on which the EPS Factory Buildings stand. Consequently, the ownership of these properties could not be confirmed as at 30th June 2013.

Management Response

Likoni Land

3566. The Corporation was issued with a letter of allotment Ref. No. 76473/XIII/181 dated 3rd July 2001, for the land. Later subdivision of the land to individual plots was carried out and title deeds processed.

Mavoko EPS Factory Land

3567. The Mavoko EPS Factory land being L.R. No 28458 was reserved/set aside for the Corporation's use by the then Ministry of Housing as per the letter 9th October 2009 Ref. No. MH/A/14/05/VOL 3 (91). However, the title for the land was in the name of the Permanent Secretary to the Treasury as trustee for the Ministry of Housing. This was among the pieces of land whose original allocation titles were revoked by the Government vide Gazette Notice No. 3454 of 1st April 2011. Consequently, the Corporation requested for the transfer of title to the land into its name and the issue was under consideration by the Ministry.

Committee Observations

3568. **The Committee made the following observations:**

(i) The Corporation had secured the title deed for the land in Likoni.

(ii) The matter of the Mavoko EPS land was pending in court (Petition No. 11 of 2015) where M/S Northern Construction Ltd. was claiming ownership of the land.

(iii) The title for the land in Mavoko was currently under the PS, Treasury on behalf of the Ministry of Housing.

(iv) The title for the Mavoko land held by M/S Northern Construction Ltd. was revoked in 2011.

(v) The Authority had written to the Registrar of Companies to confirm the identity of the Director of M/S Northern Construction Ltd.

Committee Recommendation

3569. **The Committee recommends that the management of NHC should apply for expeditious conclusion of the matter touching on Mavoko Land that was pending in Court.**

Motor Vehicles Registration Nos.KBN 909A and KBR 909K

3570. The Committee heard that the Property, Plant and Equipment balance of KSh.2,856,006,973 as at 30th June 2013included Motor Vehicles balance of KSh.29,240,826. The figure included two motor vehicles Registration Numbers KBR 909K and KBN 909A valued at KSh.7,560,000 and KSh.2,560,000 respectively, whose logbooks were not made available for audit review. As a result, it was not possible to ascertain the ownership of the vehicles.

Management Response

3571. The two vehicles were project vehicles and their logbooks were originally under N.K. Brothers, the contractor who was undertaking Madaraka housing project on behalf of NHC. When the project was completed, the two vehicles were handed over to NHC. The ownership of the two vehicles had since been transferred to NHC.

Committee Observation and Recommendation

3572. **The explanation offered was satisfactory and therefore the audit query resolved.**

Depreciation

3573. The Committee heard that Note 13 to the financial statements reflected a figure of KSh.64,362,908 under depreciation charge for the year while Note 6 reflects a figure of KSh.56,630,407 against the same item. No explanation or reconciliation was provided for the difference of KSh.7,732,501 between the two sets of figures.

Management Response

3574. The accounting officer informed the Committee that the depreciation figure of KSh. 64,362,908 in note 13 included KSh. 7,732,501 which is a depreciation amount of Property, Plant and Equipment (EPS). The same had been charged when calculating the EPS trading loss under note 3 of the financial report hence not included in note 6 which showed NHC expenses only.

Committee Observation and Recommendation

3575. **The explanation offered was satisfactory and there the matter was resolved.**

INVESTMENT IN RESEARCH DEVELOPMENT UNIT FY 2012/13

RDU Share Certificate

3576. The Committee heard that, as similarly reported in 2011/2012, the Investment of the Corporation in Research Development Unit Company Ltd (a wholly owned subsidiary) totalled KSh.99,457,797 as at 30th June 2013. However, no share certificate in support of the investment was availed for audit review and, as a result of which, it was not possible to confirm the ownership of the company.

Management Response

3577. The accounting officer informed the Committee that the RDU was a wholly owned subsidiary of NHC and therefore no share certificate had been issued to the Corporation as per the Certificate of Incorporation and Memorandum and Articles of Association.

Performance of RDU Co. Ltd.

3578. The Committee heard that the Statement of Comprehensive Income for the year ended 30th June 2013 for the Research Development Unit Company showed that the Unit reported a loss of KSh.6,972,122 (2011/2 - KSh.15,755,578). The Corporation was not likely to benefit from the Investment in the subsidiary unless the trend of losses was reversed. Further, the company's statement of financial position reflected a negative working capital of KSh.2,220,448.

Management Response

3579. The Management informed the Committee that the performance of Research Development Unit Company Limited (a wholly owned subsidiary of NHC) was declining and the Corporation suspended operations of the subsidiary with a view to coming up with a new strategy on how to reverse the trend of losses. However, the board resolved that the unit be liquidated (full Board minutes).

Committee Observations

3580. **The Committee made the following observations:**

(i) **The matter appeared in the 19th Report of the Public Investments Committee on audited accounts of State Corporations. However, the Committee on implementation had not followed up implementation of the PIC recommendations.**

(ii) **The Corporation's effort of pursuing the Directors who were holding shares in trust for NHC to transfer the same to the current NHC Directors had not been successful. NHC had therefore engaged its lawyers to move to court and apply for orders to**

have the Registrar of Companies sign the transfer forms in lieu of the former Directors of the Company.

Committee Recommendation

3581. **The Committee recommends that the Committee on implementation should follow up the PIC's recommendation of the 19th Report pursuant to its mandate.**

DEBTORS AND PREPAYMENTS FY 2012/13

3582. The Committee heard that Note 20 to the financial statements reflected a balance of KSh.118,921,396 under Rent arrears which increased substantially by KSh.14,245,637, from KSh.104,675,759 reported in 2011/2012. No explanation had was given for the huge increase in rent debtors and also no indication was seen as to any measures the corporation had put in place to address the unsatisfactory state of affairs. Further, according to the supporting schedule for Rent Debtors, the balance of KSh.118,921,396 was net of several unexplained credit balances. No reason or reconciliation was provided for the credit balances reflected against an item which under normal circumstances should show debit balances.

Management Response

3583. The accounting officer informed the Committee that the debt increment arose as a result of a court process which was initiated by the Madaraka tenants in 1998 when the Corporation gave notice to increase rent. The tenants disputed the rent increment. A court injunction was placed against the Corporation. NHC continued to accrue the new rates. As the court case was ongoing, the Corporation engaged the defunct Nairobi City Council in a debt settlement arrangement. The defunct Local Authority offered Madaraka estate in a debt swap deal that led to the sale of the units in 2006.

3584. The court ruling allowing the Corporation to levy increased rents was received in 2010; this was long after the houses were sold. The Corporation therefore did not have a legal framework for collecting the arrears. NHC was trying to catch up with the tenants when they collect their documents.

Committee Observation and Recommendation

3585. **The explanation offered by the NHC was satisfactory as there was a way of collecting the rent arrears once the tenants came for ownership certificates.**

FINANCIAL STATEMENTS DISCLOSURE FY 2013/14

3586. The Committee heard that the Corporation's financial statements for the year ended 30th June 2014 did not fully comply with International Accounting Standards No.11 on disclosure requirements in that the following requirements were not disclosed: the amount of contract revenue recognized as revenue in the period; the method used to determine the contract revenue recognized in the period; method used to determine the stage of completion of contract in progress; aggregate amount of costs incurred and recognized profit (less recognized losses) to date; amount of advances received; amount of retentions; gross amount due from customers for contract work as an asset and gross amount due to customers for contract work as a liability. No reason was provided for failure to fully comply with the above standard.

3587. The Corporation was therefore in breach of the Accounting Standard.

Management Response

3588. The accounting officer informed the Committee that the scope of IAS 11 was accounting for construction contracts in the financial statements of contractors. National Housing Corporation was not a contractor but engages contractors to construct housing units on its behalf hence this standard was not applicable to the Corporation. An extract of IAS 11was attached.

Committee Observation

3589. **The explanation offered was satisfactory to both the Committee and the Office of the Auditor General and therefore the query was resolved.**

PROPERTY, PLANT & EQUIPMENT FY 2013/14

3590. The Committee heard that ass disclosed in note 12 to the financial statements, the Corporation owned land and buildings with a total cost of KSh. 1,116,649,852 as at 30th June 2014. Excluded in this balance were fifty-two (52) parcels of land which had not been valued and has no ownership documents. Consequently, the ownership status and value of these properties could not be confirmed as at 30th June 2014.

Management Response

3591. The accounting officer concurred with the audit observation that the Corporation did not have documentation for some of its properties. The management was proactive in titling process through regular follow up at lands offices, outsourcing title registration to Consultants and establishment of land desk in the Ministry of Lands and Physical Planning to handle all the Corporation land matters.

Committee Observations

3592. **The Committee made the following observations:**

(i) **Ownership documents for the 52 properties was under processing as at the time of appearance before the Committee**

(ii) **The Corporation's land in Kipkelion and Kericho had been invaded by squatters but no permanent structures had been erected.**

(iii) **The Corporation had developed properties on land which lacked title deeds and others which had not been surveyed thus exposing the entity to losses.**

(iv) **The land which had developments but lacked titles had allotment letters.**

(v) **The properties with sectional titles included Langata where NHC had the mother title but hadn't secured titles for the individual apartment units.**

(vi) **Some of the Corporation's land had been grabbed by private individuals and titles secured.**

(vii) **The Authority had sought the services of a consultant to follow up on acquisition of title documents for land under its ownership.**

Committee Recommendations

3593. **The Committee recommends that:**

(i) **The accounting officer for the NHC should expedite securing titles to all its NHC's land.**

(ii) The accounting officer for the NHC should issue eviction notices to squatters occupying the NHC's land

(iii) The accounting officer for the NHC should do a search on all NHC's land and place caveats against them

(iv) The Land Registry should liaise with the NHC for registration and issuance of ownership documents to the NHC on NHC's legal properties.

2.31 GENERAL OBSERVATIONS AND RECOMMENDATIONS

3594. The following is a summary of the Committee's general observations and recommendations as per the findings on the audited financial statements of the State Corporations considered in this report.

Matters pending in Court

3595. The Committee observed that several 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 House Resolutions through previous PIC Reports calling for the expeditious conclusion of the cases. A case in point is the matter concerning a debt dispute between the Kenya Ports Authority and Kenol/Kobil that has been pending in Court. The matter kept on going to arbitration and Court without any progress 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.

3596. Another example is the land related cases litigated by the Kenya Ports Authority, and Kenya Airports Authority on ownership, some of which have been pending in Court for many years. As a result, the stated government entities are unable to lawfully acquire ownership documents and utilize them for delivery of services to Kenyans.

Committee Recommendations

3597. **The Committee recommends that -**

(i) The judiciary expedites conclusion of cases that have been pending in Court for long periods.

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

(iii) Chief Executives Officers/ Managing Directors should strive to embrace alternative dispute resolution mechanisms before approaching Courts of Law.

Ownership of Property, Land and Equipment

3598. 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, Kenya Ports Authority, Kenya Airports Authority, Kenya National Highways Authority, Kenya Railways Corporation, Kenya National Bureau of Statistics and the Bomas of Kenya possess land without titles.

3599. It should be noted that under the International Public Sector Accounting Standards, an entity can only recognize assets in its books of accounts if it has ownership documents to those assets. In the absence of ownership documents, accuracy of presented financial statements by state corporations may be in doubt.

Committee Recommendations

3600. **The Committee recommends that -**

(i) The accounting officers 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 accounting officers of State Corporations and the Chairperson of the 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.

(v) The National Land Commission should take disciplinary measures on its officers that procrastinate in processing land ownership disputes.

Procurement Processes and Management of Contracts

3601. 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, 2015 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 Airports Authority awarded a contract for construction of Green Field Project to International Engineering Corporation at a contract sum of US$ 653,782,815 (KSh.64,745,354,325). One of the condition precedents to the contract required that the contractor had to get a financier prior to signing of the contract.

3602. Further, the contract sum included VAT. It however discovered later that the contract was signed before securing of the financier and there was an attempt to vary the contract to include VAT in the contract sum leading to cancellation of the project when management had already paid more than KSh 4.3 billion to the contractor in advance for no work done.

3603. Another example is the Lamu Port Housing Project in which the Ministry of Transport, Infrastructure, Public Works, Housing and Urban Development advertised and awarded contract No. 9712C - Proposed Lamu Port Police Station and Management Housing for KSh.615,848,997 in the financial year 2012/2013. Under unclear circumstances, the Kenya Ports Authority was directed to take offer the project and finance it even after it had been varied to over KSh 900 million shillings. Further, there were a myriad of audit reservations raised on the preliminary implementation of the project that the management of Kenya Ports Authority could not respond to since it was not the implementing agency then; the project was being implemented by the State Department for Public Works. Matters that had been queried but whose response could not be obtained included justifications for variations of the project, accounting for engineers' expenses and whether the project had been budgeted for among others.

Committee Recommendations

3604. **The Committee recommends that -**

(i) The Chief Executive 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.

Delay in appointments of Accounting Officers

3605. The Committee observed that some State Corporations were operating without substantive accounting officers (Chief Executive Officers/Managing Directors). For instance, the Director Generals of the Kenya Rural Roads Authority and Kenya Roads Board had been in acting capacity for more than a year in their respective positions. Further, the Chief Executive Officers to the Kenyatta National Hospital, National Hospital Insurance Fund and Kenya Airports Authority had served for more than one year before the positions were substantively filled.

3606. The case of Kenya National Highways Authority was unique in the sense that upon expiry of the Director General tenure in late 2021, the Board appointed acting Director General who served for a period of less than three months prior to appointment of a substantive officer holder. This saw three persons holding an office of the Director General within a very short period; a scenario that is not desirable for stability in management.

3607. Absence of a substantive CEO is not an appropriate management practice as it impedes on the independence of the CEO to make binding decisions. The Committee noted with appreciation that the head of Public Service had issued a circular No. OP/CAB.9/1A dated 11th March 2020 directing that whenever accounting officers' position fell vacant, they should be filled immediately and that no officer should serve in acting capacity for more than six months.

Committee Recommendation

3608. **The Committee recommends that the appointing authority should appoint substantive accounting officers within six months of such positions falling vacant and**

strictly adhere to the circular Ref OP/CAB.9/1A dated 11th March 2020 from the Head of Public Service on Management of State Corporations.

Financial Performance and Sustainability of Corporations

3609. 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.

3610. The National Environmental Management Authority (NEMA) had been facing financial difficulties since the removal of the Environmental Impact Assessment levy on all construction projects in 2016 that was responsible for more than KSh 500 million revenue annually. In the financial year 2017/2018, NEMA had a negative working capital of KSh 19.6m and the trend has continued to the subsequent financial year with the authority making a loss of KSh 78 million in the financial year 2019/2020 thereby affecting operations of the Authority due to budget deficit.

3611. The Postal Corporation of Kenya is another government entity whose long-time financial existence was at risk. It was noted that its business environment had been deteriorating for the last ten years culminating into a net working capital of about KSh 450 million in the year 2017/2018. Further, cash flow challenges have affected non discretionally expenditure such as payment of salary. The continued sustainability of the Corporation was at risk unless drastic measures were put in place to make it afloat.

3612. Rivatex East African Limited is another government entity whose financial positions had been dwindling for the last six years. For instance, it recorded turnover of KSh. 98,172,058 during the year 2015/16 as compared to KSh. 118,425,640 during the year 2014/15 a decrease of KSh. 20,253,582 or approximately 17.10%. Net loss increased from KSh. 109,178,538 in 2014/2015 to KSh. 132,543,477 which was approximately 17.62% to bring the accumulated losses to KSh. 1,020,603,854. Though there has been slight improvement in the year 2019, the entity was massively dependent on government support to operate.

Committee Recommendation

3613. **The Committee recommends that the heads of state corporations should develop and run models that maximizes on returns as well as servicing the public**.

<u>Delay in availing documents to the Auditor- General</u>

3614. 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 *Article 229* of the Constitution of Kenya and Section 68(2) of the PFM Act 2012 which requires that the financial and accounting records are presented within three (3) months after the close of the financial year . Section 62 of the public Audit Act of 2015 obligates accounting officers to provide required documents for audit failure to which they be sanctioned. This was notable for most audit queries raised during the consideration of financial statements of the Kenya Ports Authority in which documents relating to Lamu Port Housing Project that had been initiated and procured by the State Department of Public Works were never presented for audit.

3615. Further, the Management of Kenya Electricity Generation Company failed to provide feasibility study documents on both Meru and Karura Hydro projects for audit review during the time of audit; failure by the management of Athi Water Services Board to provide supporting documents on expenditure with respect to pans and dams-KSh.18,526,147 in the financial year 2016/2017; failure by management of the Kenya Wildlife Service to submit document relating to short term deposits totaling KSh.92,622,211 in the financial year 2019/2020; and a myriad of queries in the audited financial statements of the Kenya Marine and Research Institute were as a result of failure or delayed submission of documents for audit.

<u>Committee Recommendations</u>

3616. **The Committee recommends that -**

(i) Accounting officers should comply with the provisions of Section 62(1) of the Public Audit Act 2015 by submitting all the required documents for audit within the stipulated timelines

(ii) The appointing authorities should implement the provisions of Section 63 of the Public Audit Act 2015 by penalising accounting officers who fail to submit required documents for audit should within the statutory timelines.

Implementation of Committee Recommendations

3617. The Committee observed that several recommendations of the previous committees had not been implemented. A case in point is the recommendation to secure ownership documents for the land claimed by various state corporations such as the Kenya Airports Authority, the Kenya Ports authority, the Kenya Wildlife Services and the Kenya Marine and Fisheries Research Institute among others but less progress had been made. Further, recommendations were on investigative agencies such as the EACC and the DCI to expedite and conclude investigations commenced, and accounting officer's obligation to submit documents to the Auditor General for audit within the required timelines among others remain largely unimplemented. This led to some audit queries subsisting for several financial years.

3618. 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 fanctus officio.

Committee Recommendation

3619. **The Committee recommends that the Committee on implementation follows up on implementation of House resolutions (adopted Committee reports) and recommends appropriate sanctions to persons that fail to implement House Recommendations.**

Interest due to delayed payments

3620. The Committee observed with concern the huge nugatory 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. Examples of such payments included the following:

- Kenya National Highways Authority (KeNHA) had an accumulated interest on delayed payments of KSh 6.4 billion as at 30th June 2019

- Kenya Rural Roads Authority had accumulated large amounts of interest arising from delayed payments to contractors.
- The Kenya Airports Authority's many contracts attracted huge interests arising from delayed payments.

Committee Recommendations

3621. **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 interest payments**

iii. **Accounting officers or Board Members that unreasonably delay payments when due occasioning accrual of interest should be held responsible for the loss of public money.**

iv. **The National Treasury should ensure timely exchequer releases to State Corporations for implementation of approved and budgeted for projects.**

v. **The accounting officers of State Corporations should ensure existence of budget and regular cash flows before contracting any person to implement a project.**

Delayed accountability of Imprest

3622. The Committee noted that several State Corporations were in breach of Section 71 of the Public Finance Management Act 2012 and the attendant regulations that required surrender of imprests within seven days upon conclusion of the assignment for which the said imprest was issued. Notable in this was the Kenya National Bureau of Statistics (KNBS) in which the census monies for both 2009 and 2019 exercises remained unaccounted for to date despite management's efforts to have it accounted for from the Ministry of Interior and Coordination of National Government Functions whose officers had been given the said monies. Further, it emerged under the KNBS audit reports that there was a trend in which officers could carry imprest for others and fail to account for and one officer given multiple imprests before accounting for the first one.

3623. Similar cases were seen in the audited accounts of North Water Services Board, Kenya Marine and Fisheries Institute and the Kenya Maritime Authority among others.

Committee Recommendations

3624. The Committee Recommends that **the accounting officers of State Corporations should adhere to Section 71 of the Public Finance Management Act 2012 and attendant Regulations by ensuring surrender of allocated imprest within seven days upon conclusion of the activity for which the said imprest was issued failure to which recovery should be made.**

Quality of audit reports

3625. The Committee noted with appreciation the continued improvement of quality of audit reports produced from the Office of the Auditor General especially on the Kenya Airports Authority's 2016/2017 and 2017/2018 financial year; the Tourism Fund for the financial years 2014/2015 to 2018/2019 and the Kenya Maritime Authority's 2017/2018 financial year and the Kenya Ports Authority's 2017/2018 to 2019/2020 financial years.

Committee Recommendation

3626. **The Committee recommends that the Office of the Auditor General continues to improve capacity of its staff to produce audit reports of highest quality.**

HON. ABDULLSWAMAD SHARRIF NASSIR, MP

CHAIRMAN, PUBLIC INVESTMENTS COMMITTEE

DATE: 31/05/2022