THE NATIONAL ASSEMBLY
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REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – FOURTH SESSION (2025)

PUBLIC INVESTMENTS COMMITTEE

ON

COMMERCIAL AFFAIRS AND ENERGY

PARLIAMENT OF KENYA LIBRARY

SECOND REPORT

OF

THE PUBLIC INVESTMENTS COMMITTEE ON COMMERCIAL AFFAIRS & ENERGY

ON EXAMINATION OF THE REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF SELECTED STATE CORPORATION

DIRECTORATE OF AUDIT, APPROPRIATIONS & GENERAL-PURPOSE COMMITTEES
THE NATIONAL ASSEMBLY
PARLIAMENT BUILDINGS
NAIROBI

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LIST OF ABBREVIATIONS AND ACRONYMS

CEO	-	Chief Executive Officer
CS	-	Cabinet Secretary
CWWS	-	Coast Water Works Services
DCI	-	Directorate of Criminal Investigations
EACC	-	Ethics and Anti-Corruption Commission
FOC	-	Fibre Optics Cable
FY	-	Financial Year
GDC	-	Geothermal Development Company
GoK	-	Government of Kenya
IAS	-	International Accounting Standards
IFRS	-	International Financial Reporting Standards
IPSAS	-	International Public Sector Accounting Standards
KAA	-	Kenya Airports Authority
Kes/ Kshs.	-	Kenya Shillings
KMA	-	Kenya Maritime Authority
KPC	-	Kenya Pipeline Company
KRC	-	Kenya Railways Corporation
LC	-	Letter of Credit
MoEP	-	Ministry of Energy and Petroleum
NLC	-	National Lands Commission
NPT	-	Non-Productive Time
NWCPC	-	National Water Conservation and Pipeline Corporation
OAG	-	Office of the Auditor General
PFMA	-	Public Finance Management Act, No. 18 of 2012
PPAD	-	Public Procurement and Asset Disposal Act, No. 33 of 2015
PS	-	Principal Secretary
PSASB	-	Public Sector Accounting Standards Board

UFW	-	Unaccounted For Water
WSP	-	Water Service Providers

CHAIRPERSON'S FOREWORD

The Public Investments Committee on Commercial Affairs & Energy (hereinafter referred to as "the Committee" is one of the six 'Watchdog Committees' in the thirteenth Parliament that examine 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 206A 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. The Committee was hived off the hitherto singular Public Investments Committee, alongside two others, for efficiency of examination of 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 seven (7) State Corporations for three financial years running up to the latest, 2020/21 FY. The report is structured as follows:

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

ii) recommendations to each of the above;

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

iv) Management Responses to each of the queries;

v) Committee Observation on each query; and

vi) recommendations of the Committee to each query raised.

In this report, the Committee makes policy recommendations that it deems will cure financial and audit challenges and at the same time recommends specific actions against specific officers who may have acted contrary to the law. It further recommends further investigations of certain matters by the relevant investigative agencies such as the EACC and the DCI. All this is geared towards ensuring prudent use of public resources and holding all persons that have misappropriated public funds accountable, in accordance with Article 226 (5) of the Constitution.

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 perform its mandate. The Committee further extends its appreciation to the Office of the Auditor-General for the services it offered to the Committee during the entire period, as well as those Accounting Officers who complied with audit timelines, and provided satisfactory responses to queries raised.

I also extend my appreciation to my fellow Members of the Committee and the secretariat 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 on Commercial Affairs & Energy, and pursuant to National Assembly Standing Order 199(6), it is my pleasant duty and honour to present to the House the 2nd Report of the Public Investments Committee on Commercial Affairs & Energy on the audited Financial Statements for eight (8) State Corporations.

HON. DAVID LOSIAKOU PKOSING, CBS, MP

CHAIRPERSON, PUBLIC INVESTMENTS COMMITTEE ON COMMERCIAL AFFAIRS & ENERGY

EXECUTIVE SUMMARY

The 2nd report of the Public Investments Committee on Commercial Affairs & Energy (PIC-C&E) contains the Committee's examination of audited financial statements of seven (7) State Corporations.

In its examination and scrutiny of the audited financial statements of the various State Corporations, the Committee's primary approach was to elicit background information as to why particular course of financial and/or management actions were or were not taken. This was done with the relevant public financial management principles in mind, including, the Constitution of Kenya, 2010, the Public Audit Act, 2015, the Public Finance Management Act, 2012, and the attendant regulations, Public Procurement & Asset Disposal Act,2015 and the attendant regulations, the International Public Sector Accounting Standards (IPSAS) and International Financial Reporting Standards (IFRS) relevant for commercial state corporations.

The preface of the report contains preliminaries on the establishment of the Committee; its membership and secretariat; mandate; and the guiding principles governing the Committee while undertaking its mandate.

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

Part three of this report contains reports of the specific state corporations whose financial statements were examined; the financial years considered in each state corporation; the specific audit reservations raised by the Auditor General in each financial year; Management Response to each audit reservation raised by the Auditor General; Committee Observation after considering each audit reservation; and finally, Committee Recommendations on each audit query.

1.0 PREFACE

1.1. ESTABLISHMENT AND MANDATE OF THE COMMITTEE

1. The Public Investments Committee on Commercial Affairs & Energy is established under the National Assembly Standing Order (S.O.) 206A and is responsible for the examination of the working of public investments based on their audited reports and accounts in the sectors of energy, environment, general economic and commercial affairs. 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) Chapter Twelve of the Constitution on Public Finance

Part I-Principles of Public Finance

Article 201 sets out the principles of public finance which includes: -

(i) openness and accountability, including public participation in financial matters (Article **201(a)**); use of public money in a prudent and responsible way (Article **201(d)**); and

(ii) responsible financial management and clear fiscal reporting (Article **201(e)**).

Part 6-Control of Public Money

Article 226 deals with the accounts and audit of public entities and provides that:

(i) the accounting officer of a national public entity is accountable to the National Assembly for its financial management (Article **226(2)**); and

(ii) the holder of a public office, including a political office, who directs or approves the use of public funds contrary to law or instructions is personally liable for any loss arising from that use and shall make good the loss, whether the person remains the holder of the office or not (Article **226(5)**).

Article 227 deals with the procurement of public good and services. Article 227 (1) in particular, provides that "when a State organ or any other public entity contracts for goods or services, it shall do so in accordance with a system that is fair, equitable, transparent, competitive, and cost-effective".

the Public Finance Management Act, No. 18 of 2012

Section 68 sets out the responsibilities of accounting officers for national government entities, Parliament and the Judiciary. This includes accountability to the National Assembly for ensuring that the resources of the respective entity for which he or she is the accounting officer are used a lawful, authorized, effective, efficient, economical and transparent manner (section 68(1)).

Section 72 focuses on the accounting officers' responsibility to manage the assets and liabilities of national government entities.

3. Apart from the above-named laws, the Committee was further guided by the following: -

i. the Parliamentary Powers and Privileges Act, No. 29 of 2017;
ii. the Public Finance Management (National Government) Regulations, 2015;
iii. the Public Procurement and Asset Disposal Act, No. 33 of 2015;
iv. the Public Procurement and Asset Disposal Regulations, 2020;
v. the State Corporations Act, No. 11 of 1986;
vi. the Public Audit Act, No. 34 of 2015;
vii. The Fair Administrative Action Act, No. 4 of 2015;
viii. the Accountants Act, No. 15 of 2008; and
ix. the National Assembly Standing Orders

1.2. COMMITTEE MEMBERSHIP

4. The Committee comprises of the following fifteen (15) Members:

	Name of Member	Constituency	Party
1	Hon. David Pkosing, CBS, MP - **Chairperson**	Pokot South	KUP
2	Hon. Dr. John Ariko Namoit, MP - **Vice Chairperson**	Turkana South	ODM
3	Hon. Dr. Adan Wehliye Keynan, CBS, MP	Eldas	Jubilee
4	Hon. Mwangi Kiunjuri, EGH, MP	Laikipia East	TSP
5	Hon. Sarah Paulata Korere, MP	Laikipia North	Jubilee
6	Hon. Babu Owino Paul Ongili, MP	Embakasi East	ODM
7	Hon. Dr. Beatrice Kahai Adagala, MP	Vihiga (CWR)	ANC
8	Hon. Esther Muthoni Passaris, MP	Nairobi (CWR)	ODM
9	Hon. Paul Kahindi Katana, MP	Kaloleni	ODM
10	Hon. Betty Njeri Maina, MP	Muranga (CWR)	UDA
11	Hon. Charo Kazungu Tungule, MP	Ganze	PAA
12	Hon. David Kiplagat, MP	Soy	UDA
13	Hon. Duncan Mathenge Maina, MP	Nyeri Town	UDA
14	Hon. Ronald Kamwiko Karauri, MP	Kasarani	Independent
15	Hon. Yussuf Mohamed Farah, MP	Wajir West	ODM

1.3. COMMITTEE SECRETARIAT

5. The Secretariat facilitating the Committee comprises the following technical staff: -

i.	Ms. Wanjiru Mwaura	- **Principal Clerk Assistant/ Team Leader**
ii.	Mr. Ahmad Guliye	- Clerk Assistant I
iii.	Mr. Andrew Kipchumba	- Clerk Assistant III
iv.	Ms. Roselyne Ndegi	- Senior Sergeant at Arms
v.	Ms. Angela Musau	- Legal Counsel II
vi.	Ms. Judith Kiprop	- Fiscal Analyst II
vii.	Mr. Amos Tindi	- Hansard Reporter II
viii.	Ms. Deborah Mupusi	- Media Relations Officer II
ix.	Ms. Gladwel Amimo	- Research Officer III
x.	Ms. Mercy Keruibo	- Audio Officer
xi.	Ms. Lily Cheroitich	- Protocol Officer

1.4. COMMITTEE PROCEEDINGS

6. To produce this report, the Committee held forty-two (42) sittings in which it comprehensively examined the reports of the Auditor General on the financial statements of eight (8) State Corporations for various financial years.

7. 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, Managing Directors and Director Generals (Accounting Officers) of various State Corporations and other relevant witnesses.

8. The Committee Observations and 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.

9. These Committee 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 in the sectors of energy, environment, general economic and commercial affair

2.0. GENERAL OBSERVATIONS AND RECOMMENDATIONS

10. In consideration of reports of various state agencies, the Committee encountered cross-cutting and at times recurring matters that make general observations and recommendations. Specific observations and recommendations are however made under each specific agency: -

a. Poor accounting standards and general incapacity of some accounting officers

11. The Committee found that due to a previous lack of exposure to the audit process culminating in parliamentary review, some accounting officers were ignorant of/ or non-compliant to various provisions of the PFM Act and Public Audit Act. Audit queries spanning as far back as FY 2018/19 remained un responded to by some agencies who were only triggered to action once invited by the Committee.

The Committee recommends that the National Treasury, Inspectorate of State Corporations and the Office of the Auditor General conduct annual sensitization and capacity building exercises to all accounting officers and finance staff in state corporations. This includes their responsibilities during the audit cycle and adherence to IPSAS.

b. Late submission of supporting documentation

12. The Committee observed that some accounting officers failed to submit supporting documentation to the Auditor General on time as per section 68(2) (b) and (k) of the PFM Act 2012. This invariably led to the Committee discussing matters that should ordinarily not feature in the final report, some as mundane as accounts not balancing.

The Committee recommends that Accounting Officers henceforth comply with section 68(2)(b) and (k) of the PFM Act 2012, by providing supportive documentation on time. The Committee in subsequent audits will prescribe punitive measures and sanctions to those accounting officers that fail to adhere to the requirements of the law in this regard.

c. Unsecured/ unlitled land holdings

13. The Committee also observed cases where land held by various institutions were not secured and titled accordingly. This led to encroachment in some cases, with the potential of eventual forfeiture or loss.

The Committee recommends that the National Land Commission and the relevant ministries immediately ensure that all State Corporations secure titles to all their parcels of land. These institutions and the National Treasury must also prioritize fencing off all land holdings to forestall further encroachment. The Committee recommends that encroachers face full extent of the law, and are evicted and charged in court.

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

3.1. NATIONAL WATER HARVESTING & STORAGE AUTHORITY (FY 2018/2019 - 2020/2021)

EXAMINATION OF THE AUDITED ACCOUNTS OF NWHSA FOR THE FY 2018/19 TO 2020/21

14. The management of National Water Harvesting and Storage Authority (NWHSA), led by the Ag. Chief Executive Officer Eng. John Muhia appeared before the Committee to adduce evidence on the audit queries that had been raised by the Auditor General for the FYs 2018/19 to FY 2020/21.

FINANCIAL YEARS 2018/2019, 2019/2020 AND 2020/2021

15. The Committee was informed that in the three financial years under review, NWHSA received qualified opinions and raised the following audit issues:

FINANCIAL YEAR 2018/2019

1. Unsupported and Offsetting of Trade and Other Payables from Exchange Transactions

16. The statement of financial position reflected trade and other payables from exchange transactions balance of Kes.1,134,402,781. The balance included debit balances totaling Kes.444,255,818 for which supporting schedules were not provided and which were offset against the payables contrary to the provisions of Paragraph 48 of IPSAS 1 — Presentation of Financial Statements - which prohibits offsetting of assets and liabilities, revenue and expenses. In addition, included in the balance of Kes.1,134,402,781 were trade payables of Kes.384,013,234 which had been outstanding for more than one year and for which Management did not provide detailed supplier ledgers and supporting documents for audit verification. In view of the foregoing, it was not possible to confirm the accuracy, validity and completeness of the trade and other payables from exchange transactions balance of Kes.1,134,402,781.

Management Response

The Accounting officer submitted that—

17. The management presented the financial statements whereby the trade receivables were offset against the trade payables. However, as rightly stated in the audit report, Paragraph 48 of IPSAS 1 prohibits such netting off. This has since been addressed in the

audited Financial Statements for the period ended 30 June 2022, with a restatement being done for the audited financial statements for the period ended 30 June 2021.

18. The Accounting Officer submitted that, as correctly noted by the auditors, the Recurrent, Special, and Development accounts had several long-standing unposted items. To address this issue, the Authority constituted a committee tasked with establishing the origin of the unreconciled items and proposing appropriate remedies. The committee completed its detailed report on 6th July 2023, which was subsequently adopted by management during its meeting held on 25th July 2023.

Committee Observation and Recommendation

19. The Committee observed that the supporting schedules were provided and financial statements reinstated for the period ended 30 June 2022, hence the matter is resolved.

2. Long Outstanding Unreconciled Items in Cash and Cash Equivalents

20. The statement of financial position reflected cash and cash equivalents amount of Kes. 256,191,108. The balance excluded Kes.31,850,430 relating to unposted items reflected in the bank reconciliations, as detailed below:

Account Name	Account No.	Date First Reported	Amount (Kes.)
Development	1114280593	2009	24,671,142
Special Acc	1111427997	2004	2,133,280
Recurrent Acc	1114280488	2006	5,056,008
			31,860,430

21. The items have been outstanding for more than 10 years and it is not clear why Management has not investigated the unposted items to clear them from the reconciliation statements. Further, a credit balance of Kes.5,020 was offset against the reported cash and cash equivalents balance contrary to the provisions of Paragraph 48 of IPSAS 1 – Presentation of Financial Statements which prohibits offsetting of assets and liabilities, revenue and expenses. In addition, the recurrent account bank reconciliation statement reflected a cashbook under cast of Kes.1,956,997, a reconciling item which should have been adjusted in the cashbook before preparing the reconciliation.

22. Consequently, it was not possible to confirm the accuracy and completeness of the cash and cash equivalents balance of Kes.256,191,108 as at 30 June, 2019.

Management Response

The Accounting Officer submitted that—

23. As correctly observed by the auditors, the Recurrent, Special and Development accounts had various long outstanding unposted items and to address this, the Authority appointed a committee to establish the origin of the unreconciling items and propose remedies. The team finalized its detailed report on the 6th of July 2023 which was adopted by management in its meeting of the 25th of July 2023.

24. The committee recommended that the unreconciling items be written off the books of the Authority after seeking the Board of Director's and the Cabinet Secretary of the National Treasury's approval as guided by the Public Finance Management Act 2015, Regulations, (148) and (157).

25. The basis of the recommendation was as follows:

i. The unreconciling items could be traced to opening balances posted in the Authority's cashbooks on 30th June 2006,

ii. No reconciliations prior to the year 2009 could be traced as all accounting records were destroyed in a fire that gutted the Authority's premises, and

iii. The Authority's bankers (KCB), through a letter dated 27th June 2023, could not provide information requested for the period dating back 14 years.

26. The management presented the Management Report based on the Resolutions of the Management meeting where the Committee's report was deliberated to the Finance Committee of the Board in the 1st Quarter of the FY 2023-2024 upon approval of the board almanac by the Cabinet Secretary - Ministry of Water, Sanitation & Irrigation and thereafter the Auditors shall be appraised of the outcome of the write off process which is projected to be finalized by December, 2023. The management presented the Management Report based on the Resolutions of the Management meeting where the committee's report was deliberated to the Finance Committee of the Board in the 1st Quarter of the FY 2023-2024 upon approval of the board almanac by the Cabinet Secretary - Ministry of Water, Sanitation & Irrigation and thereafter the Auditors shall be appraised of the outcome of the write off process which is projected to be finalized by December, 2023.

27. Additionally, the credit balance of Kes.5,020 was carried within the cash and cash equivalents, attributable to bank charges on a dormant account held by the Authority at the National Bank of Kenya. The account has since been closed, and the negative balance has been written off.

Committee Observations

28. The Committee noted that from the submission by the Accounting Officer, the credit balance of Kes.5020 was as a result of the bank charges on a dormant account held by the Authority at National Bank of Kenya.

29. The Committee observed that the Accounting Officer was in the process of seeking a write off of Kes.31,860,430 from the books of the Authority.

Committee Recommendations

30. The Committee recommends that the Authority should fast-track the process of writing off the unreconciling items pursuant to section 69(1) of the Public Finance Management Act 2015, Regulations 148(5) and (157). Further, the Accounting Officer should submit a report on the status of the write-off within six (6) months of adoption of this report.

31. The Committee recommends that the matter remains unresolved and the Office of the Auditor General to keep in view.

3. Undisclosed Receivables from Exchange Transactions

32. The statement of financial position reflected receivables from exchange transactions amounting to Kes.674,383,971. The balance excluded water supply debts of Kes.1,377,265,026 and pre-payments totaling to Kes.754,400 transferred to Water Service Boards (currently Water Works Development Agencies) under various agreements between the Authority and the Water Service Boards in the financial year 2005/2006. However, the agreements had not been formalized and the legal status of the debts remained uncertain. Consequently, the accuracy and completeness of the reported receivables balance could not be confirmed.

Management Response

33. The Accounting Officer submitted that the Authority initially governed under the Legal Notice No.270 of 1988 which mandated it to operate 46 water schemes in 7 regions namely Central, Southern, Nairobi, Coast, Rift Valley, Western and Nyanza. The Authority had assets in terms of property, Plant and Equipment in all these regions. In October 2004 the Cabinet memo defined new roles for the Authority in line with the Water Act 2002 and subsequently Legal notice No. 101 was issued. Under the Water Act 2002, seven Water Service Boards were established namely Rift Valley, Tana, Athi, Northern, Coast, Lake Victoria North & Lake Victoria South as at 30th June 2005 which took over the mandate of the seven regions and all properties, plants and equipment of the Authority.

34. The Authority commenced the process of transferring these assets that is, water debtors of Kes.1,377,265,026 and prepayments of Kes.754,400 as per the transfer

plan provided by the Water Act 2002 as supported by legal notice No 101 of 2005 where a road map had indicated the completion dates of the transfer as 30th June 2006. However, none of the Water Service Boards signed the transfer agreements.

35. Due to the prolonged delay in signing the transfer agreements, well beyond the stipulated timeframe, and given that the receivables were intended for the Water Service Boards, the Authority deemed it prudent to exclude these amounts from its books of accounts. The Authority has since communicated this position to the various Water Service Boards and to the Principal Secretary of the State Department for Water. Additionally, the Authority sought the intervention of the Principal Secretary, Ministry of Water, Sanitation, and Irrigation, through a letter dated 15th June 2022. Management remains engaged with the Parent Ministry and will continue working towards resolving this matter.

Committee Observations

36. The Committee noted at the time of examination that, the undisclosed receivables were as a result of the delay in signing of the transfer agreements by the Water Works Development Agencies

Committee Recommendations

37. The Committee recommends that the Cabinet Secretary for Water, Sanitation & Irrigation should expedite the signing of the deeds of transfer by the Water Works Development Agencies.

38. Further, the Accounting Officer should submit to the Committee, a report on the status of the transfer agreements within six (6) months of adoption of this report.

4. Long Outstanding Receivables from Non-Exchange Transactions

39. The statement of financial position reflected receivables from non-exchange transactions amounting to Kes.92,339,809. However, the following issues were noted:

i. As reported in the prior year, the receivables amount includes staff salary advances of Kes. 3,641,273 out of which Kes.1,213,269 had been outstanding for periods beyond 90 days against the Authority's policies but were yet to be recovered from the payroll.

ii. The receivables from non-exchange transactions also include deposits amounting to Kes. 14,017,475, which have remained outstanding from the

Judiciary from 2015/2016financial year.

ii. The receivables also included temporary imprests of Kes. 92,980,913 which were yet to be surrendered by the end of the financial year, and Management was yet to make recoveries of the outstanding amounts through the payroll. However, a specific provision for bad debts of Kes.18,302,852 on outstanding imprest has been made, and according to Management, this relates to staff members who have either passed on or left the Authority.

In the circumstances, it has not been possible to confirm the recoverability of receivables &non-exchange balance of Kes.92,339,809 as at 30 June, 2019.

Management Response

The Accounting officer submitted as follows—

i) Salary advances

40. In accordance with Clause 3.8 of the Authority's Human Resource Management Policies and Procedures Manual, staff are entitled to salary advances not exceeding the equivalent of two (2) months' salary. Clause 3.10 further provides that these advances are recoverable within a period of 12 months. While the auditors correctly observed that some advances had been outstanding for more than 90 days, these amounts were still within the allowable recovery period and were therefore considered valid receivables, not subject to amortisation. The outstanding amounts have since been fully recovered.

ii. Deposits with Courts

41. The management clarified that the deposits with the Judiciary were compliant with court orders for matters that were under appeal at various courts. By the close of the financial year, the cases were still active and thus were carried as assets as they could not be converted to expenses until the cases were determined by the courts. These deposits could not be amortized as the debtors were considered viable.

42. The carrying amount of court deposits was adjusted to Kes.7,803,475.00 in the audited financial statements for the period ended 30 June 2022. Further necessary adjustments will be reflected in the financial statements for the year ending 30th June 2023.

ii. Temporary Imprests

43. In accordance with Clause 4.2 of the Authority's Human Resource Management Policies & Procedures Manual, staff are eligible for temporary imprests when assigned duties that require overnight stays away from their duty stations. Regarding the reported temporary imprest balances, management clarified that the outstanding amounts carried forward during the review period pertained to staff deployed on project assignments outside their regular workstations. Given the nature of the Authority's operations, many projects span extended periods and may cross over financial years. Consequently, it was not feasible to leave such works unsupervised, especially where ongoing contracts required continuous oversight.

44. The Accounting Officer further confirmed that some of the outstanding imprests had since been surrendered, while recovery efforts for the long outstanding amounts were ongoing. In certain cases, the unrecovered imprests related to staff who were either deceased, dismissed, or who left the Authority without clearing their balances. These matters were brought to the attention of the Authority's Board. During the 3rd meeting of the Board's Finance Committee held on 5th January 2022 (FY 2021/2022), the following resolutions were adopted:

i. That the Management engages a debt collector to pursue the long outstanding imprests held by staff who were dismissed and/or staff who left the Authority; and

ii. That the Management writes off the imprest for staff who were deceased and ensures compliance with the Law.

45. In line with these Board directives, Management constituted a Working Party to analyse the long outstanding staff advances and was tasked to submit a report by 31st August 2023. The Authority's financial records will be adjusted based on the recommendations of the Working Party.

Committee Observations

46. The Committee observed that adjustments to the financial statements concerning the amounts deposited with the Courts were still ongoing, as the related cases remained pending before the courts.

47. Further, the Committee noted the Accounting Officer did not refute the fact that the Authority was in breach of its own Human Resource Policies and Procedures Manual. However, the Committee was informed that the salary advances had since been fully recovered.

48. The Committee also noted that the recovery of the long outstanding imprests was in progress.

Committee Recommendations

49. The Committee reprimands the Accounting Officer for failure to adhere to the Human Resource Policies and Procedures and recommends that the total outstanding imprest be recovered fully from the then Accounting Officer pursuant to Regulation 93 (7) of the Public Finance Management National Regulations, 2015.

5. Undisclosed and Long Outstanding Loans

50. The Authority has not disclosed in its financial statements an outstanding balance of Kes.2,460,874,897 relating to various loans. In addition, although the loan repayments were due, the Authority had not made any repayment nor recognized in the books of account the interest due, together with the related arrears. According to Management, the loans were supposed to have been passed over to the Water Works Development Agencies which took over the facilities constructed using the loans, and which were supposed to generate the revenue to repay the loans. However, no formal documentation was provided to support the explanation.
Further, although Management explained that the Authority had no capacity to repay the loans without financial support from The National Treasury and that they had sought the intervention of the Ministry of Water on the matter, the loans continued to attract interest and penalties and the lenders might invoke the terms of lending to the disadvantage of the Authority, the Water Works Development Agencies or The National Treasury.

Management Response

The Accounting officer submitted as follows—

51. The Authority had obtained **three (3) loans** through subsidiary agreements with the Government of Kenya to finance specific water infrastructure projects. The loans were as follows—

52. The first loan, secured from the International Development Association (IDA) under a loan agreement dated 28th August 1992, was intended for the Second Mombasa and Coastal Water Supply, Engineering, and Rehabilitation Project. The loan amounted to USD 17,400,000 with a repayment period of 15 years, structured in semi-annual instalments. Repayments commenced on 15th November 1997, and by the time of handing over on 30th June 2006, the outstanding principal stood at USD 6,960,000. Interest on the loan accrued at an annual rate of 16.65% as stipulated in the agreement.

53. The second loan was obtained from Kreditanstalt für Wiederaufbau (KfW) under a loan agreement dated 5th July 2002 for the Sabaki Wellfield Rehabilitation Project. The loan was valued at DM 5,000,000, repayable over 15 years through semi-annual instalments. Repayment began on 31st December 2005, and the outstanding principal at the time of handing over was DM 4,666,666.67. Interest was charged at an annual rate of 6.5% as per the loan terms.

54. The third loan was acquired from Agence Française de Développement (AFD) through an agreement signed on 7th May 1999. This facility was designated for the improvement of operational conditions in the transmission and distribution of drinking water. The total loan amount was EUR 9,146,941.03, also repayable over 15 years in semi-annual instalments. Repayment began on 30th June 2005, and by 30th June 2006, the outstanding principal balance was EUR 8,232,246.93. The loan accrued interest at a rate of 5.5% per annum, as outlined in the agreement.

55. The loans were to be serviced in accordance with the agreed repayment schedules and at the stipulated interest rates. It was anticipated that a portion of the proceeds generated from water sales would be used to meet these repayment obligations. To facilitate this, the water tariffs were expected to be adjusted accordingly to ensure sufficient revenue was available for loan servicing. However, the necessary tariff adjustments were never implemented, thereby impacting the Authority's ability to meet its repayment commitments as originally planned.

56. On 12th August 2005, the then Minister for Water and Irrigation gazetted Legal Notice No. 101 in the Kenya Gazette Supplement No. 61, outlining the Water (Plan of Transfer of Water Services) Rules, 2005, to guide the implementation of the Water Act 2002. The notice mandated the Authority to finalize the transfer of certain responsibilities related to the sale of water to the Water Service Boards within their respective jurisdictions. The deadline for completing these transfer agreements was set for 30th June 2006. While the transfer agreements were drafted, they were never signed. Despite this, the Water Service Boards took possession of the assets but did not assume the corresponding liabilities associated with the transferred functions.

57. The National Treasury has continued to make claims against the Authority in respect of outstanding loans, some of which relate to liabilities incurred prior to the transfer of functions. In response, the Authority has repeatedly sought the intervention of the Ministry of Water to facilitate the signing of the transfer agreements and to assist with the repayment of loans that fell due before the handover. This has been communicated through several letters, the most recent being dated 15th June 2022.

in these correspondences, the Authority has requested the Parent Ministry's support in regularizing the transfer of both assets and associated liabilities. The matter has been further complicated by the repeal of the Water Act 2002, which originally guided the transfer process, and its replacement by the Water Act 2016, thereby introducing legal and procedural uncertainties.

58. The management submitted that the Authority currently lacks the capacity to service the outstanding loans, as the revenue-generating assets associated with the loan-funded projects were transferred to the respective Water Works Development Agencies. Specifically, the Coast Water Works Development Agency assumed control over the Second Mombasa and Coastal Water Supply, Engineering and Rehabilitation Project, as well as the Sabaki Wellfield Rehabilitation Project. The Tana Water Works Development Agency took over projects under the Improvement of the Operational Conditions of Drinking Water Transmission and Distribution System, namely the Kandara and Kahuti projects. Similarly, the Lake Victoria South Water Works Development Agency assumed responsibility for the Siaya and Litein projects under the same program. Since these projects are no longer under the Authority's control, it no longer has access to the associated revenue streams, thus rendering it unable to meet the loan obligations.

59. In light of the circumstances, the management proposed that the National Treasury, being the guarantor of the loans, should assume responsibility for the debt, which had accrued interest and brought the outstanding balance to Kshs. 13.5 billion as at 31st December 2022. Alternatively, management suggested that the respective Water Works Development Agencies, which took over the revenue-generating projects funded by these loans, should adopt the liabilities and continue servicing them using proceeds from those specific projects.

Committee Observations

60. The Committee observed that the loans were borrowed by the National Treasury from international financiers, Kreditanstalt Für Wiederaufbau (KfW), Agence Française de Développement (AFD), and the International Development Association (IDA), and were subsequently on-lent to the National Water Harvesting and Storage Authority (NWHSA). It was further observed that while the National Treasury continues to service these loans to the original financiers, NWHSA remains burdened with the associated liabilities without having retained the corresponding revenue streams.

61. Further, the Committee further observed that under Legal Notice No. 101 of 2005 and pursuant to the Water Act 2002, assets related to the loan-financed projects were transferred to various Water Services Boards, now Water Works Development

Agencies. However, the corresponding liabilities were not transferred, and the required transfer agreements were never signed. This imbalance left NWHSA responsible for servicing debts tied to assets it no longer controls.

62. The Committee further noted that the devolution of water services and the enactment of the Water Act, 2016 introduced a new institutional framework, including county-based Water Works Development Agencies. These agencies assumed operational control and assets of NWHSA but did not assume the associated liabilities. Despite repeated efforts by NWHSA to seek resolution,including correspondence with the Ministry of Water and the National Treasury, the matter remains unresolved, with the debt having escalated to Kshs. 13.5 billion by 31st December 2022.

Committee Recommendations

63. The Committee recommends that given that the NWHSA is no longer in control of the water assets, the National Treasury should institute the process of writing off the outstanding loan against the NHWSA.

10. The Committee further recommends that the National Treasury, through the Water Services Regulatory Board (WASREB), ensure that Water Service Providers (WSPs) promptly remit the loan repayment components ring-fenced within the water tariffs to facilitate the continued servicing of water sector-related development loans.

11. The Committee recommends that the matter of unexecuted transfer deeds between NWHSA and the Water Works Development Agencies be formally escalated to the National and County Government Coordinating Summit, in accordance with the Intergovernmental Relations Act (Cap 265F), for resolution and proper alignment of assets and liabilities.

6. Undisclosed Property, Plant and Equipment

64. The statement of financial position reflected a balance of Kes.20,710,104,989 under property, plant and equipment. However, the balance excluded an amount of Kes. 16,781,832 being the value of various assets earmarked for transfer to various Water Works Development Agencies. Although Management explained that the Ministry of Water, Sanitation and Irrigation had had directed the Agencies to have the transfer agreements signed, the matter had not yet been finalized as at the time of the audit.
Consequently, the accuracy and completeness of the reported balance of Kes. 20,710,104,989 for property, plant and equipment could not be confirmed.

Management Response

The Accounting Officer submitted that—

65. The Authority originally operated under Legal Notice No. 270 of 1998, which mandated it to manage 46 water schemes across seven regions: Central, Southern, Nairobi, Coast, Rift Valley, Western and Nyanza. As a result, the Authority held various assets in the form of property, plant, and equipment across these regions. In October 2004, a Cabinet Memo outlined new roles for the Authority in accordance with the Water Act 2002. Subsequently, Legal Notice No. 101 was issued, leading to the establishment of seven Water Service Boards by 30th June 2005: Rift Valley, Tana, Athi, Northern, Coast, Lake Victoria North, and Lake Victoria South. These Boards took over the responsibility for the seven regions, including the assets, property, plant, and equipment that had previously been under the Authority's control.

66. The Authority initiated the process of transferring these assets i.e. assets valued at Kes.16,781,802 earmarked for transfer to various Water Works Development Agencies as per the transfer plan provided by the Water Act 2002 as supported by legal notice No 101 of 2005 where a road map under table 3 had indicated the completion dates of the transfer as 30th June 2006. However, none of the Water Service Boards signed the transfer agreements.

67. Since the deadline for signing the transfer agreements has passed and the receivables remain due to the Water Service Boards, management deemed it prudent to exclude these balances from the Authority's books of account. The Authority has communicated this treatment to each Water Service Board and to the Principal Secretary, State Department for Water.

68. In the 19th Report, the Public Investments Committee recommended that the disputed assets and remain on the Authority's books until the transfer plan is finalized. In response, the Authority reinstated the Kes. 16,781,802 of assets in its accounts as at 30th June 2022. Management has since written repeatedly, most recently on 15th June 2022, to the Parent Ministry requesting assistance to regularise both the asset transfers and their associated liabilities. This effort has been complicated by the repeal of the Water Act 2002 and its replacement by the Water Act 2016. The Authority will continue to engage the Ministry until a definitive resolution is achieved.

Committee Observation

69. The Committee observed that, as at the time of examination, the Water Works Development Agencies were yet to sign the deed of transfer.

Committee Recommendation

70. The Committee recommends that the Cabinet Secretary for Water, Sanitation & Irrigation to expedite the signing of the deeds of transfer by the various Water Works Development Agencies as provided for under section 152 of the Water Act, 2016 and submit a report on the same within six months after adoption of this report.

71. Further, the Committee recommends that the Auditor General to keep in view of the same in the subsequent financial year.

7. Work In Progress

72. The statement of financial position reflected a property, plant and equipment balance of Kes.20,710,104,989 which included an amount of Kes.20,118,587,213 relating to capital work - in - progress amounting to Kes.20,118,587,213. The following audit findings were made:

7.1. Construction of Head Office

73. The work in progress balance of Kes. 20,118,587,213 included an amount of Kes. 859,351,951 relating to the construction of a Head Office Block. The Authority awarded the contract for the construction of the office block to a local firm at a contract sum of Kes. 485,400,820 in 2008. However, as previously reported, the firm abandoned the project after being paid a total of Kes. 80,660,480. The Authority thereafter procured another firm for the project and by the end of the 2018/2019 financial year, a total of Kes. 859,351,951 had been incurred on the building. This exceeded the original contract sum by Kes.373,951,131 representing a variation of 77% contrary to the provisions of Section 139 (6) of Public Procurement and Asset Disposal Act, 2015 which provides that where variations result in an increment of the contract price by more than twenty-five percent, such variations shall be tendered for separately. Although Management explained that the cost escalations arose from change in prices between 2008 and 2011, it was not possible to confirm whether public funds were utilized in an effective manner.

Management was therefore, in breach of the law.

Management Response

The Accounting Officer submitted that—

74. The Authority initially awarded a contract for the construction of its Headquarters building at a contract sum of KES 485,400,820. The contractor, however, abandoned the site after receiving an advance payment of KES 48,540,082 and further payments totaling KES 26,465,926 through certified works. As a result, the Authority lodged a claim of KES 24,270,401 for damages with the contractor's insurer, pursuant to the

performance bond. The insurance company declined the claim. The Authority's legal team proceeded to seek summary judgment in court, which was declined, with the court directing the matter to proceed to full hearing. Consequently, the Authority terminated the contract, citing abandonment of works by the contractor—an action consistent with the terms and conditions of the contract.

75. Following termination of the initial contract, the construction of the Headquarters building was re-awarded on 6th December 2011 to a different contractor at a contract sum of Kshs. 707,909,101, which was in addition to the Kshs. 80,660,480 already expended under the initial contract.

76. Notably, the first contract was signed on 19th March 2008, while the second was signed three years and nine months later, on 6th December 2011. The second contractor commenced works on 20th January 2012, and the project has since been completed and the building occupied.

77. The Authority provided the following justifications for the variation in contract values:

i. Both contracts were procured by the Authority through the Open National Tenders and in compliance with the Public Procurement Act 2005 and regulations 2006.

ii. Each contract was awarded to the lowest evaluated tenderer, based on both technical and financial criteria.

78. The cost variance on the various bill items was mainly attributable to the following reasons:

i. In Bill No. 2, there was a cost variance of Kes 100,379,805.20 due to change in prices of construction materials (cement, steel, reinforcement bars, finishes etc.), changes in fuel prices and prices of labour. It should be noted that the scope of work in this bill item had been maintained in the bills of quantities. To support the above cost variance for some bill items a tabulation has been provided comprising the following:

(i) Bill description

(ii) Tender prices as quoted by M/s Capital Construction Company Ltd. tender No.NWC/HQ/13/06-07.

(iii) Benchmarking rates for construction works provided by the Ministry of Public works for 2007

(iv) Tender prices as quoted by M/s NK Brothers Construction Co. Limited tender No. NWC/HQ/132/10-11

(v) Benchmarking rates for construction works provided by Quantity Surveyor JournalOctober - December, 2011.

79. The information provided in the table below ascertains the fact that the rates used in the procured contracts were within the prevailing market rates.

Item No.	Bill description	NWC/HQ/13 /06-07	MOPW Rates-2007	NWC/HQ/132/10-11	QS Journal Rates -2011
1.	Excavations not exceeding 1.5m deep in CM	70	88	190	300
	Concrete-C20	8,000	7,893	10,500	11,400
	Concrete-C30	9,500	11,249	13,500	13,800
	200mm-external machine dressed walling	1,100	1,374	1,550	1,800
	Twisted reinforcement bars in kg	85	74.4	135	135
	Mild reinforcement bars in kg	85	75.2	135	
	15mmPlastering internal Square Meters	200	159	280	320
	Formwork-foundation/columns/beams in Square Meters	250	258	350	400

80. The escalation in the cost of works under the second contract was largely attributable to significant changes in the prices of construction materials, labour,

fuel, and fluctuations in the exchange rate of the Kenyan Shilling against major currencies over the four-year period between the two procurements. The following examples illustrate some of the specific cost variances:

(i) electrical sub contract PC sum from Kes22.5 million to Kes51 million. - Structuredcabling amount from Kes.5 million to Kes.30million.
(ii) Standby generator from Kes5 million to Kes8 million
(iii) Plumbing & drainage works from Kes8.5 million to Kes22.3 million
(iv) Air conditioning works from Kes4 million to Kes15.2 million.

81. The total project cost factored in the professional fees for the consulting Electrical Engineer, Quantity Surveyor, Project Architect, and Structural Engineer, whose contracts were independently procured (independent of the implementing contractor) but directly related to the implementation of the project.

82. In light of the above considerations, the Authority maintains that the cost escalation was justified, and that the project ultimately delivered value for money.

Committee Observations

83. The Committee observed that the explanation and documents submitted on the variations of the contracts with respect to the construction of the head office were satisfactory.

Committee Recommendation

84. The Committee recommends that this matter is resolved, however, the management of NAWSA should ensure that proper planning of projects is undertaken to reduce variations during contract implementation.

8. Delays and Escalated Costs in Construction of Siyoi — Muruny Dam

85. The statement of financial position reflected a balance of Kes. 21,489,383,960 under property, plant and equipment which included an amount of Kes. 20,067,919,582 relating to capital work-in-progress. The work in progress of Kes. 20,067,919,582 included an amount of Kes. 6,216,292,564 relating to construction of the Siyoi Muruny Dam and Water Supply Project, located in West Pokot County, in two lots.

8.1. Lot 1

86. Lot 1 entailed construction of the dam whose contract was awarded to a Chinese contractor in March, 2015, at a contract price of Kes. 5,056,182,763. The Authority has made payments amounting to Kes. 2,337,267,275 to the contractor. However, although the contract, which was for thirty-six (36) months commencing 30 March, 2015 and ending on 30 March, 2018, had 3 extensions, to 20 July, 2018, 19 August,

2018 and subsequently to 16 March, 2020, the progress report provided for audit review indicated that only approximately 54% of the works had been completed as at 30 June, 2020. Further, payment certificates totalling Kes. 427,380,292 due for payment as at 30 June, 2020 were yet to be settled due to lack of budgetary allocation from The National Treasury.
However, the contractor resumed work in November, 2020.

8.2. Lot 2

87. Lot 2 entailed construction of Siyoi Kapenguria Water Supply for which the contract was awarded to a contractor in March, 2015 for 52 Months (225 Weeks) at a contract price of Kes. 4,149,828,304. The Authority had made accumulative payments of Kes. 3,879,025,289 to the contractor as at 30 June, 2020. The contract completion date was extended by five (5) months to 29 August, 2018 and subsequently to 19 July, 2019. However, the progress report provided for audit indicated that the contractor resumed works in November, 2020. Under the circumstances, it was not possible to confirm that the Project would be completed within schedule and in a cost-effective manner.

Management Response

The Accounting Officer submitted as follows—

88. The two contracts under the project (Lot 1 and Lot 2) experienced inordinate delays primarily due to inadequate budget allocations throughout the project implementation period. Additionally, the delays were compounded by the suspension of works, which resulted from the Authority's default in meeting interim payment obligations to the contractors.

89. Specifically, the financing trend for the project in comparison to the annual project requirement was as tabulated here below.

Financial Year	Approved Budget Allocation	Actual Funds received	Variance	Project Requirement	(Underfinancing)
2014-2015	780,000,000.00	780,000,000.00	0.00	800,000,000.00	(20,000,000.00)
2015-2016	550,000,000.00	550,000,000.00	0.00	2,414,122,340.67	(1,864,122,340.67)
2016-2017	1,317,712,048.00	1,317,712,048.00	0.00	3,214,122,340.67	(1,896,410,292.67)

2017-2018	1,636,792,000.00	1,636,792,000.00	0.00	3,214,122,340.67	(1,577,330,340.67)
2018-2019	1,000,000,000.00	500,000,000.00	500,000,000.00	0	500,000,000.00
2019-2020	850,000,000.00	850,000,000.00	0.00	0	850,000,000.00
	6,134,504,048.00	5,634,504,048.00	500,000,000.00	9,642,367,022.02	(4,007,862,974.02)
				58.43%	

90. As depicted in the table above, at the intended completion date of the project (30th March 2018), the project had only been financed upto 58.43% of the contractual cost.

91. This this significant underfinancing led to delays in settling interim payment certificates, prompting the contractor to suspend works under Sub-Clause 16.1 [Contractor's Entitlement to Suspend Work] of the General Conditions of Contract. The contractor cited the Authority's failure to comply with Sub-Clause 2.4 [Employer's Financial Arrangements] and Sub-Clause 14.7 [Delayed Payment] as the basis for suspension. Under the terms of the contract:

i. Clause 16.1 allows the contractor to suspend work if the employer fails to meet payment obligations.
ii. Clause 2.4 requires the employer to provide proof of financial arrangements for contract payment.
iii. Clause 14.8 and Clause 20.1 provide for the accrual of interest on delayed payments and the right to lodge cost claims due to suspension.

92. As a result, the suspension of works adversely impacted the project timeline and introduced additional costs, including interest on delayed payments, variation of prices, and claims due to delays.

93. The overall cost-effectiveness of the project has been significantly undermined by these financing challenges. The Authority has since written to the Parent Ministry requesting full and timely funding to avoid further cost escalations and ensure the successful completion of the project.

Committee Observations

94. The Committee noted that the explanation and evidence provided by the Accounting Officer was unsatisfactory.

95. The Committee noted that a special audit ought to be undertaken on the Siyoi/ Mururu dam Lot 1 and Lot 2 projects to—

i. establish the causes of the inordinate delay in completion of the project;
ii. establish variations (if any) and reasons thereof, the total amount of interests and penalties accrued and the amount of interests and penalties settled vis-à-vis the project total sum;
iii. establish if there was any level of oversight in relation to approval of claims;
iv. establish the quality of works done in the construction of the dam and the water supply pipeline system;
v. evaluate and report on the performance of the water supply pipeline;
vi. establish the circumstances under which the main contractor was yet to be fully paid while the water supply component which was dependent on the main contractor was fully paid;
vii. provide details of ownership of the two companies and the circumstances under which part of the monies due to one of the companies was settled in a foreign currency (US Dollar) as the project was fully funded by the Government of Kenya;
viii. submit a schedule of all the certificates raised vis-à-vis the payments made thus far for both companies; and
ix. establish if there was value for money in the entire Siyoi/ Mururu dam project.

Committee Recommendations

96. The Committee recommends that the management of NWHSA should not process any claim relating to the Siyoi/ Mururu dam project.

97. The OAG should commence the special audit in accordance with the Terms of Reference stated in paragraph 77 and submit the report within three months after adoption of the report.

9. Excess Board of Directors

98. The statement of financial performance reflected remuneration of Directors expenditure of Kes. 13,256,227. However, the Cabinet Secretary appointed seven (7) independent Directors to the Board instead of five (5) as provided for under Section 31(e) of the Water Act, 2016, resulting to an excess of two (2) Members. This resulted in unnecessary extra costs on remuneration to the Directors. In view of the above, it was not possible to confirm that the Board was properly constituted and the propriety of the expenditure.

Management Response

99. The Accounting Officer submitted that the issue regarding the excess number of Board Directors was raised with the appointing authority and had since been addressed through the reconstitution of the Authority's Board, in compliance with the Water Act, 2016.

Committee Observation

100. The Committee observed that, at the time of examination, the Accounting Officer did not refute the fact that the number of independent Directors was in excess contrary to the provisions of the Water Act, 2016. However, although the anomaly had been corrected there was loss of public funds.

Committee Recommendation

101. The Committee recommends that the Inspectorate of State Corporations investigates the matter and surcharge the responsible individuals in accordance with section 19 of the State Corporations Act, Cap 446.

10. Composition of the Audit Committee

102. The Audit Committee did not have any Member with expertise in audit, financial management or accounting, experience and knowledge in risk management or membership of professional body in good standing, as required under Section 3.4 (2) (b) of the Code of Governance for State Corporations (Mwongozo). In the circumstances, the effectiveness of the Audit Committee in executing its oversight role, could not be confirmed.

Management Response

103. The Authority acknowledged that the Board Audit committee initially lacked a member with the necessary financial background. However, this issue was addressed by appointing an Alternate Director to the Principal Secretary (The National Treasury and Planning) to the Board on 31st January 2020. The Audit Committee was subsequently reconstituted to include the Alternate Director, who possessed the requisite financial expertise.

Committee Observation and Recommendation

104. The Committee observed that, at the time of examination, a new board audit committee had been reconstituted with the inclusion of an alternate director to the Principal Secretary (National Treasury & Planning) with the requisite financial background as a member and the matter is resolved.

FINANCIAL YEAR 2019/2020

11. Other Expenses

105. The statement of financial performance reflected an expenditure of Kes.90,675,539 in respect of other expenses which included an amount of Kes.89,347,854 being payment of tax assessed on the Authority by the Kenya Revenue Authority (KRA). The payment of Kes.89,347,854 was intended to clear all existing tax liabilities due to KRA. However, the Authority's ledgers continued to reflect balances of Kes.13,048,119 and Kes.14,107,857 for withholding Value Added Tax (VAT) and withholding tax payables respectively, which were still outstanding, an indication that the Management did not reconcile its tax ledgers. In view of the above discrepancies, the accuracy and completeness of tax assessment of Kes.89,347,854 could not be confirmed.

Management Response

The Accounting Officer submitted that:-

106. The by KRA covered the period before December 2016 and the reported VAT and Withholding Tax related to the tax status for the FY 2019-2020. The Authority has since paid all its tax liabilities and updated the records which resulted to the issuance of a Tax Compliance Certificate.

Committee Observation and Recommendation

107. The Committee observed that at the time of Examination, the Authority had cleared all its tax obligation with the Kenya Revenue Authority and a tax compliance certificate had been issued. The matter is therefore resolved.

12. Cash and Cash Equivalents

108. The statement of financial position reflected a balance of Kes.370,513,551 under cash and cash equivalents as at 30 June, 2020. However, an amount of Kes. 31,860,430 relating to unposted items reflected in the bank reconciliations as detailed below.

Account Name	Account No.	Date First Reported	Amount in Kes
Development A/C	1114280593	2009	24,671,142
Special A/C	1114279978	2006	2,133,280
Recurrent A/C	1114280488	2006	5,056,008
			31,860,430

109. The items had been outstanding for more than ten (10) years and it was not clear why Management had not investigated the unposted items to clear them from the reconciliation statements. Consequently, the accuracy and completeness of cash and cash equivalents balance of Kes. 370,513,551 as at 30 June, 2020 could not be confirmed.

Management Response

110. The Accounting Officer acknowledged that the Recurrent, Special, and Development accounts contained various long-outstanding unposted and reconciling items. These discrepancies originated when the Authority reconstructed its financial records after an inferno in September 2009 destroyed its manual cash books, which at the time were maintained in hard copy. To resolve the differences, the Authority requested historical bank statements and cheque copies from Kenya Commercial Bank Ltd.; however, the bank encountered challenges retrieving records dating back to 2005.

111. Recognizing the difficulty in fully reconstructing these entries, the Finance Committee of the Board initially resolved to write off the items. Before final approval, the full Board referred the matter to its Governance, Risk, and Audit Committee for detailed review. A dedicated working committee has since been established to assist the Internal Audit Department in preparing a comprehensive report for the Board, which is scheduled for presentation in the 2022-2023 financial year.

112. The Public Investments Committee of the National Assembly examined this issue in its 21st Report and recommended that the Managing Director ensure regular account reconciliations in accordance with financial regulations and International Accounting Standards. The Authority now undertakes monthly bank reconciliations as required by law, and these records are available for verification.

Committee Observations

113. The Committee noted that the Accounting Officer did not refute the fact that the balance of Kes. 31,860,430 was outstanding. However, this was caused by lack of documentation due to a fire incident that gutted the premises of the Authority.

114. Further, the Committee observed that the Accounting Officer was in the process of seeking a writ off of Kes. 31,860,430 from the books of the Authority.

Committee Recommendations

115. The Committee recommends that the Authority should fast-track the process of writing off the long outstanding balance of Kes. 31,860,430 pursuant to section 69(1) of the Public Finance Management Act 2015, Regulations 148(5) and (157) of the Public Finance Management (National Government Regulations), 2015. Further, the Accounting Officer should submit a report on the status of the write-off within six (6) months of adoption of this report.

13. Undisclosed Receivables from Exchange Transactions

116. The statement of financial position reflected receivables from exchange transactions amounting to Kes.674,383,971. However, the balance excluded water supply debts of Kes.1,377,265,028 and pre-payments totaling to Kes.754,400 transferred to Water Service Boards (currently Water Works Development Agencies) under various agreements between the Authority and the Water Service Boards in the financial year 2005/2006. However, the agreements had not been formalized and the legal status of the debts remained uncertain. Consequently, the accuracy and completeness of the reported receivables balance could not be confirmed.

Management Response

The Accounting Officer submitted that—

117. The Authority initially operated under Legal Notice No. 270 of 1988, which mandated it to manage 46 water schemes across seven regions: Central, Southern, Nairobi, Coast, Rift Valley, Western, and Nyanza. Accordingly, the Authority held assets, including property, plant, and equipment, within these regions.

118. In October 2004, following a Cabinet Memorandum and the enactment of the Water Act, 2002, Legal Notice No. 101 of 2005 was issued, redefining the Authority's role. Consequently, seven Water Services Boards, Rift Valley, Tana, Athi, Northern, Coast, Lake Victoria North, and Lake Victoria South, were established and

mandated to take over the functions and assets of the Authority as of 30th June 2005.

119. In line with this, the Authority initiated the transfer of assets, including water debtors amounting to Kes.1,377,265,026 and prepayments of Kes.754,400, as per the asset transfer plan outlined in the Water Act, 2002 and the roadmap which set 30th June 2006 as the deadline for completing the transfers. However, none of the Water Services Boards signed the transfer agreements.

120. Given the prolonged delay in finalizing the transfers and the fact that the receivables relate to the Boards, the Authority found it prudent to exclude these items from its books of accounts. The Authority has communicated this position to the respective Water Services Boards and the Principal Secretary, State Department for Water.

121. The Authority formally sought the intervention of the Principal Secretary through a letter dated 13th June 2022 and will continue engaging with the Parent Ministry to bring the matter to a resolution.

Committee Observations

122. The Committee observed that the undisclosed receivables resulted from prolonged delays in the signing of transfer agreements by the Water Works Development Agencies, despite the legal framework and timelines set out in the Water Act, 2002 and Legal Notice No. 101 of 2005.

Committee Recommendations

123. The Committee recommends that the Cabinet Secretary for Water, Sanitation & Irrigation should expedite the signing of the deeds of transfer by the Water Works Development Agencies.

124. Further, the Accounting Officer should submit to the Committee a report on the status of the transfer agreements within six (6) months of this report.

14. Trade and Other Payables from Exchange Transactions

125. The statement of financial position reflected a balance of Kes.1,255,092,379 under trade and other payables from exchange transactions which included trade payables of Kes.803,836,872, accruals of Kes.16,994,133 and third-party payments of Kes.17,057,894. These payables included debit balances of Kes.443,239,411, Kes. 26,826,009 and Kes. 10,860,642, respectively, which were netted off against the credit balances. This is contrary to International Public Sector Accounting Standards

(IPSAS) 1: Preparation and Presentation of Financial Statements — which requires assets and liabilities to be presented separately in the financial statements. The supporting schedules and explanations for netting off the balances were not provided.

Further, the Authority had legal cases and the courts awarded judgement against the Authority with costs amounting to Kes.104,765,214. However, the legal costs have not been accrued as part of the trade and other payables from exchange transactions.

126. In addition, the trade and other payables balance of Kes.1,255,092,379 included amounts received in advance totaling to Kes.17,686,720, relating to the Authority's business unit. However, some of the business unit's works were completed and handed over to the respective clients while others became dry boreholes and others had no supporting documentation. The balance of Kes.17,686,720 should have been recognized as income for the completed works or refundable amounts for the dry boreholes.

127. The trade and other payables balance of Kes.1,255,092,379 also included trade payables amounting to Kes.189,854,326 and retention funds held on behalf of suppliers amounting to Kes.92,526,421 which have been outstanding for more than two years. No explanation was provided for failure to refund the amounts due to the creditors. Under the circumstances, the accuracy and completeness of trade and other payables from exchange transactions balance of Kes. 1,255,092,379 as at 30 June, 2020 could not be confirmed.

Management Response

128. The Accounting Officer acknowledged the requirements of Paragraph 48 of IPSAS 1 - Presentation of Financial Statements and undertakes to comply by separating trade payables and trade receivables with future presentation of the Financial Statements.

Legal Cases and Court Awards

129. The Authority recognizes liabilities as payables when they are incurred. The legal cases and court awards are reported as contingent liabilities under Note 27 of the Financial Statements. These were considered potential but had not been incurred as they were all active or under appeal.

Business Unit Liabilities

130. The payments received in advance under the business unit had not crystallized into sales as the projects were ongoing and had not reached certification stage.

Retentions held on behalf of suppliers

131. The management confirmed that the amount held over 2 years relates to Mununy (Siyoi) Dam Project which is a multi-year project that commenced on 30th March 2015. This money is correctly held as it shall be released when the project is certified as substantially complete.

Further, the management is in the process of reconciling the Retention Control Account through an appointed internal committee to enable it confirm the status of projects whose retention is due to enable it release the retained monies. The records shall be updated accordingly.

Committee Observation and Recommendation

132. The Committee observed that the submission by the Accounting Officer with regards to Trade and other Payables from Exchange Transactions was satisfactory, hence the matter is resolved.

15. Undisclosed and Long Outstanding Loans

133. The Authority has not disclosed in its financial statements an outstanding balance of Kes.3,014,375,749 relating to various loans as detailed below:

Donor	Purpose	Currency	Amount (Kes.)
IDA (International Development Association)	Mombasa and Coastal Water Supply, Engineering	USD 17,400,000	1,774,800,000
AFD(Agence Francaise De Development)	Sabaki Wellfield Rehabilitation Project	EUR 9,146,941	969,575,749
KFW (Kreditanstalt Fur Wiederaufbau)	Improvement of the Operational Conditions of	DM 5,000,000	270,000,000
Total			3,014,375,749

134. Further, although the loan repayments were due, the Authority did not make any repayment or recognize the interest due in the books of account, together with the related arrears. According to Management, the loans were supposed to have been

passed over to the Water Works Development Agencies which took over the facilities constructed using the loans, and which were supposed to generate the revenue to repay the loans. However, no formal documentation was provided to support the explanation.

In addition, although Management explained that the Authority had no capacity to repay the loans without financial support from The National Treasury and that they had sought the intervention of the Ministry of Water on the matter, the loans continued to attract interest and penalties and the lenders might invoke the terms of lending to the disadvantage of the Authority, the Water Works Development Agencies or The National Treasury.

Management Response

The Accounting Officer submitted that—

135. The Authority had obtained three loans through subsidiary agreements with the Government of Kenya to finance various water-related projects. The first loan was from the International Development Association (IDA) under an agreement dated 28th August 1992 for the Second Mombasa and Coastal Water Supply, Engineering and Rehabilitation Project. The loan amount was USD 17,400,000, repayable over a period of 15 years in semi-annual instalments, with repayments commencing on 15th November 1997. As at 30th June 2006, the outstanding principal was USD 6,960,000, with interest accruing at a rate of 16.65% per annum as stipulated in the agreement.

136. The second loan was obtained from Kreditanstalt für Wiederaufbau (KfW) through an agreement signed on 5th July 2002 to fund the Sabaki Wellfield Rehabilitation Project. The total loan amount was Deutsche Marks (DM) 5,000,000, also repayable over 15 years in semi-annual instalments, with repayments starting on 31st December 2005. As at 30th June 2006, the outstanding principal was DM 4,666,666.67, with an interest rate of 6.5% per annum.

137. The third loan was sourced from Agence Française de Développement (AFD) under an agreement dated 7th May 1999 for the improvement of the operational conditions of the drinking water transmission and distribution system. The loan amount was EUR 9,146,941.03, repayable over a 15-year period in semi-annual instalments, with repayments commencing on 30th June 2005. As at 30th June 2006, the outstanding principal was EUR 8,232,246.93, with an applicable interest rate of 5.5% per annum as per the agreement.

138. The loans were to be serviced as per indicated repayment plans at the indicated interest rates. The proceeds obtained from water sales were to be partly used in defraying the same. However, the water tariffs were to be adjusted to accommodate the repayment but this was never done.

139. On 12th August 2005, the then Minister for Water and Irrigation gazetted (Legal Notice No. 101 in the Kenya Gazette Supplement No. 61) the water (plan of transfer

of water services) rules, 2005 to guide on the enactment of the Water Act 2002. The Notice required that the Authority finalizes the transfer of certain roles relating to sale of water to Water Service Boards in their jurisdictions. The deadline for such execution of transfer agreements was 30th June 2006. The transfer was to be in the form of signed transfer agreements. Though drafted, the transfer agreements were not signed. However, the Water Service Boards assumed the assets but did not take the ensuing liabilities.

140. The National Treasury has repeatedly demanded repayment of the outstanding loans, prompting the Authority to seek intervention from the Ministry of Water. The Authority has, on multiple occasions, requested assistance to facilitate the signing of transfer agreements and to support the resolution of loan obligations that arose before the assets were handed over. The most recent of these efforts was a letter dated 15th June 2022, in which the Authority appealed to the Parent Ministry to assist in regularizing the transfer of assets along with their associated liabilities. The matter remains unresolved and has been further complicated by the repeal of the Water Act, 2002—which provided the legal framework for the original asset transfers—and its replacement by the Water Act, 2016.

141. The Authority lacked the capacity to service the outstanding loans, as the revenue-generating assets associated with the projects funded by these loans had since been transferred to various Water Works Development Agencies. Specifically, the Coast Water Works Development Agency took over the Second Mombasa and Coastal Water Supply, Engineering and Rehabilitation Project, as well as the Sabaki Wellfield Rehabilitation Project. The Tana Water Works Development Agency assumed responsibility for the Improvement of the Operational Conditions of Drinking Water Transmission and Distribution System, including the Kandara and Kahuti projects. Additionally, the Lake Victoria South Water Works Development Agency took over similar improvement projects implemented in Siaya and Ugenya. As such, the Authority no longer controlled the infrastructure tied to these projects and, therefore, could not generate revenue from them to meet the loan repayment obligations.

142. In light of these circumstances, management proposed that the National Treasury, being the guarantor of the loans, assume responsibility for the entire debt, which including accrued interest, stood at Kshs 13.5 billion as of 31 December 2022. Alternatively, the respective Water Works Development Agencies that inherited the projects should formally adopt the loan obligations and continue servicing them from the revenues generated by those projects.

Committee Observation

143. The Committee observed that the NWHSA was no longer in control of the water assets and the National Treasury ought to have instituted the process of writing off the loan against the NHWSA.

Committee Recommendations

144. The Committee recommends that since the NWHSA is no longer in control of the water assets, the National Treasury should institute the process of writing off the loan against the NHWSA.

145. Further, the National Treasury through the Water Services Regulatory Board (WASREB) should ensure that Water Service Providers timely remit the amount ring-fenced in the water tariffs for repayment of loans to enable servicing of loans secured for development of the water sector.

146. The Committee recommends that the issue of execution of the transfer deed to be taken up by the a National and County Government Co-ordinating Summit under the Intergovernmental Relation Act, Cap 265F.

16. Long Outstanding Receivables from Non-Exchange Transactions

147. The statement of financial position reflected receivables from non-exchange transactions amounting to Kes. 89,423,364 as at 30 June, 2020. As reported in the prior year, the receivables amount of Kes. 89,423,364 included deposits of Kes. 13,987,475 which have remained outstanding from the Judiciary from the financial year 2015/2016. The receivables also included temporary imprests of Kes. 91,064,585 which in turn included long outstanding imprest of Kes. 67,379,065, which was yet to be recovered from the payroll. However, a specific provision for bad debts of Kes. 18,302,852 on outstanding imprest has been made, and according to Management, this relates to staff members who have either passed on or left the Authority.

Under the circumstances, the recoverability of receivables from non-exchange balance of Kes. 89,423,364 as at 30 June, 2020 could not be confirmed.

Management Response

The Accounting Officer submitted the following—

i. Deposits with Courts

148. The management submitted that the deposits with the judiciary complied with court orders for matters that were under appeal at various courts. By the close of the financial year, the cases were still active and thus were carried as assets as they

could not be converted to expenses until the cases were determined by the courts. These deposits could not be amortized as the debtors were considered viable.
The court deposits carrying amount was adjusted to Kes.7,803,475.00 in the audited financial statements for the period ended 30 June 2022.Further adjustments shall be effected in the financial statements for the period ended 30th June 2023.

ii. Temporary Imprests

149. Staff are entitled to temporary imprest for duties requiring officers to stay overnight away for duty stations as per clause 4.2 of the Authority's Human Resource Management Policies & Procedures Manual. On the reported temporary imprest portfolio, it is noteworthy that the outstanding imprest carried forward for the year under review related to imprest for staff who were on project duties outside their workstations. The Authority's nature of work was such that projects are executed over a period until they are completed. As such, works could not be left unsupervised, especially where contracts were running across the financial years.The management submitted that some of the imprest has since been surrendered, while recovery of long outstanding imprests was ongoing.

150. Some long outstanding imprest related to deceased staff, staff who were dismissed and left the Authority without clearing their outstanding imprest. The cases have been brought to the attention of the Authority's Board. At the 3rd Finance Committee of the Board held on 5th January, 2022 in the FY 2021/2022 the following resolutions were passed:

i. That the Management engages a debt collector to pursue the long outstanding imprests held by staff who were dismissed and/or staff who left the Authority; and

ii. That the Management writes off the imprest for staff who were deceased and ensures compliance with the Law.

151. In compliance with the Board Directives, the management formed a Working Party to Analyse the Long Outstanding Advances to Staff with a requirement to deliver a report by 31st August 2023.

Committee Observations

152. The Committee noted at the time of examination that, in respect to the amounts deposited with the Courts, the adjustments in the financial statements was ongoing as the matters were still pending before Court.

153. Further, the Committee noted the Accounting Officer did not refute the fact that the Authority was in breach of its own Human Resource Policies and Procedures Manual.

However, the Committee was informed that the salary advances had since been fully recovered.

154. The Committee also noted that the recovery of the long outstanding imprests was ongoing.

Committee Recommendations

155. The Committee reprimands the Accounting Officer for failure to adhere to the Human Resource Policies and Procedures and recommends that the total outstanding imprest be recovered fully from the then Accounting Officer pursuant to Regulation 93 (7) of the Public Finance Management National Regulations, 2015.

17. Undisclosed Property, Plant and Equipment

156. The statement of financial position reflected a balance of Kes. 21,689,383,960 under property, plant and equipment as at 30 June, 2020. However, and as previously reported, the balance excludes an amount of Kes. 16,781,832 being the value of various assets earmarked for transfer to various Water Works Development Agencies. Although Management explained that the Ministry of Water, Sanitation and Irrigation had directed the Agencies to have the transfer agreements signed, the matter had not yet been finalized as at 30 June, 2020. Consequently, the accuracy and completeness of the reported balance of Kes. 21,689,383,960 for property, plant and equipment could not be confirmed.

Management Response

157. The Authority initially operated under the Legal Notice no.270 of 1988 which gave the mandate to operate 46 water schemes in 7 regions namely Central, Southern, Nairobi, Coast, Rift Valley, Western and Nyanza. The Authority had assets in terms of property, Plant and Equipment in all these regions. In October 2004 the Cabinet memo defined new roles for the Authority in line with the Water Act 2002 and subsequently Legal notice No. 101 was issued.

158. Under the Water Act 2002, seven Water Service Boards were established namely Rift Valley, Tana, Athi, Northern, Coast, Lake Victoria North & Lake Victoria South as at 30th June 2005 which took over the mandate of the seven regions and all properties, plants and equipment of the Authority. The Authority initiated the process of transferring these assets i.e. assets valued at Kes.16,781,832 earmarked for transfer to various Water Works Development Agencies as per the transfer plan provided by the Water Act 2002 as supported by legal notice No. 101 of 2005 where a road map under table 3 had indicated the completion dates of the transfer as 30th June 2006. However, none of the Water Service Boards signed the transfer agreements.

159. Since the signing of the transfer agreement has taken longer than the prescribed period and the receivables were due to the Water Service Boards it was prudent to exclude them from the book of accounts and the Authority has since communicated to various Water Service Boards and the Principal Secretary, State Department of Water (communication to various Boards).

160. In their 19th Report of the PIC, the recommendation was such that assets and liabilities in question should be included in the books accounts of the Authority until the transfer plan is finalized. The assets have been reinstated in the Authority's Books as at 30th June 2022. Through several letters, with the latest dated 15th June 2023, the Authority sought the intervention of the Parent Ministry to help regularize the transfer of assets and associated liabilities. Instructively, the matter has been complicated by the fact that the Water Act 2002 has since been repealed by the Water Act of 2016.Meanwhile, the Authority will continue engaging the Parent Ministry on the matter to bring it to a logical conclusion.

Committee Observation

161. The Committee observed at the time of examination that, the Water Works Development Agencies were yet to sign the deed of transfer.

Committee Recommendation

162. The Committee recommends that the Cabinet Secretary for Water, Sanitation & Irrigation to expedite the signing of the deeds of transfer by the various Water Works Development Agencies as provided for under section 132 of the Water Act, 2016 and submit a report on the same within six months of adoption of this report.

163. The Auditor General to keep in view of the same in the subsequent financial year.

18. Delays and Escalated Costs in Construction of Siyoi — Muruny Dam

164. The statement of financial position reflected a balance of Kes. 21,689,383,960 under property, plant and equipment which, as disclosed in Note 21 to the financial statements, includes an amount of Kes. 20,067,919,582 relating to capital work-in-progress. The work in progress of Kes. 20,067,919,582 includes an amount of Kes. 6,216,292,364 relating to construction of the Siyoi Muruny Dam and Water Supply Project, located in West Pokot County, in two lots.

18.1. Lot 1

165. Lot 1 entailed construction of the dam whose contract was awarded to a Chinese contractor in March, 2015, at a contract price of Kes. 5,056,182,763. The Authority has made payments amounting to Kes. 2,337,247,275 to the contractor. However, although the contract, which was for thirty-six (36) months commencing 30 March, 2015 and ending on 30 March, 2018, had 3 extensions, to 20 July, 2018, 19 August, 2018 and subsequently to 1s March, 2020, the progress report provided for audit review indicated that only approximately 54% of the works had been completed as at 30 June, 2020.

Further, payment certificates totaling Kes. 427,380,292 due for payment as at 30 June, 2020 were yet to be settled due to lack of budgetary allocation from The National Treasury. However, the contractor resumed work in November, 2020.

18.2. Lot 2

166. Lot 2 entailed construction of Syoi Kapenguria Water Supply for which the contract was awarded to a contractor in March, 2015 for 52 Months (225 Weeks) at a contract price of Ks hs. 4,149,825,304. The Authority had made accumulative payments of Kes. 3,879,025,289 to the contractor as of 30 June, 2020. The contract completion date was extended by five (5) months to 29 August, 2018 and subsequently to 19 July, 2019. However, the progress report provided for audit indicated that the contactor resumed works in November, 2020. Under the circumstances, it was not possible to confirm that the Project would be completed within schedule and in a cost-effective manner.

Management Response

167. The Accounting Officer submitted that as observed by the auditors, the two contracts under the project (Lot 1 & Lot 2) had experienced inordinate delays. This was attributed to:

i. Inadequate budget allocation for the project over the project life, and
ii. Suspension of works due to default on interim payments by the Employer (Authority).

168. The initial completion date of the project (30th March 2018), the project had only been financed up to 49.62% of the contract sum. This led to delays in meeting interim certificates, which in turn led to suspension of works by the contractor.

169. Contractually, the Contractor may suspend works if the Employer is in breach of certain clauses of the contract. One of clause in the General Conditions of Contract is where the Contractor can suspend works due to non-payment. The Employer is also required to furnish the Contractor the Financial arrangements that have been made and are being maintained to enable the Employer to pay the Contract Price once the works are executed.

170. Consequently, suspension of contract had an effect on the project completion period which also had a direct cost relating to claims, interest on delayed payments and Variation of Prices. Therefore, the project's cost effectiveness in implementation was and continues to be affectedby such costs as a result of funding challenges. The Authority has however written to the Parent Ministry requesting for full funding to mitigate against further escalation of costs.

Committee Observations

171. The Committee noted that the explanation and evidence provided by the Accounting officer was unsatisfactory.

172. The Committee noted that a special audit ought to be undertaken on the the Siyoi/ Muruny dam Lot 1 and Lot 2 projects to—

(a) establish the causes of the inordinate delay in completion of the project;

(b) establish variations (if any) and reasons thereof, the total amount of interests and penalties accrued and the amount of interests and penalties settled vis-à-vis the project total sum;

(c) establish if there was any level of oversight in relation to approval of claims;

(d) establish the quality of works done in the construction of the dam and the water supply pipeline system.

(e) evaluate and report on the performance of the water supply pipeline;

(f) establish the circumstances under which the main contractor was yet to be fully paid while the water supply component which was dependent on the main contractor was fully paid;

(g) provide details of ownership of the two companies and the circumstances under which part of the monies due to one of the companies was settled in a foreign currency (US Dollar) as the project was fully funded by the Government of Kenya;

(h) submit a schedule of all the certificates raised vis-à-vis the payments made thus far for both companies; and

(i) establish if there was value for money in the entire Siyoi/ Muruny dam project.

Committee Recommendations

173. The Committee recommends that the management of NWHSA should not process any claim relating to the Siyoi/ Muruny dam project.

174. The OAG should conduct a special audit in accordance with Terms of Reference stated in paragraph 149 and submit the report within three months after adoption of the report.

19. Composition of the Board of Directors

175. The statement of financial performance reflected an expenditure of Kes. 47,452,021 in respect of remuneration of Directors during the year under review. However, the Cabinet Secretary appointed twelve (12) Directors including the Chief Executive Officer instead of ten (10) Directors as provided for under Section 31(e) of the Water Act, 2016, resulting to an excess of two (2) Directors. This resulted in unnecessary extra costs on remuneration to the Directors. Further, the Audit and Risk Committee did not have any Director with expertise in auditing, financial management or accounting experience and knowledge in risk management and membership of professional body in good standing, as required under the Mwongozo Code of Governance for State Corporations. The Board was therefore, not properly constituted.

Management Response

176. The Accounting Officer submitted that the matter was brought to the attention of the appointing Authority and according to the Water Act,

2016, had since been addressed through the Appointment of the Authority's Board.

177. Further, it was true that the Board Audit committee did not have a member with the requisite financial background. However, this was addressed through the appointment of an Alternate Director to the Principal Secretary (National Treasury & Planning) to the Board on 31st January 2020. The Audit Committee was also reconstituted to include the Alternate director who had the requisite financial background.

Committee Observation

178. The Committee noted that at the time of examination, the Accounting Officer did not refute the fact that the number of Independent Directors was in excess contrary to the provisions of the Water Act, 2016. However, although the anomaly had been corrected there was loss of public funds.

Committee Recommendation

179. The Inspectorate of State Corporations to investigate the matter and surcharge the responsible persons pursuant to section 19 of the State Corporations Act. Cap 446.

20. Automation of the Financial Reporting Process

180. Review of the Accounting System in place revealed that the Authority's financial records were mainly manual with the trial balance and financial statements maintained in excel work sheets. Although the ledgers are extracted from the Navision Information System, critical information processing and reporting modules such as user rights access, cut off, trial balance, budget variance and financials, had not been incorporated in the system. Further, the inventory management and control module of Navison system did not meet the records management criteria as per the Records Management Procedures Manual of October, 2010., issued by the Public Procurement Regulatory Authority (PPRA). In addition, manual intervention exposes the Authority's financial statements to risk of material misstatement.

Management Response

181. The Accounting Officer submitted that at the time of audit, the Authority was still implementing an Accounting System which had not been fully customized including training of the end system users. The installation and customization of the Dynamics 365 Business Central Enterprise Resource Planning system was completed and the Authority auto-generates all its reports. The same was verified during the audit of the FY 2021-2022 where no system issue was raised in the final audit report.

Committee Observation and Recommendation

182. The Committee noted at the time of examination that the Automation of the Financial Reporting Process had been effected as submitted by the Accounting Officer, hence the matter is resolved.

183. Incomplete Fixed Asset Register

184. The Authority did not maintain a comprehensive fixed asset register. Details of the cost of the assets, disposals, depreciation and accumulated depreciation, location of the assets, tagging and officer responsible for each asset were not disclosed in the register. Further, the Authority computed depreciation charge for furniture and fittings and office equipment using rates which were different from rates documented in the approved Finance Manual. In the absence of a comprehensive and updated fixed asset register, Management may not be able to effectively monitor and safeguards its assets.

Management Response

185. As per the submissions of the Accounting Officer, the Authority's Fixed Asset Register was being updated in the Accounting System as the Fixed Asset Register Module was still under development at the time of audit. The module had since been completed and a Certificate of Substantial Completion issued. Further, the finance manual was amended to reflect

the adopted and correct depreciation rate for the furniture and fittings as had been approved by the Authority's Board of Directors.

Committee Observations

186. The Committee noted from the explanation of the Accounting Officer that the Authority was yet to update the asset register to reflect the Authority's current name.

187. Further, the Committee observed that failure by the Authority to transfer the assets from the defunct National Water Conservation and Pipeline Corporation to National Water Harvesting and Storage Authority was exposing their assets to risks.

188. The Committee noted that some parcels of land belonging to the Authority had been grabbed and the Authority had sort recourse from EACC and DCI to repossess the grabbed parcels of land. Further, the Management had registered cautions on the grabbed lands.

Committee Recommendations

189. The Committee recommends that the Authority prepares a proper inventory of their assets including the 253 parcels of land and should submit the same within three (3) months of adoption of this report.

190. The Committee recommends that the Authority commences the process of renaming its assets to reflect the current status and submit a report to the Committee within three (3) months of adoption of this report.

161. Formulation of the Authority's Policies

191. Review of Plans, Policies and Manuals of the Authority revealed that the eight documents had not been updated or formulated as detailed below;

Policy	Status
Financial Management Systems Manual	Not Revised
IT Strategic Plan	Not Done
IT Security and User Management Policy	Not Done

Business Continuity and Disaster Recovery Plan	Not Done
Human Resource Policy and Procedures Manual	Not approved
Risk Management Policy Framework	Not Done
Procurement and Inventory Management Manual	Not Revised
Anti-Corruption Policy	Not Done

192. In the absence of approved and updated policies to guide its business process, Management may not be able to guide its processes on a structured and consistent way, and this may hinder achievement of the mandate of the Authority.

Management Response

193. The Accounting Officer stated that four policies had been done and approved by the Board, two policies had been revised and were awaiting the approval by the Board and two policies had not been done due to budgetary constraints as follows—

(a) The Financial Management Systems Manual which has not yet been revised is currently awaiting approval by the Board of Directors.

(b) The IT Strategic Plan and the IT Security and User Management Policy, which were previously not done, have now been completed and approved;

(c) The Business Continuity and Disaster Recovery Plan was incomplete, with efforts to finalize it scheduled for the FY 2023-2024. The delay was primarily due to budgetary constraints; however, an additional budget has since been approved, and the revision process is currently ongoing;

(d) The Risk Management Policy Framework had not been completed, due to financial limitations, but was now under active revision following budget approval in the same financial year;

(e) The Human Resource Policy and Procedures Manual, which had not previously received formal approval, has now been approved;

(f) The Procurement and Inventory Management Manual remains unrevised, although a revised version has been prepared and is awaiting approval by the Board of Directors; and

(g) The Anti-Corruption Policy, which was initially not done, has since been completed and approved.

Committee Observation

194. The Committee observed that the Accounting Officer did not refute the fact that the Authority operated without approved policies.

Committee Recommendations

195. The Committee reprimands the Accounting Officer and recommends that the Authority submits to the Auditor General the approved policies for review and verification within three (3) months of adoption of this report.

FINANCIAL YEAR 2020/2021

162. Long Outstanding Items and Under Casting in Bank Reconciliation Statements

196. The statement of financial position reflected cash and cash equivalents balance of Kes 119,004,528. The balance excludes an amount of Kes. 31,860,430 relating to unposted items reflected in the bank reconciliations statements as detailed below:

Account Name	Year First Reported	Amount(Kes)
Development A/c	2009	24,671,142
Special A/c	2006	2,133,280
Recurrent A/c	2006	5,056,008
Total		31,860,430

197. The items have been outstanding for more than ten (10) years and it is not clear why Management has not cleared them. Further, the balance of Kes 119,004,528 includes a non-reconciling item relating to undercast amount of Kes 1,956,997. Management has not explained why corrections for the

undercast were not done in the cashbook to arrive at the corrected cash book balance. In the circumstances the accuracy and completeness of cash and cash equivalents balance of Kes.119,004,528 as at 30 June, 2021 could not be confirmed.

Management Response

198. The Accounting Officer agreed with the Auditor's observation that, the Recurrent, Special and Development accounts have various long outstanding unposted items and to address this, the Authority appointed a committee to establish the origin of the unreconciling items and propose remedies. The team finalized its detailed report on the 6th of July 2023 which was adopted by management in its meeting of the 25th of July 2023.The committee recommended that the unreconciling items be written off the books of the Authority after seeking the Board of Director's and the Cabinet Secretary of the National Treasury's approval as guided by the Public Finance Management Act 2015, Regulations. (148) and (157).

199. The basis of the recommendation was as follows:

i. The unreconciling items could be traced to opening balances posted in the Authority's cashbooks on 30th June 2006.

ii. No reconciliations prior to the year 2009 could be traced as all accounting records were destroyed in a fire that gutted the Authority's premises, and

iii. The Authority's bankers (KCB), through a letter dated 27th June 2023, could not provide information requested for the period dating back 14 years.

200. The Management acknowledged the audit opinion and submitted that the Management Report, incorporating the resolutions arising from the deliberations of the Committee's report during the Management meeting, was scheduled for presentation to the Finance Committee of the Board in the first quarter of the FY 2023–2024. This presentation is contingent upon the approval of the Board Almanac by the Cabinet Secretary, Ministry of Water, Sanitation, and Irrigation. Subsequently, the Office of the Auditor

shall be appraised of the outcome of the write-off process, which is anticipated to be concluded by December 2023.

201. The Authority further informed the Committee that the amount of Kes 1,956,997 reported as an undercast, could not be posted as it was an unreconciling item that should also have been categorized as unposted and given the same treatment as elaborated in the preceding paragraphs.

Committee Observations

202. The Committee noted that from the submission by the Accounting Officer, the credit balance of Kes. 5020 was as a result of the bank charges on a dormant account held by the Authority at the National Bank of Kenya.

203. The Committee observed that the Accounting Officer was in the process of seeking a write off of Kes.31,860,430 from the books of the Authority.

Committee Recommendations

204. The Committee recommends that the Authority should fast-track the process of writing off the unreconciling items pursuant to section 69(1) of the Public Finance Management Act 2015, Regulations 148(5) and (157). Further, the Accounting Officer should submit a report on the status of the write-off within six (6) months of adoption of this report.

205. The Committee recommends that the matter remains unresolved and the Office of the Auditor General to keep in view.

163. Long-Outstanding Receivables from Exchange Transactions

206. The statement of financial position reflected receivables from exchange transactions balance of Kes.367,376,235 which included balances of Kes. 25,877,498 and Kes. 191,389,840 in respect to rent receivable and net business unit debtors respectively. Further, review of the ageing analyses

of the receivables revealed that Kes. 13,608,690 and Kes. 130,954,927 respectively have remained outstanding for more than 90 days and therefore casting doubt on their recoverability.

207. Although the Management provided for bad and doubtful debts of Kes. 10,509,826 and Kes. 112,502,843 as specific provisions for doubtful debts with respect to rent receivables and net business unit debtors respectively, the provisions may be in adequate as the amounts have been outstanding for long. In the circumstances, the recoverability of the receivables from exchange transactions of Kes. 367,376,235 could not be confirmed.

Management Response

208. The Accounting Officer concurred with the Auditor that some receivables from rent and business unit have remained outstanding for over 90 days. As guided by its policy, the Authority provided them as doubtful debts. This was considered adequate as the remainder of the debts were aged below 90 days. The management had embarked on an aggressive debt collection drive where some debtors have yielded and paid as can be verified from the receipts. This has helped reduce the Business Unit Debtors from Kes.191,389,840to Kes.144,381,803 as at 30 June 2023.

209. To further address rent and business unit debtors, the management appointed a Working Party to reconcile and analyze the Business Unit Debtors and propose mechanisms of addressing the long outstanding ones. The committee is due to submit its final report on 15 August 2023 for due consideration by management and the Board. The assets will be updated accordingly.

Committee Observations

210. The Committee observed at the time of examination that the Authority had instituted measures of recovering long outstanding debts.

Committee Recommendations

211. The Committee recommends that the Authority should commence the process of writing off bad and doubtful debts that may not be realised pursuant to section 69 of the Public Finance Management Act, 2012.

164. Long Outstanding Retentions

212. The financial statement included a balance of Kes.456,564,249 relating to retention monies held on behalf of suppliers out of which Kes.392,876,626 related to amounts retained on or before 30 June, 2020 and whose respective defects liability period had lapsed. Although Management indicated that Kes.392,876,626 relates to retention for ongoing Mururu (Siyoi) dam project, the balance of Kes.63,687,622 was unsupported. It was not clear under what circumstances the monies continued to be held by the Authority for years spanning to up to five (5) years.

213. Further, the retention bank account reflected a balance of Kes.27,912,200 while the retentions included in the trade and other payables from exchange transaction reflected a balance of Kes.456,564,249. The Management had not explained how the balance of Kes.428,652,049 will be cleared when it falls due.

Management Response

214. The Accounting Officer submitted that it held a retention portfolio of Kes.456,564,249 as at 30 June 2021out of which Kes.392,876,626 related to Mururu (Siyoi) Dam Water Supply Project. Contractually, retention was only released upon lapse of the defects liability period and upon request by the contractor who was then required to update his payment details. These contracts have varying defects liability periods. In the instance, the Mururu (Siyoi) dam project has a 2-year defects liability period. However, retention money was withheld on all interim certificates and thus accumulated over the project life. Mururu (Siyoi) dam was commenced on 30th March 2015 and by the close of the financial year 2020-2021, had not reached substantial completion. Therefore, the retained money from the project was yet to fall due but had aged over 90 days. Thus, non release of the same by 30 June 2021 was not in breach of Regulation 23(2a) of the Public Finance Management (National Government) Regulations.

215. The retentions amounting to Kes.63,687,622 related to various projects whose defects liability period was 1 year and were therefore due for release. However, some of the retentions were aged 12 months as the contractors had not requested for release of their retained money. The aforementioned scenarios led to the management opting to clear outstanding net payments to the contractors and payment of taxes with

the available funds and as such delayed the transfer of the retention deductions to the retention holding account.

216. The Authority had however, planned its cashflows to ensure that there was sufficient money to pay out any retentions that fall due. This was informed by the projected retention release dates for various project.

Committee Observation and Recommendation

217. The Committee observed that the submission by the Accounting Officer with regards to Trade and other Payables from Exchange Transactions was satisfactory, hence the matter is resolved.

165. Long Outstanding Temporary Imprest

218. The statement of financial position reflected receivables from non-exchange transactions balance of Kes. 63,027,411 which included Kes. 46,070,614 respect of net temporary imprest to staff. These amounts have remained outstanding contrary to Paragraph 3.2 of The National Treasury Circular No. AG.3/88 No 1.7(16) of 07 May, 2021. Further, Management did not disclose, the basis for computing the specific provision for bad and doubtful debts relating to temporary imprest to staff amounting to Kes. 18,302,852. In the circumstances, recoverability of the outstanding imprest balance of Kes. 46,070,614 and the basis for the provision for bad debts on temporary imprest of Kes. 18,302,852 could not be confirmed.

Management Response

The Accounting Officer submitted as follows—

219. Staff are entitled to temporary imprest for duties requiring officers to stay overnight away for duty stations as per clause 4.2 of the Authority's Human Resource Management Policies & Procedures Manual. On the reported temporary imprest portfolio, it is noteworthy that the outstanding imprest carried forward for the year under review related to imprest for staff who were on project duties outside their workstations. The Authority's nature of work was such that projects are executed over a period until they are

completed. As such, works could not be left unsupervised, especially where contracts were running across the financial years.

220. The management submitted that some of the imprest has since been surrendered, while recovery of long outstanding imprests was ongoing. The long outstanding imprest related to deceased staff, staff who were dismissed and left the Authority without clearing their outstanding imprest.

221. The cases have been brought to the attention of the Authority's Board. At the 3rd Finance Committee of the Board held on 5th January, 2022 in the FY 2021/2022 the following resolutions were passed:

i. that the Management engages a debt collector to pursue the long outstanding imprests held by staff who were dismissed and/or staff who left the Authority; and

ii. that the Management writes off the imprest for staff who were deceased and ensures compliance with the Law.

In compliance with the Board Directives, the management formed a Working Party to Analyse the Long Outstanding Advances to Staff with a requirement to deliver a report by 31st August 2023.The books shall be adjusted in compliance with the recommendations of the working party.

Committee Observations

222. The Committee noted at the time of examination that, in respect to the amounts deposited with the Courts, the adjustments in the financial statements was ongoing as the matters were still pending before Court.

223. Further, the Committee noted the Accounting Officer did not refute the fact that the Authority was in breach of its own Human Resource Policies and Procedures Manual. However, the Committee was informed that the salary advances had since been fully recovered.

224. The Committee also noted that the recovery of the long outstanding imprests was ongoing.

Committee Recommendations

225. The Committee reprimands the Accounting Officer for failure to adhere to the Human Resource Policies and Procedures and recommends that the total outstanding imprest be recovered fully from the then Accounting

Officer pursuant to Regulation 93 (7) of the Public Finance Management National Regulations, 2015.

166. Material Uncertainty Related to Sustainability of Services

226. The statement of financial performance reflected deficit for the year amounting to Kes.569,703,026 (2020: Kes.193,869,537). The Authority recorded accumulated deficit amount of Kes.1,269,002,463 up from a deficit of Kes.715,891,438 recorded in 2019/2020. Further, the current liabilities balance of Kes.1,272,496,169 exceeded the current assets balance of Kes.575,896,256 by Kes.696,599,913 thereby, casting doubt on the Authority's capability to meet its immediate financial obligations as and when they fall due.The Authority was therefore, not in a position to meet its current financial obligations as they fall due and depends on creditors and Governments grants to meet its day-to-day operations.

Management Response

227. The Authority was a non-income generating entity that was majorly reliant on government exchequer to achieve its mandate of water storage and flood control. Therefore, the target of A.I.A committed during the year to supplement the recurrent budget government exchequer release, though budgeted, was not achieved. Specifically, against a budgeted target of Kes.100Million, the Authority achieved an actual collection of Kes.54.97Million.

Committee Observations

228. The Committee observed that the Authority was dependent on government budgetary allocations as it could not generate enough A-I-A to meet its financial obligations.

Committee Recommendations

229. The Committee recommends that the Authority should budget its programs within the budget ceilings provided by the National Treasury to mitigate against liabilities that may hinder the operations of the Authority.

167. Long Outstanding Payables

230. The statement of financial position reflected trade and other payables from exchange transactions balance of Kes.1,272,496,169 which included trade payables balances totalling Kes.750,373,948 out of which Kes.628,759,240 have remained outstanding for more than the allowable credit period of thirty (30) days as at 30 June, 2021. The Management contravened the provisions of Regulation 23(2a) of the Public Finance Management (National Government) Regulations, 2015 which requires Accounting Officers to comply with any tax, levy, duty, pension, commitments and audit commitments as may be provided for by legislation. Further, Management risks being held in breach of contractual obligations. In the circumstances, Management was in breach of the law.

Management Response

The Accounting Officer submitted as follows—

231. The long outstanding trade payables were as a direct result of inadequate budgetary provision for multi-year projects that were under implementation including Mururu (Siyoi) which was allocated a budget of Kes.1.5 Billion against an expenditure of Kes.1.68Billion and thus a shortfall of Kes.180Million, other historical pending bills that were still under review by an internal pending bills committee and payables that were subject to court proceedings and thus frozen ending court determination as was noted in the contingent liabilities from the FY 2019-2020.

232. In addition, delayed release of the development exchequer for the year contributed to carrying over pending bills. In this instance, the final exchequer for the financial year was received on 8th July 2021 which was after the cut-off date of 30th June 2021. The funds were utilized to defray the accumulated pending bills. However, it should be noted that, since the Authority implements projects that run over financial years, it is inevitable that some bills will remain outstanding at the closure of financial years. To address this, the management continues to seek adequate

funding for the projects from the Parent Ministry to clear bills. The same has been gradually received over the years to date.

Committee Observation and Recommendation

233. The Committee observed at the time of examination that the evidence submitted in relation to the audit query was satisfactory, hence the matter is resolved.

168. Budget Deficit

234. The statement of comparison of budget and actual amounts reflected final budget and actual on comparable basis amounts of Kes.493,000,000 and Kes.527,826,170 respectively, resulting to overfunding amounting to Kes.34,826,170 or 7%. However, the Authority spent an amount of Kes.1,097,529,195 against budgeted expenditure amount of Kes.493,000,000 resulting to an over expenditure of Kes.604,529,195 or 122% of the budget. Management explained that the over-expenditure was caused by depreciation and amortization expense amount of Kes.191,328,887, impairment loss of Kes.123,012,669 and taxation of Kes.155,411,004 all totaling Kes.469,752,560.

Management Response

235. The Accounting Officer was in agreement that the recurrent expenditure was affected by inclusion of non- financial costs recorded in the year under review such as depreciation, amortization and increased provision on bad and doubtful debts on exchange transactions and the one-off tax payment after an assessment was done by the Kenya Revenue Authority for the period before 2016.The auditor stated that the figure of Kes.134,776,635 was a budget over-expenditure. However, this amount consisted of an expense of Kes.101,744,204 reported as Expenses related to rendering of services. This was an expense incurred in order to generate Appropriations in Aid (A.I.A) which was a requirement to supplement the Recurrent Exchequer from GoK. The balance of Kes.33,032,431 was as a result of the accrual nature of reporting that was required of the Authority. The Authority was not over-funded by Kes.34,826,170 as observed. This was a netting off effect between the deficit of Kes.32,750,000 on the Recurrent grant receipts. Therefore, there was an actual budget under-funding (and

not an over-funding) which was mainly caused by the Authority's inability to raise A.I.A.

Committee Observation

236. The Committee observed that the variance in the audit query was as a result of the accrual nature of reporting that was required of the Authority. The submission by the Accounting Officer was satisfactory hence the matter is resolved.

Committee Recommendation

237. The Committee recommends that the Authority should prepare its books of accounts in accordance with the guidelines of the International Public Sector Accounting Standards (IPSAS).

16?. Top Management on Acting Appointments

238. Review of the organization structure of the Authority revealed that key Management positions which including: the Chief Executive Officer, General Manager (Technical Planning and Design), General Manager (Human Resource & Administration), General Manager (Construction & Electro-Mechanical Services) and General Manager (Corporate & Legal Services), lacked substantive holders during the year under review and hence casting doubt on the Authority's capability to implement its policies and programmes if line with its strategic objectives This is contrary to Section 7.5(a) of the Authority's Human Resource Policies and Procedures Manual of 2016 which prescribes that recruitment shall be done against approved establishment where a position falls vacant, the Corporation shall ascertain whether the vacancy shall be filled by promotion from within or recruitment from outside.

In the circumstances, Management was therefore in breach of law.

Management Response

239. The Accounting Officer confirmed that the Authority was unable to substantively fill the Top Management as it did not have approved Human Resource Policy Instruments as was required by the State Corporations Advisory Committee (SCAC). In compliance, the Authority sought

approval from the SCAC. This approval had not been obtained by the close of the Financial Year 2020-2021.

240. The Authority had since received approval as communicated through a letter Ref. No. OP/SCAC 9/38 dated 21st March, 2022 and another from the Cabinet Secretary dated 8th August, 2022. The Authority sought financing from the National Treasury to undertake the recruitment. The financing was yet to be approved. The positions shall therefore be filled upon receipt of funding.

Committee Observation

241. The Committee observed at the time of examination that, the vacant positions could not be substantively filled due to budgetary constraints and the existence of a moratorium on recruitment within the public sector.

Committee Recommendation

242. The Committee recommends that the Accounting Officer should submit a report on the status of recruitment to the Office of the Auditor General for verification within three (3) months after adoption of this report.

179 Improper Constitution of Water Harvesting and Storage Board

243. Review of Gazette notice no.1244 of 8 February, 2019 revealed that the appointment of seven (7) independent Board Members by the Cabinet Secretary was contrary to Section 31(1) of the Water Act, 2016 which requires appointment of five (5) independent Board Members in addition to a chairperson, who shall be appointed by the President; the Principal Secretary responsible for matters relating to water; the Principal Secretary responsible for matters relating to land; the Principal Secretary responsible for finance; five other members, who shall be appointed by the Cabinet Secretary; and a Chief Executive Officer.

Management Response

244. The matter was brought to the attention of the appointing Authority. This had since been addressed through the Appointment of the Authority's Board in compliance with the Water Act, 2016. Subsequent board

appointments have been made in compliance with the Water Act 2016. See appointments made vide Gazette Notice No. 7692 and 9772.

Committee Observation

245. The Committee noted that at the time of examination, the Accounting Officer did not refute the fact that the number of Independent Directors was in excess contrary to the provisions of the Water Act, 2016. However, although the anomaly had been corrected there was loss of public funds.

Committee Recommendation

246. The Inspectorate of State Corporations to investigate the matter and surcharge the responsible persons pursuant to section 19 of the State Corporations Act, Cap 446.

3.2. COAST WATER WORKS DEVELOPMENT AGENCY (FY 2018/2019 -2020/2021)

FINANCIAL YEAR 2018/2019

171. Presentation of Financial statements

247. The statement of financial performance did not separately disclose revenue from exchange and non-exchange transactions as required by the reporting format prescribed by the Public Sector Accounting Standards Board. Further, notes 6, 7,11,12,13,14,15,1718 and 19 are not presented sequentially, whereas Note 9 in the statement of financial performance is redundant since it makes reference to total revenues which should not have a Note. In addition, although the statement of cash flows was prepared using the direct method, it reflects an adjustment for depreciation amounting to Kes.143,580,866, whose use however, the template issued by the Public Sector Accounting Standards Board only recommends when the indirect method is used.

248. Consequently, the financial statements do not conform to International Public Sector Accounting Standard No.1 on presentation of financial statements and the format prescribed by the Public Sector Accounting Standards Board.

Management Response

249. The Accounting officer submitted that the format applied was prescribed by the Public Sector Accounting Standards Board on the Presentation of Financial Statements in the subsequent financial years. The prescribed format for cash flow presentation had been applied in the subsequent years. The cash balance as per the cash flow statement agreed with the statement of financial position for the year in reference.

Committee Observations

250. The Committee observed that the Accounting Officer did not refute the fact that the presentation of the financial statements was not in the prescribed reporting standards during the period under review.

251. Further, the Committee noted that the anomaly has since been corrected.

Committee Recommendation

252. The Committee recommends that the matter is resolved.

172. Inaccuracies in the Financial Statements

253. A recast of the balances that comprised the assets balance totaling Kes.14,705,873,284 reflected in the statement of financial position as at 30 June, 2019 yielded Kes.14,705,973,284, resulting to an unexplained variance of Kes.100,000. Further, the net assets balance totaling Kes.1,879,914,387 reflected in the statement of financial position as at 30 June, 2019 differs by Kes.100,000 with the re-cast total amounting to Kes.1,879,814,387. In addition, note 20 to the financial statements reflected additions to assets during the year totaling Kes.6,256,669. However, a recast of the items included in the balance yielded a sum of Kes.6,265,669, resulting to a variance of Kes.9,000 which was not explained. In the circumstances, the accuracy and completeness of the statement of financial position as at 30 June, 2019 could not be confirmed.

Management Response

254. The Accounting Officer submitted that the variances of Kes.100,000 on two scenarios were noted at draft level and corrected by the Agency. However, it happened that the same queried draft financial statement pending correction was picked as the Final report. The casting error did not affect the Net Assets and Liabilities Position hence the accuracy of the financial statement. The variance of Kes.9000 Under Note 10 remained unadjusted in the following year as the Property, plant and Equipment schedule remained unchanged. It has now been adjusted for in FY 2020 together with the movement schedule. This will be confirmed during the audit review.

Committee Observation and Recommendation

255. The Committee noted that the amended financial statement submitted by the Accounting Officer was satisfactory, hence the matter is resolved.

256. The Committee recommends that the Accounting Officer henceforth complies with International Accounting Standards (IAS 1) on presentation of financial statements.

173. Variances Between Financial Statement Figures and Supporting Schedules

257. The monitoring and evaluation and maintenance of water assets expenditure balances reflected in the financial statements differ with the amounts reflected in the respective supporting schedules as follows:

Account Name	Note	Financial Statement Amount (Kes.)	Schedule Amount (Kes.)	Variance Kes.
1. Monitoring and Evaluation	10	18,673,558	18,673,198	360
2. Maintenance of Water Assets	13	64,253,678	62,653,152	1,600,526
Total		82,937,236	81,326,350	1,600,886

258. Consequently, the accuracy and completeness of the financial statements could not be confirmed.

Management Response

259. The Accounting Officer submitted that there was no variance between the financial statement figures as the supporting documentation had been submitted to the OAG.

Committee Observation and Recommendation

260. The Committee observed that the explanation and documents submitted by the Accounting Officer were satisfactory, hence the matter is resolved.

174. Property, Plant and Equipment

261. The property, plant and equipment balance totaling Kes.2,564,857,929 as at 30 June, 2019 did not include assets of undetermined value transferred to the Agency from the Ministry of Water and Irrigation, and the defunct National Water Conservation and Pipeline Corporation pursuant to Legal Notice No.101 of 12 August, 2005. No satisfactory explanation was provided by Management for exclusion of the assets from these financial statements.

262. Further, assets, including lands and office buildings acquired while undertaking various works under the Water and Sanitation Services Improvement Project (WaSSIP) and the Agency's projects such as Mkonda Dam in Kwale County, have similarly not been included in these financial statements and the Agency's fixed assets register as at 30 June, 2019. Records provided for audit indicated that the lands measured at least 53.79 hectares and were acquired at a total cost of Kes.10,832,423. In addition, a report by Management on the status of the plots of land owned by the Agency revealed that at least one-third of the lands as at 30 June, 2019 had been encroached upon by private developers. These included 22 acres of land with staff houses in Shanzu, Mombasa, which were irregularly apportioned into 42 plots and the respective title deeds issued to private developers. Therefore, the Agency's assets have not been properly safeguarded as required by Section 72(1)(a)(b) of Public Finance Management Act, 2012.

263. Additionally, examination of motor vehicle records indicated that only fifty-three (53) out of 89 of the Agency's motor vehicles and eighty-nine (89) out of one hundred and twenty-eight motor cycles were recorded in the assets register. Therefore, the remainder thirty-six (36) motor vehicles and thirty-nine (39) motor cycles were at risk of misplacement or loss as their locations and use could not be effectively tracked by Management. In view of these issues, it has not been possible to confirm the accuracy, completeness and ownership of the property, plant and equipment balance totaling Kes.2,564,857,929 reflected in the statement of financial position as at 30 June, 2019.

Management Response

The Accounting Officer submitted as follows—

264. CWWDA inherited assets from National Water Conservation and Pipeline Corporation and the Ministry of Water. There were no ownership documents for the inherited properties. As part of the process of transition, a joint team was constituted to confirm the location, size and the terms of land tenure. As per the said report, the details could not be ascertained and therefore the Assets could not be included in the financial statements.

265. Assets, Office Buildings and motor vehicles acquired under Wassip project have been captured in the financial statements mainly under work in progress and capitalized after completion. The portions of land acquired under Mkanda Dam in Kwale County was a way leave for the facility expansion. After completion of rehabilitation, the project was handed over to the County. The expenditure was captured in the financial statements under resettlement compensation.

266. On the grabbed land in shanzu the Agency lodged complaints to the National Land Commission (NLC) and the EACC. The Agency has obtained CAVEATS on the Shanzu land among others and recovery is ongoing with help of EACC and NLC.As it stands, the Agency is working with the stated Agencies to resolve the issue of ownership documents, but that does not change the current status that the Transfer of Asset Agreement and titles are held by NWCPC.

267. On motor vehicles and motor cycles, The Agency has captured in the Asset register motor vehicles and cycles acquired which have ownership documents. The others are obsolete and have been claimed by National water and the Ministry for disposal.

Committee Observations

268. The Committee observed at the time of examination that, the Agency was yet to sign the transfer documents and therefore ownership of the assets whose value was undetermined by the Auditor was in possession of the defunct National Water Conservation and Pipeline Corporation (now National Water Harvesting & Storage Authority).

269. The Committee noted that the Agency had liaised with National Lands Commission and the Ethics & Anti-Corruption Commission in a bid to reclaim the grabbed parcels of land.

Committee Recommendations

270. The Committee recommends that the Accounting Officer should facilitate and ensure the execution of the deeds of transfer in respect to the parcels of land.

271. The Committee recommends that Ethics & Anti-Corruption Commission (EACC) and the National Land Commission (NLC) conclude investigation of the ownership of the contested parcels of land within six (6) months of adoption of this report.

175. Loan Balance

272. The statement of financial position reflected a loan balance totaling Kes.11,482,729,838 as at 30 June, 2019. As previously reported, in spite of the disclosure that Kes.11,464,257,010 of the loan was outstanding in June, 2018, the confirmation letter issued by the National Treasury dated 15 September, 2018 reflected a balance of Kes.12,241,117,290, resulting to unexplained variance of Kes.758,387,452. Records held by the Agency indicated that, in the year 2008, the Government of Kenya entered into a financing agreement with the World Bank to finance water and sanitation services in the then Coast Province through Coast Water Works Development Agency. The Bank was to disburse Kes.4,570,199,584.27 (USD.45,203,760) under Credit IDA Credit 4376-KE at an interest rate of 1.5 per cent per annum. The repayment period was set at thirteen (13) years with effect from 30 March, 2013, and an annual repayment of USD.4,906,636 comprised of USD.3,168,030 in principal amount and USD.1,738,606 in interest. However, records to confirm whether any repayments had been made to offset the loan were not provided for audit verification. In addition, the outstanding interest as at 30 June 2019, if any, was not disclosed separately under other current liabilities as required under Paragraph 82 of IPSAS (Accrual) 1.

273. Further, although International Public Sector Accounting Standard (IPSAS) No.4 requires foreign currency monetary items to be translated using the closing rate, the loan balance was translated using the exchange rate prevailing on the date the loan was acquired. As a result, no foreign exchange gain or loss was recognized. Further, the Agency's accounting policy on translation of foreign denominated transactions and balances was not disclosed in the notes to the financial statements in line with the accounting standards.

274. In view of these discrepancies, it was not possible to confirm whether the Agency had observed the terms of the loan. In addition, the accuracy and completeness of the loan balance totaling Kes.11,482,729,838 reflected in the statement of financial position as at 30 June, 2019 could not be confirmed.

Management Response

The Accounting Officer submitted as follows—

275. The loan balance was a cumulative amount acquired over the years. The Agency was under taking reconciliation with the National Treasury team on the loan balances and the actual position will be reported once the exercise is completed. *(transfer letter on reconciliation was submitted).* Loan repayment has never been effected on grounds of water tariff not being reflective of the operational costs related to water production.

276. This was attributed to the following factors:

i. nonpayment of water sales bills by WSPs including the arrears;
ii. high water production cost which the existing tariff cannot sustain (Electricity cost at Saricho Water Works);
iii. high maintenance costs due to dilapidated infrastructure;
iv. non-revenue Water due to dilapidated infrastructure, illegal connections and burst; and
v. governance issues in WSPs.

277. New water tariff has been Gazetted and is effective from October 2023 with a loan repayment component. Once implemented will set aside the component of loan repayment. *(new tariff gazette notice submitted)* Interest payable was captured under payables NOTE 22 under General Creditors amount of Kes. 843,685,821. *(Creditors as at 30.6.2019 submitted)*. On foreign currency translation at closing rate. The Agency

reported the loans using the ruling rate since the reconciliation of loans for determination of exchange gains or losses is undertaken at National Treasury level. The Agency receives funds in local currency hence no loss or gain.

Committee Observations

278. The Committee noted at the time of examination that, the revenue generated by Water Service Providers (WSP) was insufficient to repay the loan and therefore, the loans were being serviced by the National Treasury.

279. The Committee also noted that the Agency was undertaking reconciliation with the National Treasury to ascertain the exact amount of loan balance (both principal & interest).

Committee Recommendation

280. The Committee recommends that The National Treasury through the Water Services Regulatory Board (WASREB) should ensure that Water Service Providers timely remit the amount ring-fenced in the water tariffs for repayment of loans to enable servicing of loans secured for development of the water sector.

281. Within three (3) months upon adoption of this report, the Accounting Officer to submit the loan reconciliation report.

176. Trade and Other Receivables

282. The trade and other receivables balance totaling Kes.3,621,629,912 as at 30 June, 2019 included Kes.3,616,155,676 due from Water Service Providers. However, the balance differs by Kes.985,788,777 from the balances totaling Kes.2,630,366,899 reflected in the books of the Water Service Providers, as detailed in the table below:

Water Service Provider	Balance as per Agency (Kes.)	Balance as per Water Company	Difference (Kes.)

			(Kes.)	
1	Mombasa Water and Sewerage Company Limited	1,381,172,144	1,167,419,444	213,752,700
2	Malindi Water and Sewerage Company Limited	531,332,877	506,029,445	25,303,432
3	Kilifi-Mariakani Water and Sewerage Company Limited	658,879,187	315,671,948	343,207,239
4	Kwale Water and Sewerage Company Limited	500,719,880	190,764,959	309,954,921
5	Taita/Taveta Water and Sewerage Company Limited Lamu Water and Sewerage Company Limited	529,211,732	450,481,103	78,730,629
6	Lamu Water and Sewerage Company Limited	13,111,856		13,111,856
7	Tana River Water and Sewerage Company Limited	1,728,000		1,728,000
Total		**3,616,155,676**	**3,616,155,676**	**985,788,777**

283. In the circumstance, the accuracy and completeness of the trade and other receivables balance totaling Kes.3,621,621,912 as at 30 June, 2019 could not be confirmed.

Management Response

284. The Accounting Officer informed the Committee that there had been challenges in engaging with the WSPs to undertake the reconciliation. Recently the matter was picked up by Senate. The Agency has now engaged all the WSPs to work closely to harmonize the figures with a completion date of 15 September 2023. (reconciliation letters of Water Companies submitted).

Committee Observation

285. The Committee observed that the Agency was engaging all the Water Service Providers (WSPs) to harmonise the unreconciling figures.

Committee Recommendation

286. The Committee recommends that within three (3) months of adoption of this report, the Accounting officer should provide a report on the progress of the reconciliation of the balances in the books of the Water Service Providers.

177. Finance Costs

287. The statement of financial performance reflected finance costs totaling Kes.114,335,040 incurred in the year under review. Management indicated that the costs denoted interest charged on the World Bank Loan. However, no records were provided to confirm how the amount was arrived at. In the circumstances, the measurement and validity of finance costs totaling Kes.114,335,040 for the year ended 30 June, 2019 could not be confirmed.

Management Response

288. The Accounting Officer submitted that the loan interest schedule of ksh 114,335,040 provided for three loans: Wassip-1(CREDIT NO.4376-KE), Wassip-AF(CREDIT NO.5103KE) and AFD (CREDIT NO.CKE 310) calculated using interest rates applicable as per loan agreements.

Committee Observation and Recommendation

289. The Committee observed that the loan interest schedules for all the three loans submitted by the Accounting Officer were satisfactory hence the matter is resolved.

178. Trade and Other Payables

290. The statement of financial position reflected trade and other payables totaling Kes.1,343,329,059. Included in the balance is interest on loans totaling Kes.843,685,821. However, records on the principal amount and interest paid and outstanding on the loans were not provided for audit review. Consequently, the accuracy and completeness of the trade and other payables balance totaling of Kes.1,343,329,059 as at 30 June, 2019 could not be confirmed.

Management Response

291. Loan interest repayment has never been effected on grounds of water tariff not being reflective of the operational costs related to water production. This is attributed to the following factors:

i. Non- payment of water sales bills by WSPs including the arrears;
ii. high water production cost which the existing tariff cannot sustain (Electricity cost at Baricho Water Works);
iii. high maintenance costs due to dilapidated infrastructure;
iv. non-Revenue Water due to dilapidated infrastructure, illegal connections and burst; and
v. governance issues in WSPs.

292. New water tariff has been Gazetted and is effective from October 2023 with a loan repayment component. Once implemented will set aside the component of loan repayment.

Committee Observation

293. The Committee observed at the time of examination that, the loans were serviced by the National Treasury due to insufficient revenue generated by Water Service Providers (WSP).

Committee Recommendation

294. The Committee recommends that The National Treasury through the Water Services Regulatory Board (WASREB) should ensure that Water Service Providers timely remit the amount ring-fenced in the water tariffs for repayment of loans to enable servicing of loans secured for development of the water sector.

179. Revenue Budget

295. The statement of comparison of budgets and actual amounts indicated that the Agency's revenue budget totaled Kes.1,349,591,000 during the year under review and actual collections totaling Kes.2,177,287,914, resulting to net surplus of Kes.827,696,914 or 61.3% of the budget as detailed below:

Revenue Item		Budget Kes.	Actual Kes.	Over-Collection	Ratio of Actual Over Budgeted Collections %
1.	Rendering of Services	560,000,000	835,219,773	275,219,773	149.1%
2.	Government Grants and Subsidies	785,000,000	1,332,282,346	547,282,346	169.7%
3.	Other Income	4,591,000	9,785,795	5,194,795	213.1%
	Total	**1,349,591,000**	**2,177,287,914**	**827,696,914**	**161.3%**

296. As the data shows, collections under all the three revenue items exceeded their respective budgets with the total collections being equivalent 161% of the total budgeted.

Management Response

297. The increase in reported revenue was attributed to GoK grants such as Equalisation, Drought funds and Special programmes, Dongo Kundu among others and their procurement took time hence the surplus of funds.The increase in other income is attributed to more sales by water tanker during the drought period.

Committee Observation and Recommendation

298. The Committee observed that the submission by the Accounting Officer relating to the over-expenditure was a result of GOK grants hence the matter is resolved.

180. Expenditure Budget

299. During the year under review, the Agency had budgeted to spend Kes.2,063,137,234 on its various programs and activities. However, actual expenditure totaled Kes.1,939,803,479, resulting to under-expenditure of Kes.123,333,755 or 6% as summarized below:

Item		Budgeted Amounts (Ksha.)	Actual Amounts (Kes.)	Over Absorption (Kes.)	Under Absorption (Kes.)	UnderAbsorption (%)
1	Use of goods and Services	442,749,000	311,041,172	-	131,727,828	29.8%
2	Remuneration of	21,955,000	15,392,600	-	6,562,400	29.9%

	Directors					
3	Employees Costs	235,662,000	205,116,602	-	30,545,398	13.0%
4	General Expenses	58,058,000	24,286,985	-	33,771,015	58.2%
5	Repair and Mainte nance	482,720,000	561,685,846	78,965,846	-	16%
6	Contracted Services	707,945,234	707,945,234	-	-	-
7	Finance Costs	114,028,000	114,335,040	307,040	-	0.3%
Total		**2,063,137,234**	**1,939,803,479**	**79,272,886**	**202,606,641**	**6.0%**

300. The under-expenditure mainly occurred in four items whereby the Agency had budgeted to spend Kes.758,444,000 but spent Kes.555,837,359, resulting to under-absorption of Kes.202,606,641 or 26.7% of the aggregate target. Further, the Agency had budgeted to spend Kes.482,720,000 on repairs and maintenance but spent Kes.561,685,846 resulting to over-expenditure of Kes.78,965,846 or 16% of the budget. However, no

evidence was provided by Management to confirm whether the over-expenditure was approved by the Board.

Management Response

301. Expenditure is attributed to activity levels during the year under review and most of the expenditure were within the approved budget except for electricity for Baricho water which has been in increasing trend.Under repairs and maintenance, the cost of Kes. 561,837,359 include Electricity for Bulk water production which has been on an increasing trend due to inflation. The expenditure was catered for under reallocation within the approved budget.

Committee Observation and Recommendation

302. The Committee observed that the expenditure was catered for under reallocation within the approved budget , hence the matter is resolved.

181. Non-Revenue Water

303. The statement of financial performance reflected water sales totaling Kes.835,219,773. Included in the balance were bulk sales totaling Kes.697,863,700. The report of the Chief Executive Officer indicated that the volume of water produced in the year under review totaled 57,305,000 cubic meters (M3) out of which 34,893,185 cubic meters (M3) were billed to customers. The balance totaling 22,411,815 cubic meters (M3) or 39% of the output produced signified Non-Revenue Water which was 14.11% percentage points above the allowable loss of 25% prescribed in the guidelines issued by the Water Services Regulatory Board. The Non-Revenue-Water (NRW) totaling 19,546,735.5 cubic meters may have resulted to loss of Kes.390,934,710 at the sale price of Kes.20 per cubic meter charged by the Agency to Water Service Providers. The significant level of Non-Revenue Water is a drain on the Agency's profitability and could hamper its ability to sustain its services.

Management Response

304. The unaccounted-for water is as result of vandalism, old water infrastructure, Pipeline bursts, Theft of meters among others and is continuously being addressed by the Agency. The guidelines prescribed by WASREB allowed for 25%. Mitigation measures put in place include replacement of meters, pipeline patrols, new pipelines for Marere and repairs in Mzima line. This has brought the unaccounted-for water to current level of 17% as at 2023 Financial year. The level is expected to drop further once the Mzima pipeline project is implemented.

Committee Observation

305. The Committee observed that the unaccounted-for water level had reduced from 39% to 17 % which is below the set level and therefore the submission by the Accounting Officer was satisfactory.

Committee Recommendation

306. The Accounting Officer should enhance the mitigation measures to minimize the loss being incurred.

182. Expired Mkonda Dam Performance Bond

307. Examination of records on construction of Mkonda Dam indicated that the performance bond signed by the contractor expired on 31 March, 2018. No record of a new performance bond having been issued was provided for audit. In the circumstance, the bond may not be enforceable and the Agency could incur loses should the contractor fail to perform the contract as agreed.

Management Response

308. At the expiry of the performance bond the project was at defect liability period hence there was no need for renewal.

Committee Observation and Recommendation

309. The Committee observed that the contract was on defect liability period hence there was no need for renewal of the performance bond and the matter is resolved.

183. Irregularity in Baricho Well-Field Resettlement Compensation

310. Examination of records on compensation payments made for resettlement of persons affected by the construction of Mkanda Dam indicated that payments totalling Kes.2,330,460 were made to persons whose names were not in the Resettlement Action Plan (RAP) that identified the Project Affected Persons (PAP) and compensations due to them. In the circumstance, the expenditure totalling Kes.2,330,460 incurred on the persons may have been irregular.

Management Response

311. The report refers to Mkanda and not Baricho. There were no irregularities in Baricho well field compensation. Payments for Mkanda Dam was done as per the approved resettlement Action plan.

Committee Observation

312. The Committee observed the subject matter of the query was inconsistent with the title of the query.

Committee Recommendation

313. The Committee recommends that the Office of the Auditor General should capture the correct audit query (if any) in subsequent audit cycles.

184. Outstanding Imprests

314. The financial statements reflected outstanding imprests totaling Kes.877,022, as at 30 June, 2019 out of which Kes.497,200 had been outstanding for over one (1) year contrary to Section 93 (5) of the Public Financial Management Regulations, 2015. In addition, records examined indicated that five officers held multiple imprests totalling Kes.790,020, contrary to Section 93(4)(b) of Public Finance Management Regulations, 2015.Management indicated that the imprests would be recovered through payroll deductions, but did not explain why it had taken so long to effect the recoveries.

Management Response

315. The Accounting Officer submitted that Kes 497,200 of the outstanding imprest related to two staff members who exited from the Agency in FY 2017 and are yet to claim their final dues. This will be deducted from their final dues.The balance of the imprest Kes.790,020 held by officers in field undertaking Bulk operations was cleared on time as per the payroll summary for July 2019.

Committee Observation and Recommendation

316. The Committee observed that the explanation and documents submitted by the Accounting Officer on recovery of the outstanding imprests was satisfactory, hence the matter is resolved.

185. Payment of Salary Advances

317. Examination of salary records indicated that advances totaling Kes.1,002,349 as at 30 June, 2019 paid to seventeen (17) officers were in excess of their two months' basic salaries contrary to Section 6.1. of the Agency's Human Resource Manual. Further, collateral security required to be provided by payees for the excessive advances were not presented for audit. In the circumstance, the salary advances balance totaling Kes.2,338,774 as at 30 June, 2019 may have been paid irregularly.

Management Response

318. This was a computation error during the preparation of the advance process. However, the same has been corrected going forward. The staff with advance salaries were under recovery in the payroll schedule for July 2019 hence no funds could be lost as a result of non- deduction.

Committee Observation and Recommendation

319. The Committee observed that the issue on computation of salary advances has been corrected going forward and the matter is resolved.

FINANCIAL YEAR 2019/2020

The Auditor General gave a qualified audit opinion raising the following concerns; -

186. Operating Income

320. The statement of financial performance for the year ended 30 June, 2020 reflected operational income totaling Kes. 849,760,568. Included in the balance were administrative fees totaling Kes. 116,565,660 billed to Water Service Providers for use of the water supply infrastructure inherited by the Water Service Providers from the Agency. However, the fees are contrary to Section 131(2) of the Water Act, 2016 which exempts licensed water services providers from paying for use of public assets for the provision of water services other than the repayment of loans acquired for the development of those assets. Therefore, the fees charged to the Water Service Providers by the Agency may not be valid. As a result, the total income reported by the Agency in the year under review may be overstated by Kes.116,565,660

Management Response

321. The Accounting Officer submitted that the lease fees were charged in line with Water Act, 2002. However, upon the enforcement of Water Act 2016 on 21.4.2017, WSPs were no longer required to pay lease fees. The configuration of the core billing system to delete the component of lease fees was completed in April 2020.From 2020 to date, WSPs are not charged lease fees.At the moment, CWWDA has been carrying out reconciliation exercise across the seven (7) WSPs. Once completed correct amounts will be reflected.

Committee Observation

322. The Committee observed that the Agency took inordinate time (three years) to configure its core billing system to be compliant with the provisions of the Water Act, 2016.

Committee Recommendation

323. The Committee recommends that the Accounting Officer submits a report showing reconciliation of the lease fees charged to the Water Service Providers within three (3) months of adoption of this report.

324. The Committee further recommends that the Auditor General keeps in view this matter in subsequent audit cycles with a view of determining whether the reconciliation exercise across the seven (7) Water Service Providers (WSPs) have been completed.

187. Trade and Other Receivables

325. The statement of financial position reflected trade and other receivables balance totaling Kes.4,101,329,864 as at 30 June, 2020. The balance included Kes. 4,077,321,823 dues from Water Service Providers which however differs by Kes. 885,376,331 from the balances reflected as owed to the Agency in the books of respective Water Service Providers, as detailed in the following table:

	Water Service Provider	Balance as per Agency (Kes.)	Balance as per Water Company (Kes.)	Difference (Kes.)
1	Mombasa Water & Sewerage Co. Ltd	1,525,422,723	1,175,970,141	349,452,582
2	Malindi Water & Sewerage Co. Ltd	571,809,922	500,785,438	71,024,484
3	Kilifi-Mariakani Water & Sewerage Co. Ltd	799,193,306	734,988,126	64,205,180

4	Kwale Water & Sewerage Co. Ltd	603,711,593	230,284,804	423,248,752
5	Taita/Taveta Water & Sewerage Co. Ltd	577,184,279	498,454,322	78,729,957
Total		**4,077,321,823**	**3,191,945,492**	**885,376,331**

326. The aggregate variance amounting to Kes 885,376,331 has not been reconciled and as a result, the accuracy and completeness of the trade and other receivables balance totaling Kes 4,101,329,864 as at 30 June, 2020 could not be confirmed.

Management Response

327. The Accounting Officer submitted that there had been challenges in sitting with the WSPs to undertake the reconciliation. Recently the matter was picked up by the Senate. The Agency has now engaged all the WSPs to work closely to harmonize the figures with a completion date of 15th September 2023.

Committee Observations

328. The Committee observed that the Agency was engaging all the Water Service Providers (WSPs) to harmonise the unreconciling figures.

Committee Recommendation

329. Within three (3) months of adoption of this report, the Accounting Officer should provide a report on the progress of the reconciliation of the balances in the books of the Water Service Providers.

188. Inaccuracy of the Statement of Comparison of Budget and Actual Amounts

330. The statement of comparison of budget and actual amounts for the year ended 30 June, 2020 reflected actual expenditure totaling Kes.

1,643,685,071 whereas re-casting of the items reflected in the statement yielded Kes. 1,642,315,399. The resulting variance amounting to Kes. 1,369,672 has not been explained.

Management Response

331. This was noted to be a tying error. Data was being copied from Excel to the Word final report. The correct amount of Kes.1,642,315,399 was reflected under statement of financial performance.

Committee Observations

332. The Committee observed that the submission by the Accounting Officer on the inaccuracy of the statement of comparison of budget and the actual amounts was satisfactory and the matter is resolved.

Committee Recommendations

333. The Committee recommends that the Accounting Officer should ensure that the financial statements are prepared accurately in line with section 68 (2) (b)of the Public Finance Management Act, 2012.

189. Audit Fees Payable

334. The statement of financial position for the year ended 30 June, 2020 reflected trade and other payables totaling Kes. 1,493,230,730. Included in the balance were outstanding audit fees totaling Kes. 2,867,522. However, the entry for the current year provision on audit fees is reflected as nil in Note 9 to the financial statements. No explanation has been provided for the anomaly. In the circumstance, the accuracy and completeness of the outstanding audit fees as at 30 June, 2020 reflected in the Note 9 to the financial statements could not be confirmed.

Management Response

335. The Accounting Officer submitted that the Office of Auditor General provided invoices for two years (2017-2018, 2018-2019) amounting to Kes.2,867,522 that was captured in the financial statements. Therefore, there was no need for provision for audit fees.

Committee Observation

336. The Committee noted at the time of examination that the explanation provided by the Accounting Officer was unsatisfactory as the invoices provided after the year end affected the previous year's financials.

Committee Recommendations

337. The Committee recommends that Agency records its Financial Statements accurately in line with the guidelines of the International Public Sector Accounting Standards (Accrual basis)

338. The Committee recommends that the Accounting Officer should henceforth comply with section 68(2)(b) of the Public Finance Management Act by providing supportive documentation to the Auditor General on time.

190. Total Net Assets and Liabilities

339. The statement of financial position reflected total assets, liabilities and total net assets totaling Kes.16,341,340,788, Ksh.14,120,661,830 and Kes.2,220,678,958 respectively as at 30 June, 2020. However, the statement reflected at the bottom net assets and liabilities totaling Kes.2,220,678,958 instead of Kes.16,341,340,788. No explanation has been provided for the anomaly. As a result, the total net assets balance as at 30 June, 2020 may not be fairly stated.

Management Response

340. The presentation is as per the Approved Reporting manual.

Committee Observations and Recommendation

341. The Committee observed that the approved reporting manual reflected net assets and liabilities hence the matter is resolved.

191. Unpaid Value Added Tax

342. The trade and other payables balance totaling Kes.1,493,230,730 included general creditors totaling Kes.1,486,153,958, out of which Kes.76,842,252 denotes Value Added Tax not remitted to the Commissioner of Domestic Taxes.

343. Delayed remittance of the balance may attract penalties prescribed in Section 83(1) of Tax Procedures Act, 2015. The law provides that a person who submits a tax return after the due date shall be liable to pay a penalty equivalent to twenty-five percent (25%) of the tax due or ten thousand shillings, whichever is higher.

344. Consequently, the amount of penalties and interest payable on the outstanding Value-Added-Tax totaling Kes.76,842,252 as at 30 June 2020 could not be confirmed.

Management Response

345. The Agency had been undertaking reconciliation with KRA from FY 2016 on VAT and withholding Tax. This was occasioned by system change by KRA to ITAX.

Committee Observations

346. The Committee observed that the issue was occasioned by a system change and there is an ongoing reconciliation with Kenya Revenue Authority.

Committee Recommendation

347. The Committee recommends that the Accounting Officer submits a report on the reconciliation progress to the OAG for verification within one month of adoption of the report.

192. World Bank Loan

348. The statement of financial position reflected non-current liabilities totaling Kes.12,627,431,099 being the balance for a World Bank Loan owed by the Agency as at 30 June, 2020.The Government of Kenya entered into a financing agreement with the World Bank in the year 2008 to finance water and sanitation services in Coast Province through Coast Water Works Development Agency. The Bank agreed to disburse Kes.4,570,199,584.27 (USD.45,203,760) at an interest rate of 1.5 per cent per annum. The repayment period was set at thirteen (13) years with effect from 30 March, 2013, with an annual repayment of USD.4,906,636 for which the principal amount was USD.3,168,030 and interest USD.1,738,606.

349. However, records indicating repayments of the loan were not provided for audit verification. In addition, the annual repayment due amounting to USD.4,906,636 comprising the principal totaling USD.3,168,030 and interest totalling USD.1,738,606 was not disclosed separately under other current liabilities. Further, International Public Sector Accounting Standard (IPSAS) requires foreign currency monetary items to be translated using the closing rate for the date of the respective financial statements. However, the loan balance was translated to Kenya shillings at the rate prevailing on the transaction date and as a result, the applicable foreign exchange gains or loss was not measured and recognized in the financial statements. Further, the accounting policy on translation of foreign denominated transactions and balances was not disclosed in the Notes to the financial statements in line with accounting standards.

350. In view of these anomalies, it was not possible to confirm whether the Agency had observed the loan's repayment terms and whether the outstanding liability on the loan denoted as Kes.12,627,431,099 as at 30 June, 2020 was correct. Further, the statement of financial position as at 30 June, 2020 reflects trade and other payables balance totaling Kes.1,493,230,730. The balance included general creditors totaling Kes. 1,486,153,958 out of which Kes.998,120,842 is unpaid interest on the loan outstanding since 2013. No satisfactory explanation has been provided on why the interest had not been paid. In addition, the accuracy and completeness of the interest balance could not be confirmed in the absence of matching records from the lender.

Management Response

351. Loan repayment had never been effected on grounds of water tariff not being reflective of the operational costs related to water production. This was attributed to the following factors:

i. Nonpayment of water sales bills by WSPs including the arrears.
ii. High water production cost which the existing tariff cannot sustain (Electricity cost at Baricho Water Works)
iii. High maintenance costs due to dilapidated infrastructure.
iv. Non-Revenue Water due to dilapidated infrastructure, illegal connections and burst
v. Governance issues in WSPs

352. New water tariff had been Gazetted and was effective from October 2023 with a loan repayment component. Once implemented will set aside the component of loan repayment. (new tariff gazette notice submitted)On foreign currency translation at closing rate, The Agency reported the loans using the ruling rate since the reconciliation of loans for determination of exchange gains or losses is undertaken at treasury level.The Agency receives funds in local currency hence no loss or gain.Loan interest repayment has never been effected on grounds of water tariff not being reflective of the operational costs related to water production.

353. This is attributed to the following factors:

i. Nonpayment of water sales bills by WSPs including the arrears.
ii. High water production cost which the existing tariff cannot sustain (Electricity cost at Baricho Water Works)
iii. High maintenance costs due to dilapidated infrastructure.
iv. Non-Revenue Water due to dilapidated infrastructure, illegal connections and burst
v. Governance issues in WSPs

354. New water tariff had been Gazetted and is effective from October 2023 with a loan repayment component. Once implemented will set aside the component of loan repayment.

Committee Observations

355. The Committee noted at the time of examination that, the revenue generated by Water Service Providers (WSP) was insufficient to repay the loan and therefore, the loans were being serviced by the National Treasury.

356. The Committee also noted that the Agency was undertaking reconciliation with the National Treasury to ascertain the exact amount of loan balance (both principal & interest).

Committee Recommendation

357. The Committee recommends that The National Treasury through the Water Services Regulatory Board (WASREB) should ensure that Water Service Providers timely remit the amount ring-fenced in the water tariffs for repayment of loans to enable servicing of loans secured for development of the water sector.

358. Within three (3) months upon adoption of this report, the Accounting Officer to submit the loan reconciliation report to the OAG.

193. Property, Plant & Equipment
193.1. Miscellaneous Discrepancies

359. The statement of financial position reflected property, plant and equipment balance totaling Kes. 4,307,346,037 as at 30 June, 2020. However, the following anomalies were noted in respect to the balance:

i. Some assets of undisclosed value transferred to the Agency by the Ministry of Water and Irrigation, and National Water Conservation and Pipeline Corporation through Legal Notice No.101 of 12 August, 2005 have been excluded from the financial statements.

ii. Similarly, the financial statements and the fixed assets register do not include land and office buildings acquired while undertaking various Water and Sanitation Services Improvement Project (WaSSIP) activities and institutional projects. The assets include land measuring 53.79 hectares for Mkanda Dam acquired at a cost of Kes.10,832,423.

iii. A management report on the status of the Agency's land indicated that more than one-third (1/3) of the land, including 22 acres with staff houses in Shanzu, Mombasa, had been encroached on by private developers. The land had been apportioned into 42 title-deeds and issued to private parties.

iv. The Agency had eighty-nine (89) motor vehicles and one hundred and twenty-eight (128) motor cycles as of 30 June, 2020. However, thirty-six (36) motor vehicles and thirty-nine (39) motor cycles were not recorded in the assets register.

v. The property, plant and equipment balance totaling Kes.4,307,346,037 as at 30 June, 2020 excludes a piece of land valued at Kes.150,000 that was included in the financial statements for the previous year. No record of its disposal or loss was provided for audit.

Management Response

360. CWWDA inherited assets from National Water Conservation and Pipeline Corporation and the Ministry of Water. There were no ownership documents for the inherited properties. As part of the process of transition, a joint team was constituted to confirm the location, size and the terms of land tenure. As per the said report, the details could not be ascertained and therefore the Assets could not be included in the financial statements. Assets, Office Buildings and motor vehicles acquired under Wassip project have been captured in the financial statements mainly under work in progress and capitalized after completion. The portions of land acquired under Mkanda Dam in Kwale county was a way leave for the facility expansion. After completion of rehabilitation the project was handed over to the county.

361. The expenditure was captured in the financial statements under resettlement compensation. On motor vehicles and motor cycles, the Agency has captured in the Asset register motor vehicles and cycles acquired which have ownership documents. The others are obsolete and have been claimed by National water and the ministry for disposal as per attached letters. (NWCPC &Ministry of Water Disposal letters submitted).The land valued at Kes.150,000 is owned by the Agency. However, no ownership documents are in place and the Agency is in the process of acquiring titles for all properties.

Committee Observations

362. The Committee observed at the time of examination that, the Agency was yet to sign the transfer documents and therefore ownership of the assets whose value was undetermined by the Auditor was in possession of the defunct National Water Conservation and Pipeline Corporation (now National Water Harvesting & Storage Authority).

363. The Committee noted that the Agency had liaised with National Lands Commission and the Ethics & Anti-Corruption Commission in a bid to reclaim the grabbed parcels of land.

Committee Recommendations

364. The Committee recommends that the Accounting Officer should facilitate and ensure the execution of the deeds of transfer in respect to the parcels of land.

365. The Committee recommends that Ethics & Anti-Corruption Commission (EACC) and the National Land Commission (NLC) conclude investigation of the ownership of the contested parcels of land within six (6) months of adoption of this report.

193.2. Excluded Land in Bamburi- Kiembeni Area

366. The property, plant and equipment balance totaling Kes.4,307,346,037 excluded two pieces of land namely LR No. 12270 and LR.No.12273 in Bamburi- Kiembeni area valued at Kes.3,000,000 which were acquired for laying of water supply pipes under Mombasa Lot 2 Project. Further, title deeds for the two parcels of land indicated they were owned by private parties. Management has not explained why their ownership was not transferred to the Agency.

367. In addition, the two parcels of land have not been included in the assets register contrary to Regulation. 143(2) of the Public Finance Management (National Government) Regulations, 2015. The provision provides that each public entity's register of land should record each owned parcel of land and the terms on which it is held with reference to conveyance and address area among other data.In view of these issues, the valuation and, ownership of the property, plant and equipment balance totaling Kes.4,307,346,037 reflected in the statement of financial position as at 30 June, 2020 could not be confirmed.

Management Response

368. The Accounting Officer submitted that the two parcels of land are in the Asset Inventory record of the Agency. The Agency is in the process of Registering the Parcel of land so as to get title deeds and once the process is completed and title availed, the same will be captured in the Asset register.

Committee Observation

369. The Committee observed that the Accounting Officer did not refute the fact that the two parcels of land were not captured in the asset inventory record of the Agency as they were not duly registered by the Agency.

Committee Recommendation

370. The Committee recommends that the Accounting Officer fast-tracks the registration of the two parcels of land and update the asset register within six (6) months of adoption of this report. The OAG to keep in view of this query.

194. Intangible Assets

194.1. Unrecognized and Excluded Intangible Assets

371. During the year under review, the Agency acquired software and computer applications as well as a website through various contracts. However, the values of the intangible assets were not included in the financial statements for the year. As a result, the completeness and accuracy of the total assets balance amounting to Kes.16,341,340,788 as at 30 June, 2020 may not be fairly stated.

Management Response

372. The software's and computer application had been in use since 2007.During the year, the Agency acquired a new Email server which was reflected under Computer additions in the Property, Plant and Equipment movement Schedule.

Committee Observation

373. The Committee noted that the software and computer applications were reported as computer additions and reported under property, plant and equipment and the matter is resolved.

Committee Recommendation

374. The Committee recommends that the Accounting Officer should henceforth ensure that the intangible assets are reported separately from property, plant and equipment in accordance with IAS 38.

195.Budgetary Control and Performance

195.1. Revenue Budget

375. During the year under review, the Agency's revenue budget was Kes.1,682,000,000 against actual collections totaling Kes.1,983,079,970, resulting in a net over-collection of Kes.301,079,970 or 18% of the budget as detailed below:

Revenue Item	Budgeted Amount (Kes.)	Actual Amount (Kes.)	Over-Collection (Kes.)	% Over-Collection
Rendering of Services	738,200,000	849,760,568	111,560,568	15
Government Grants and Subsidies	938,800,000	1,121,131,699	182,331,698	19
Other Income	5,000,000	12,187,703	7,187,703	144
Total	**1,682,000,000**	**1,983,079,970**	**301,079,969**	**18**

Management Response

376. The increase in reported revenue was attributed to GoK grants such as Equalization and Drought funds to cover emergencies such as drought among others interventions. There was also increase in other income attributed to more sales by water tanker during the period.

Committee Observation and Recommendation

377. The Committee observed that the submission by the Accounting Officer relating to the over-expenditure was a result of GOK grants hence the matter is resolved.

195.2. Expenditure Budget

378. The statement of comparison of budget and actual amounts indicated that, the Agency had budgeted to spend Kes.1,675,732,051 on its various programs and activities. However, expenditure for the year totaled Kes.1,642,315,399, resulting in under-expenditure of Kes.33,416,652 or 2% as summarized below:

	Item	Budgeted Amount (Kes.)	Actual Amount (Kes.)	Under/(Over) Expenditure (Kes.)	Under /(Over) Expen diture in (%)
1	Administratio n Expense	310,727,100	304,337,029	6,390,071	2
2	Board Expenses	29,565,700	28,666,892	898,808	3
3	Staff Costs	214,411,000	206,338,752	8,072,348	4
4	General Expenses	72,565,300	22,662,377	49,902,923	69
5	Operational	571,166,900	604,383,970	(33,217,070)	6

	Expenses				
6	Project Costs	414,529,792	414,529,792	-	2
7	Finance Costs	62,766,259	61,396,587	1,369,672	2
Total		**1,675,732,061**	**1,642,315,399**	**33,416,652**	**2**

379. The Agency had budgeted to spend Kes. 571,166,900 on operational expenses but spent Kes. 604,383,970 resulting in over-expenditure of Kes. 33,217,070 or 6% . However, Management did not provide for audit review a revised budget to confirm approval of the over-expenditure which may denote lack of proper budgetary planning and execution.

Management Response

380. The under expenditure of Kes.33,416,652 was attributed to delay in disbursement to finance the budgeted project activities for the financial year under review. These projects are equalization and small dams, Boreholes and Pan. Under operational expenses, the high expenditure is attributed to Electricity for Bulk water production which has been on an increasing trend due to inflation among other factors. This was catered for through budget reallocations within the approved budget.

Committee Observation and Recommendation

381. The Committee observed that the expenditure was catered for under reallocation within the approved budget , hence the matter is resolved.

196. Non-Revenue Water

382. The statement of financial performance for the year ended 30 June, 2020 reflected water sales totaling Ksh.849,760,568. Included in the balance were bulk water sales totaling Kes.733,194,908 as disclosed in Note 6 to the

financial statements. The report to the Chief Executive Officer included in the annual report accompanying the financial statements indicates the water production in the year under review totaled Kes.43,637,714 cubic meters, out of which 36,980,281M³ was billed to customers during the year under review. The balance totaling 6,657,433M³ or approximately 15.26% of the output was denoted as Non-Revenue Water (NRW). Management has not indicated the measures taken, or plans drawn, to minimize the NRW.

Management Response

383. The Accounting Officer submitted that NRW was at 15.26 % which was within the allowable industry benchmark. Unaccounted For Water (UFW) was as result of old water infrastructure and the Agency has continuous plan to mitigate on the same by replacing meters, Continuous repairs and patrol of the Main transmission lines. Currently a water police unit has been deployed to assist on the same and is operational at the Agency.

Committee Observation

384. The Committee observed that the unaccounted-for water level had reduced from 39% to 17 % which is below the set level and therefore the submission by the Accounting Officer was satisfactory.

Committee Recommendation

385. The Accounting Officer should enhance the mitigation measures to minimize the loss being incurred.

197. Irregular Procurement of Construction Works

386. Examination of expenditure records indicated that the Agency spent Kes.11,170,200 on rehabilitation of Mkang'ombe Dam in the year under review. Management used Restricted Tender Method to select ten (10) firms which, however, were not in the list of prequalified suppliers. The appointments were contrary to Regulation 54(3) of the Public Procurement and Disposal Regulations, 2006 which provides that where

restricted tendering is used pursuant to Section 73(2)(b) of the Act, the procuring entity shall invite tenders from at least ten persons selected from the list of pre-qualified suppliers maintained under Regulation 8(3a).In view of the failure to observe the law, the expenditure totaling Kes.11 ,170,200 was irregular and may not have been incurred in an economic way.

Management Response

387. The firms selected were from the list of prequalified suppliers for the Agency.

Committee Observations

388. The Committee observed that the selected firm was from the list of prequalified suppliers of the agency and the matter was resolved.

Committee Recommendation

389. The Committee recommends the Accounting Officer to henceforth avail documents to the Auditor general on time pursuant to section 68(2)(b) of the Public Finance Management act, 2012.

198. Failure to Recover Imprests

390. As disclosed in the financial statements under trade and other payables were outstanding staff imprests totaling Kes.2,134,700 which were overdue as at 30 June, 2020. This was contrary to regulation 93(5) of the Public Financial Management (National Government) Regulations, 2015 which requires a holder of a temporary imprest to account or surrender the imprest within seven (7) days after returning to duty station.

Management Response

391. The imprest as at 30.6.2020 relating to bulk water operations were all cleared in the following month as evidenced by attached payroll summary for July 2020.

Committee Observation and Recommendation

392. The Committee observed that the explanation and documents submitted by the Accounting Officer on recovery of the outstanding imprests was satisfactory, hence the matter is resolved.

FINANCIAL YEAR 2020/2021

The Auditor General gave a qualified report and raised the following concerns:-

199. Land

393. The Statement of financial position reflected property, plant and equipment balance totaling Kes.7,471,811,487. The balance included Kes.150,000 relating to a plot of land. However, the assets register provided for audit review did not disclose any information on location of the land and the terms on which it was held by the Agency. In addition, a report dated July 03 2021 on planned transfer to the Agency of Assets and liabilities from National Water Conservation and Pipeline Corporation and Ministry of Water and Irrigation indicated that the Agency was in possession of Sixty-one 61 parcels of land with buildings in the Counties of Kilifi, Mombasa, Malindi, Kwale and Taita Taveta.

394. However, all the listed parcels were registered as property of the National Water Conservation and Pipeline Corporation and the Government of Kenya. In addition, their actual locations and the nature of buildings therein were not disclosed in the report. In view of these omissions, the valuation of the lands and buildings and ownership of the assets by the Agency could not be confirmed.

Management Response

395. The land valued at Kes.150,000 is owned by the Agency. However, no ownership documents are in place and the Agency is in the process of acquiring titles for all properties. CWWDA inherited assets from National Water Conservation and Pipeline Corporation and the Ministry of Water. There were no ownership documents for the inherited properties. As part

of the process of transition, a joint team was constituted to confirm the location, size and the terms of land tenure.

396. All the listed parcels were registered as property of the National Water Conservation and Pipeline Corporation and the Government of Kenya; therefore, the Assets could not be included in the Financial Statements of the Agency.

Committee Observations

397. The Committee noted that with respect to the land valued at 150,000, the Accounting officer did not refute the fact that the Agency had not acquired ownership of the land and therefore it could not form part of the assets of the agency.

398. Further, the Committee observed the Agency was yet to sign the deed of transfer and therefore ownership of the assets whose value was undetermined by the Auditor was in possession of the National Water Harvesting & Storage Authority.

Committee Recommendations

399. The Committee recommends that the Agency should fast track the process of registration of the land valued at 150,000 and submit a report on the status of the land within six(6) months of adoption of this report.

400. The Committee recommends that the Accounting officer should facilitate and ensure the signing of the deeds of transfer by the Agency.

200. Trade and Other Receivables

401. The statement of financial position as at 30 June, 2021 reflected trade and other receivables balance totaling Kes.4,506,692,648. The balance included Kes.4,499,887,869 due from Water Service Providers. However, as the Appendix attached to this report indicates, the accounting records of the indebted Water Service Providers reflected debts totaling Kes.4,334,918,146 as owed to the Agency resulting to unexplained variances totaling Kes. 164,969,723 between the Agency's and the debtors' records.

	Water Service Provider	Balance as per Agency (Kes.)	Balance as per Water Company (Kes.)	Absolute Variance (Kes.)
1	Mombasa Water & Sewerage Co. Ltd	1,571,123,390	1,644,852,038.20	(73,728,648.20)
2	Malindi Water & Sewerage Co. Ltd	563,873,206	641,766,442	(77,893,236)
3	Kilifi-Mariakani Water & Sewerage Co. Ltd	1,014,768,981	957,146,026	57,622,955
4	Kwale Water & Sewerage Co. Ltd	695,725,546	661,549,221.65	34,176,324.35
5	Taita/Taveta Water & Sewerage Co. Ltd	635,606,942	406,444,956	229,163,986
6	Lamu Water & Sewerage Co. Ltd	15,763,804	-	15,763,804
7	Tana River Water & Sewerage Co. Ltd	3,024,000	-	3,024,000
Total		**4,499,887,869**	**4,334,918,145.85**	**164,969,723.15**

402. In addition, an analysis on the ageing of the debts was not provided for audit review. In the circumstance, the accuracy, completeness and recoverability of the trade and other receivables balance totaling of Kes.4,506,840,899 as at 30 June, 2021 could not be confirmed.

Management Response

403. There has been challenges in sitting with the WSPs to undertake the reconciliation. Recently the matter was picked up by Senate, the Agency has now engaged all the WSPs to work closely to harmonize the figures with a completion date of 15 September 2023. The Aging analysis for the debt is available and was provided during the review. (*Reconciliation letters to Water Companies submitted*)

Committee Observations

404. The Committee observed that the Agency was engaging all the Water Service Providers (WSPs) to harmonize the unreconciling figures.

Committee Recommendations

405. Within three (3) months of adoption of this report, the Accounting Officer should provide a report on the progress of the reconciliation of the balances in the books of the Water Service Providers.

201. World Bank Loan

406. The statement of financial position reflected a long-term loan balance totaling Kes.13,201,986,800 owed to the World Bank as at 30 June,2021. As previously reported, the Government of Kenya entered into a financing agreement with the Bank in the year 2008 to finance water and sanitization services in the Coast region through Coast Water Works Development Agency. The Bank lent the Government US dollars 45,203,760 under credit No.IDA-4376-KE. The loan amount was equivalent to Kes.4,570,199,584.27, and was replaceable in 13 (thirteen)years with effect from 30 March ,2013 at an interest rate of 1.5% per annum. The annual repayment of US $4,906,636 entailed a principal sum of US$3,168,030 and interest of US$1,738,606.

407. However, records on repayment of the loan were not provided for audit verification. In addition, the repayment of US $4,906,636 due annually was not disclosed separately under other current liabilities in the statement of financial position as at 30 June,2021.Further, contrary to paragraph 27 of the International Public Sector Accounting Standard IPSAS 4- The Effects of Changes in Foreign Exchange Rates- which requires foreign currency monetary items being translated using the closing exchange rates, the loan balance totaling 13,201,986,800b as at 30 June, 2021 was translated to Kenya Shillings based on the exchange rate on the transaction date. As a result, the foreign exchange gain or loss was not disclosed in the financial statements.

408. Further, the accounting policy applied by the Agency in translating foreign denominated transactions and balances was not disclosed in the notes to the financial statements as required by the accounting standard.In the circumstances, accuracy, completeness and fair presentation of the loan balance totaling Kes.13,201,986,800 could not be confirmed.

Management Response

409. The Accounting Officer submitted that the loan repayment had never been effected on grounds of water tariff not being reflective of the operational costs related to water production. This was attributed to the following factors:

i. Nonpayment of water sales bills by WSPs including the arrears.
ii. High water production cost which the existing tariff cannot sustain (Electricity cost at Baricho Water Works)
iii. High maintenance costs due to dilapidated infrastructure.
iv. Non-Revenue Water due to dilapidated infrastructure, illegal connections and burst
v. Governance issues in WSPs

410. New water tariff had been Gazetted and was effective from October 2023 with a loan repayment component. Once implemented will set aside the component of loan repayment.

Committee Observations

411. The Committee noted at the time of examination that, the revenue generated by Water Service Providers (WSP) was insufficient to repay the loan and therefore, the loans were being serviced by the National Treasury.

412. The Committee also noted that the Agency was undertaking reconciliation with the National Treasury to ascertain the exact amount of loan balance (both principal & interest).

Committee Recommendation

413. The Committee recommends that The National Treasury through the Water Services Regulatory Board (WASREB) should ensure that Water Service Providers timely remit the amount ring-fenced in the water tariffs for repayment of loans to enable servicing of loans secured for development of the water sector.

414. Within three (3) months upon adoption of this report, the Accounting Officer to submit the loan reconciliation report to the OAG.

202. Loan Interest

415. The statement of financial position reflected trade and other payables balance totaling Kes.1,859,900,549. The balance included general creditors totaling Kes.1,854,798,746, out of which Kes.1,015,504,490 relates to unpaid loan interest owed to the National Treasury since 2013. However, management did not explain the failure to pay the interest over the years. Further, it was not clear how the interest amount was accrued and as a result, its completeness and accuracy could not be confirmed.

Management Response

416. Loan interest repayment has never been effected on grounds of water tariff not being reflective of the operational costs related to water production. This is attributed to the following factors:

i. Nonpayment of water sales bills by WSPs including the arrears.
ii. High water production cost which the existing tariff cannot sustain (Electricity cost at Baricho Water Works)
iii. High maintenance costs due to dilapidated infrastructure.
iv. Non-Revenue Water due to dilapidated infrastructure, illegal connections and burst
v. Governance issues in WSPs.

417. The Agency was under taking reconciliation with the National Treasury team on the loan balances and the actual position will be reported once the exercise is completed. New water tariff has been Gazetted and is effective from October 2023 with a loan repayment component. Once implemented will set aside the component of loan repayment. *(New Tariff Gazette notice submitted).*

Committee Observation and Recommendation

418. The Committee observed that the loan interest schedules for all the three loans submitted by the Accounting Officer were satisfactory hence the matter is resolved.

203. Total Assets and Liabilities

419. The statement of financial position reflected aggregate liabilities totaling Kes.15,061,887,349 and net assets totaling Kes. 2,261,727,534 which translated to net assets totaling Kes.12,800,159,815. However, the statement reflected net assets and liabilities totaling Kes.2,261,727,534. As a result, the accuracy and validity total net assets and liabilities balance could \not be confirmed.

Management Response

420. The presentation is as per the Approved Reporting manual *(Sample for AOG and CDA audited Accounts submitted)*

Committee Observations and Recommendation

421. The Committee observed that the approved reporting manual reflected net assets and liabilities hence the matter is resolved.

204. Budgetary Control and Performance

422. The statement of comparison of budget and actual amounts indicated that the Agency realized revenue totaling Kes.1,624,648,201 against a budget of Kes.1,821,065,000, resulting in a revenue shortfall of Kes.196,416799 or 11% of the budget. Management attributed the shortfall to unrealized government grants totaling Kes.331,016,665 equivalent to 31% of the budgeted amount Kes.1,076,000,000.The statement indicated that expenditure incurred during the year totaled Kes.1,583,599,623 which exceeded the budget of Kes.1,575,959,420 by Kes.7,640,203 or 0.4%.

Management Response

423. As noted, the expenditure for the year under review was more than what was budgeted for. This was due to expenditure for projects being carried forward from previous year. Eschequer releases for the previous year were made towards the close of the financial year hence it was not possible to carry out / clear all payments in the previous year. All expenditures were within the approved budget.

Committee Observation and Recommendation

424. The Committee observed that the submission by the Accounting Officer on the inaccuracy of the statement of comparison of budget and the actual amounts was satisfactory and the matter is resolved.

425. The Committee recommends that the Accounting Officer should ensure that the financial statements are prepared accurately in line with section 68 (2) (b)of the Public Finance Management Act, 2012.

205. Previous Years Issues

205.1. Incomplete Water Project Works

426. Expenditure records indicated payments totaling Kes.3,824,792 made in respect of Mbulia pipeline extension in Voi, Taita Taveta County. The respective construction contract valued at Kes.8,406,181 was signed in

July, 2020 and entailed construction of three water kiosks at a total cost of Kes. 1,202,780.

427. However, an audit verification done in September, 2021 revealed that none of the three water kiosks had the 10m3 plastic tanks prescribed in the Bills of Quantities (BQs) installed and further, the kiosks were not connected to the water inlet and outlet systems prescribed in the BQs. The records indicated that Kes.300,000 had been paid for the water tanks and systems as at 30 June, 2021.In view of the improper execution of the project, value for money may not be realized on the contract.

Management Response

428. The contract was signed on 28th July 2020 at a contract price of Ksh. 8,406,181.00 as stated in the report. The contract works moved on very well and the targeted completion date was June 2021.By 29th April 2021 a certificate of payment was prepared. By then the tanks had been delivered waiting installation and connection. However, the Contractor quit the site after 1st payment, works were never completed. The contract was terminated and awarded to another contractor to finalize the remaining works and is complete as per attached completion certificate

Committee Observation and Recommendation

429. The Committee observed from the submissions of the Accounting Officer that although the contract was initially canceled, it was awarded to another contractor and the works were completed and the matter is resolved.

3.3. GEOTHERMAL DEVELOPMENT COMPANY (F/Y 2017/2018-2020/2021)

Overview of the State Corporation

430. The Geothermal Development Company (GDC) is a state corporation under the Ministry of Energy and Petroleum. It was formed in 2008 as a Special Purpose Vehicle (SPV) to accelerate the development of geothermal resources in Kenya. GDC is tasked with developing steam fields and selling geothermal steam for electricity generation to Kenya Electricity Generating Company (KENGEN) and private investors.

EXAMINATION OF THE AUDITED ACCOUNTS OF GEOTHERMAL DEVELOPMENT COMPANY FOR FY 2017/2018 TO FY 2020/2021

431. The management of Geothermal Development Company, led by the Chief Executive Officer Mr. Paul Ngugi appeared before the Committee to adduce evidence on the audit queries that the Auditor General had raised for the FY 2017/2018 to FY 2020/21.

FINANCIAL YEAR 2017/2018

The Auditor General gave an unqualified opinion and raised the following concerns—

Emphasis of Matter

206. Corporate Tax and Related Penalties

432. The Company being a state corporation was required to comply with tax laws and other related regulations, including remission of taxes to Kenya Revenue Authority (KRA) as per prescribed due dates. The statement of financial position reflects current tax liability of Kes.3,220,274,000 (2017: Kes.2,409,858,000) for the years ended 30 June 2015, 2016 and 2017, and quarterly installments due as at 30 June 2018. The financial statements further reflect other payables amounting to Kes.1,832,400,000 as per Note 15, which include interest and penalties of Kes.1,114,508,658 (2017: Kes.710,097,000) arising from non-payment of income taxes. Although the Company has in the past requested for budgetary allocation by the

National Treasury to enable it offset the liability, this was yet to be settled. The delayed payments of income taxes had exposed the Company to penalties and interests, which continues to increase with the continued delay.

Management Response

433. The Accounting submitted that the Government of Kenya vested fifty-nine (59) wells in Olkaria drilled using Government funding to GDC. The vested wells were to generate revenues for further development of geothermal resources in the country. The National Treasury and Economic Planning reviewed the matter and provided guidance on the treatment of steam charges as appropriation in aid. Based on the National Treasury's guidance, there had been engagements between parties to deliberate on the matter. KRA had further requested for additional information from the company which was being compiled for submission. The Company was awaiting KRA's conclusion and position on the matter.

Committee Observations

434. The Committee noted that the Accounting Officer did not refute the fact that the revenue generated from the 59 wells was to be treated as Appropriations-in-Aid but was recorded as revenue in the books of account and therefore categorized as taxable income.

435. The Committee noted that the Accounting Officer had obtained an advisory from the Cabinet Secretary, the National Treasury and Economic Planning advising that the money generated from the 59 wells ought to be treated as appropriation in aid (AIA) and not revenue.

Committee Recommendations

436. The Committee recommends that the revenue generated from the 59 wells owned by GDC be treated as Appropriations-in-Aid, and the proceeds should only be used to develop more wells as per the agreement.

437. The Committee also recommends that the Accounting Officers of GDC and KRA should expeditiously engage with a view of reconciling the outstanding tax arrears.

438. The Committee recommends that the Accounting Officer of GDC should report on the status of the implementation of the above recommendation within three (3) months of adoption of this report to the OAG.

FINANCIAL YEAR 2018/2019

The Auditor General gave an **unqualified opinion** and raised the following concerns:

Emphasis of Matters

207. Long Outstanding Corporate Tax and Related Penalties

439. The Company being a state corporation was 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 reflects current tax liability of Kes.4,042,976,000 (2018: Kes.3,220,274,000) for the years ended 30 June, 2015, 2016, 2017 and 2018, and quarterly instalments due as at 30 June, 2019.Further as disclosed in Note 15 to the financial statements, the financial statements reflect other tax liabilities amounting to Kes.2,578,205,000 which include interest and penalties of Ksh1,440,807,350 (2018: Kes.1,114,508,658) arising from non-payment of income taxes. According to Management, request for abandonment of the liability was not granted and subsequently the Company paid an instalment of Kes.50,000,000 during the year under review. However, the outstanding liability is yet to be settled in full. The delayed payment of income taxes has exposed the Company to penalties and interest, which continues to increase with the continued delay.

Management Response

440. The Accounting Officer submitted that the Government of Kenya vested fifty-nine (59) wells in Olkaria drilled using Government funding to GDC. The vested wells were to generate revenues for further development of geothermal resources in the country. The National Treasury and Economic Planning reviewed the matter and provided guidance on the treatment of steam charges as appropriation in aid. Based on the National Treasury's guidance, there had been engagements between parties to deliberate on the matter. KRA had further requested for additional information from

the company which was being compiled for submission. The Company was awaiting KRA's conclusion and position on the matter.

Committee Observations

441. The Committee noted that the Accounting Officer did not refute the fact that the revenue generated from the 59 wells was to be treated as Appropriations-in-Aid but was recorded as revenue in the books of account and therefore categorized as taxable income.

442. The Committee noted that the Accounting Officer had obtained an advisory from the Cabinet Secretary, the National Treasury and Economic Planning advising that the money generated from the 59 wells ought to be treated as appropriation in aid (AIA) and not revenue.

Committee Recommendations

443. The Committee recommends that the revenue generated from the 59 wells owned by GDC be treated as Appropriations-in-Aid, and the proceeds should only be used to develop more wells as per the agreement.

444. The Committee also recommends that the Accounting Officers of GDC and KRA should expeditiously engage with a view of reconciling the outstanding tax arrears.

445. The Committee recommends that the Accounting Officer of GDC should report on the status of the implementation of the above recommendation within three (3) months of adoption of this report to the OAG.

208. Unproductive and Abandoned Wells

446. As similarly reported in the 2016/2017 audit report and as disclosed in Note 9 to the financial statements, the statements of profit or loss and other comprehensive income reflect Other Expenses amounting to Kes.1,703,973,000 which constitutes an amount of Kes.917,002,000 (2016: Nil) which relates to the cost of unproductive and abandoned wells, written off during the year under review. According to Management in

past responses, success rates for geothermal wells increase as more wells are drilled to provide surface information. The cost of unproductive and abandoned wells written off by the Company were significant and requires enhanced management attention, with the aim of minimizing drilling losses.

Management Response

The Accounting Officer submitted as follows:-

i.Background to the matter

447. GDC is mandated to de-risk geothermal prospects in the country, and this invariably has outcomes of both successful (productive wells) and unsuccessful wells (un-productive wells due to low temperature or low permeability and abandoned wells due to drilling or formation challenges).The risk of drilling unproductive wells is normally highest at the initial exploration drilling phase and reduces through appraisal to production drilling phase. Wells 24A and 25B were drilled as appraisal wells to discover the extent of the resource and unfortunately were unsuccessful.

448. The cost of unproductive and abandoned wells for the year comprised of the cost of well 24A of Ksh. 516,859,127 & Well 25B of Ksh. 400,143,079 that turned out to have low permeability and low temperature. The costs relate to labor costs, material costs and other overhead costs incurred during drilling. GDC staff did the drilling of the above wells.

ii. Mitigation measures

449. In effort to minimize drilling challenges and improve success rate, the company has entrenched collaborative efforts of GDC experts and external consultants including ELC consultant from Italy, WestJEC, JICA Consultant from Japan and the Geothermal Advisory Board (GAB). In well siting and targeting as well as drilling best practices. Menengai has a complex geological formation inside the caldera that has been quite challenging in terms of location of buried permeable structures where enhanced permeability can be intercepted. To address this challenge, the Company has sought peer review from the Geothermal Advisory

Board (GAB) and the other experts on the geo-scientific and drilling activities to provide second opinion on the well siting and improvement of drilling performance. This had led to improvement in success rates.

ii. Current status

450. In addition to working with the consultants, the Board has put in place a Well Abandonment and Write off Policy and increased budgetary allocation to improve on well targeting and drilling efficiency. Great improvements have been noted in Paka Field.

Committee Observation

451. The Committee observed that at the time of examination, the Accounting Officer submitted that the Management of GDC had developed a Well Abandonment and Write Off Policy.

Committee Recommendation

452. The Committee recommends that having in place the well abandonment and write off policy, the matter is resolved.

453. The Committee also recommends that the Office of the Auditor General should check on the status of the audit query in future audit cycles, to confirm the effectiveness of the strategies adopted by the management to mitigate unproductive and abandoned wells.

209. Cost of Non-Productive Time (NPT)

454. As reported in the 2016/2017 audit report and as disclosed in Note 9 to the financial statements, the statement further reflects other operating expenses of Kes.1,703,973,000 which includes an amount of Kes.116,286,000 (2018: Kes.49,087,000) being the cost of Non-Productive Time (NPT) during drilling activities, which was written off during the year under review. According to Management in past responses, the causes of the NPT were mainly operational and part of the drilling program, while others were as a result of logistical challenges. The Management has in the past committed to develop a formal policy on what should constitute acceptable levels of NPT based on international best practices. However, by the time of concluding this audit, no such policy had been developed

to guide the management of NPT associated with staff costs. Costs of NPT are voidable costs which increases the cost of drilling wells, and the costs ought not to have been incurred by the Company.

Management Response

The Accounting Officer submitted as follows—

i. Background to the matter

455. Management does an analysis of the drilling time to monitor and evaluate its drilling performance with a view of correcting and enhancing efficiency, and proper allocation of costs. Non-productive time is considered as time spent by the drilling crew outside the planned drilling time. This could be because of factors that were either avoidable or non-avoidable. These factors could lead to stoppages in drilling hence the down time.

ii.Non-Productive Time costs

456. In line with the company policy and the Financial Reporting Standards, the labor (staff) costs incurred during drilling because of down time do not constitute the cost of the well and are thus expensed through the income statement. During this period, the expensed costs were because of logistical downtimes such as wait on repairs of the equipment, transport, and wait on water for drilling which is a critical component during drilling among other factors. The company has put in place a policy to ensure that the non-productive time was effectively monitored, managed, and recognized.

Committee Observations

457. The Committee observed that the management of GDC had come up with a policy on non- productive time. However, mitigation for occurrence in the future had not been expounded.

458. The Committee observed that the Paka and Silale fields had logistical challenges stemming from poor infrastructure and the long distance between the geothermal development fields and the logistical centers in Nakuru and Marigat. This had led the company incurring huge costs in non-productive time.

459. The Committee noted that the management lack of framework contract in the supply of the critical drilling components had greatly contributed to high cost of non-productive time, as sourcing of the components took a long time, thus making the machines and labour idle.

Committee Recommendation

460. Within three months of adoption of this report the management should develop parameters to guide in the payments of staff that corresponds with the performance of the rigs and incorporate it in the human resource policy manual and further, develop mitigation plans to reduce nonproductive time.

461. The Committee directs the office of the Auditor General to keep the query in view by observing it in the subsequent audit cycles.

462. The Committee recommends that GDC to have a framework contract for spares and maintenance of the machines as per section 114 (2) of the Public Procurement and Asset Disposal Act, Cap 412C.

210. Wasteful expenses

463. As disclosed in Note 9 to the financial statements, the statement of profit or loss and other comprehensive income reflects other operating expenses of Kes.1,703,973,000 which constitutes an amount of Kes.338,688,000 (USD 2,853,177.33) which further includes interest on unpaid invoices of Kes.62,041,000 and arbitration costs of Kes.45,486,000, on account of a GDC vs Cluff Geothermal case. Further, as disclosed in Note 8 to the financial statements, the legal expenses balance of Kes.118,009,000 includes an amount of Kes.104,454,000 incurred on account of the above case, which brings the total expenses on account of the case to Kes. 211,981,000.

464. Further, and as disclosed in Note 23(a) to the financial statement the case arose from alleged breach of contract by the Company, for non-payment of USD 26,177,935 relating to provision of top holing services by the contractor at Menengai field. According to Management, the case

has since been determined through arbitration. The above expenses which are significant, have negatively affected the operating results of the Company and calls for Management to relook its management of contracts and related obligations, to avoid such legal expenses.

Management Response

The Accounting officer submitted as follows—

i.Background of the matter

465. Geothermal drilling in Menengai started in February 2011 with two GDC rigs. Menengai drilling experience showed that rig mobilization and drilling the top section of the well up to the production casing depth (1000M – 1200M) took the longest time. There was need to drill wells at a faster rate to meet the steam/power development targets outlined in the ministry of energy 5000MW+ development plan. To meet this requirement, GDC explored several options to fast track the drilling process and established that top holing was the most viable technique. Top holing technique employed a smaller rig that was fast to move from site to site, took shorter time to rig up/down, and could drill the top section in shorter time by using pressure/air hammer technology. After the well was top holed, GDC's big/high horsepower rig would be used to deepen the wells to the required total depth.

466. GDC entered into contract with Cluff Geothermal, and other consortium members made up of: Cluff Geothermal, Great Rift Drilling, and Ardon Risk & Support Services (K) Limited for provision of Top Holing Drilling Services for Twenty (20) Geothermal Wells at Menengai Geothermal Project on 15th February 2013. Each well was to be top-holed/ drilled to a measured true vertical depth of 1000M or total true vertical depth to a minimum of 2,000M at a contract value of USD 41,219,208 inclusive of taxes.

467. The Contractor commenced the works on 14th August 2013 and suspended operations on 26 February 2015. A total of fourteen (14) wells were top holed. The Contractor submitted invoices amounting to USD

14,551,954.66 for drilling and reimbursable costs for service rendered between August 2013 and February 2015. GDC paid the contractor in full for the said amount which constitutes cost of all works done by the contractor.

468. Due to financial challenges, the contractor suspended operations and de-mobilized the drilling crew and equipment on 23rd June 2016. The contractor started charging stand by charges even when his personnel demobilized from site. By December 2016 the contractor had claimed more than USD 15 Million. GDC disputed the standby charges because the suspension of works was not authorized.

ii. The case

469. Cluff proceeded to declare a dispute and filed a notice of arbitration at the London Court of International Arbitration (LCIA) on 15th April 2017 seeking an amount of Ksh 2.7 billion (US Dollars 26,264,509.03) in unpaid invoices for the period from March 2015 to June 2016, damages in the form of lost profits and consequential loses related to delayed payments (and non-payment) of certain invoices. Cluff as well threatened to bring a suit against the Republic of Kenya under the agreement for promotion and protection of British investments in Kenya signed in September 1999.

470. The Office of the Attorney General and Department of Justice took over the conduct of the matter being a matter that fell under his jurisdiction as provided for under section 5 (1) (k) of the Office of the Attorney General's Act 2012. The Attorney General entered appearance before the LCIA for and on behalf of GDC and appointed a co-counsel to handle the matter. GDC procured the services of a forensic accounting expert, and technical drilling experts to assist the counsel in the matter.

471. The matter was heard at the London Court of International Arbitration from 2nd – 18th July 2018.Upon conclusion of the hearing the LCIA rendered its award as follows.

i. The Respondent (GDC) will pay the Claimants (Cluff) the sum of Ksh 232 million (US $2,259,680) in respect of invoices GRD041, GRD042 and GRD058.

ii. The Respondent (GDC) will pay to the Claimants (Cluff) the sum of Ksh 61 million (US $593,497.33) in respect of interest under s.49 of the Arbitration Act up to [3 June 2019] and continuing thereafter at a

rate of Ksh 46,000 (US $463,23) per day until such date as the Respondent pays;

iii. All other claims are dismissed; and

iv. Issues of costs are reserved to be dealt with in a subsequent award.

Parties subsequently agreed on the issue of costs and closed the matter with GDC having fully paid the decretal sum.

ii. Conclusion of the matter

472. The Solicitor General wrote a letter to the Head of Public Service informing him of the outcome. In the said letter, the Office of the Attorney General & Department of Justice opined that the award was favourable to the state and GDC having knocked off over Ksh 2.4 billion (US $ 23,000,000). They further stated that the Government of Kenya had incurred a significant saving by defending the case fully.

473. The status of the top holed wells are as follows:

	WELL ID	SPUD DATE	COMPLETION/ABONDONED DATE	DEPTH (m)	Remarks	Current Status
1	MW-14A	30-Aug-13	Abandoned on 15th Dec 2013 at depth 597m, top of fish 271m	597	Abandoned due to collapsed formation. Has stuck drill pipes.	To be utilized for geological hazard monitoring and other research work
2	MW-23	8-Jan-14	15-Mar-14	1001	Drilled to completion by GDC rig after top-holing	To be utilized for reinjection of brine from other production wells

3	MW -24	25-Mar-14	Abandoned on 7th April 2014 at depth 85M due to misalignment.	85	Abandoned due to misalignment.	To be utilized for geological hazard monitoring and other research work
4	MW - 24A	9-Apr-14	Abandoned on 2-May-2014 due to failed fishing operations	503	Drilled to completion by GDC rig after top-holing	To be utilized by alternative technology
5	MW -25	5-May-14	Abandoned on 27/May/14	525	Abandoned due to stuck drill pipes and failed fishing operations	To be utilized for geological hazard monitoring and other research work
6	MW - 25A	3-Jul-14	Abandoned on 16-Aug-14 due to stuck drill string and failed fishing operations	480	Abandoned due to stuck drill pipes and failed fishing operations	To be utilized for geological hazard monitoring and other research work
7	MW -25B	5-Dec-14	25-Dec-14	507	Drilled to completion by GDC rig after top-holing	To be utilized for monitoring performance of the production

						reservoir
8	MW -26	22-Aug-14	12-Sep-14	503	Awaits further drilling to deeper depth	To be drilled deeper for future use
9	MW -8A	1-Jan-15	17-Jan-15	360	Drilled to completion by GDC rig after top-holing	To be utilized by alternative technology
10	MW -27	21-Sep-14	22-Oct-14	456	Drilled to completion by GDC rig after top-holing	To be utilized by alternative technology
11	MW -28	26-Oct-14	11-Nov-14	456	Drilled to completion by GDC rig after top-holing	To be utilized for reinjection of brine from other production wells
12	MW -29	15-Nov-14	29-Nov-14	457	Awaits further drilling to deeper depth	To be drilled deeper for future use
13	MW -31	25-Jan-15	14-Feb-15	366	Awaits further drilling to deeper depth	To be drilled deeper for future use

14	MW-32	24-Feb-15	28-Feb-15	80	Abandoned at the time when dispute arose between the parties	Not usable. The site is unstable and can't support a high-capacity drill rig.

Submission by the Solicitor General

Introduction

474. In respect to the query whether Geothermal Development Company (GDC) sought legal advice from this Office and if GDC conducted due diligence before entering into the Contract, from the file records, this Office was unable to locate any request for legal advisory in both respects.

London Court of International Arbitration ("LCIA")

475. The Contractor/Claimants' (Cluff Geothermal Limited, a company duly incorporated under the laws of the United Kingdom, and Great Rift Drilling Limited, a company duly incorporated under the laws of Kenya) declared a dispute vide the letter to GDC dated 23rd November, 2016. The Contractor/Claimants' thereafter filed a Request for Arbitration dated 9th May, 2017 at the London Court of International Arbitration ("LCIA").

476. The dispute between the Parties arose from a Drilling Contract signed on 15th February, 2013 between the Claimants' and a third-party (Adrari Risk & Support Services (K) Limited) as the drilling service providers, and the Respondent/GDC.The Drilling Contract was for the provision of top holing drilling services for twenty (20) geothermal wells to a depth of 1000m (or wells to a depth equivalent to 20,000m) at the Menengai Field.

477. The arbitration was initiated pursuant to Clause 16.8.1 of the Drilling Contract, which provided as follows:

i. Resolution of Disputes

47.8. In the event of any dispute or difference arising between the parties in relation to or arising out of this agreement, including the interpretation, rectification, termination or cancelation of this Agreement:

a. Subject to the Parties' right of election set out, any dispute, controversy or claim arising out of or in connection with this Agreement which cannot be settled amicably between the Parties, including a dispute as to the validity or existence of this Agreement (a "Dispute"), shall be resolved by arbitration in London conducted in the English language by three arbitrators pursuant to the rules of the London Court of International Arbitration ("LCIA") save that, unless the Parties agree otherwise:

b. each Party shall nominate and appoint an arbitrator;

c. the third arbitrator, who shall act as chairman of the tribunal, shall be chosen by two arbitrators appointed by or on behalf of the Parties. If it is not chosen and appointed within 30 days of the date of appointment of the later of the two Party-appointed arbitrators to be appointed, it shall be appointed by the LCIA;

d. each arbitrator shall be and shall remain independent and impartial of each Party, and no arbitrator shall be of the same nationality as any Party.

e. The Arbitrators' decision shall be final and binding (in the absence of manifest error) and may only be referred to a court for the purpose of enforcement, including by making an application to any court having jurisdiction for judgment on the award to be entered and/or for enforcement of any award including enforcement of any award granting interlocutory relief against any other party to the arbitration, and for the obtaining of any evidence (whether by discovery of documents, testimony, affidavits or other means) which the arbitrators direct shall be admitted to arbitration. The Parties may not appeal an award to any court unless on a point of law. The arbitration tribunal shall have the power to make provisional awards and to order on a provisional basis any relief which it would have power to grant in a final award;

f. The decision of the arbitration tribunal shall be in writing and shall state the reasons for the decision and all facts and circumstances relied upon.

g. Each Party shall bear its own costs of preparing and presenting its case. The costs of the arbitration (including fees and expenses of the arbitrators) shall be shared equally between the Parties unless the arbitration award provides otherwise.

h. The terms of this Agreement shall not prevent or delay the Parties from seeking orders for specific performance or interim or final injunctive relief on a without notice basis or otherwise.

i. Any order, award, or other decision or finding of a court of competent jurisdiction and/or the arbitrators or any agreement reached by way of settlement between the Parties in respect of any dispute, disagreement or question arising out of or in relation to or in consequence of this Agreement or relating to its construction or performance shall be enforceable in any jurisdiction in which either of the Parties has assets."

479. Pursuant to the Drilling Contract, the Parties, including, appointed a highly respected Arbitral Tribunal: Ms. Chantal-Aimée Doerries Kings Counsel, Chair of the Tribunal (a former Chair of the Bar Council of England and Wales), Dr. Gavan Griffith Kings Counsel (a former Solicitor General of Australia) and Dr. Michael Mayer (a Senior Austrian lawyer). On 18th July, 2017, the Honourable Attorney General advised for the appointment appointed as Co-Counsel, Mr. Michael Sullivan Kings Counsel of One Essex Court Chambers, London, UK.

480. Vide the letter from Office of the Attorney General and Department of Justice (OAG&DOJ) to GDC dated 28th September, 2017, the Office of the Attorney General advised for the appointment of a Quantum (Forensic Accounting) Expert: Stone Turn Group (Mr. Neil Ashton of London, UK). Vide the letter from OAG&DOJ to GDC dated 6th November, 2017, the Office of the Attorney General advised for the appointment of the Technical Experts: Mr. Hagen Hole (Geothermal Consultants Limited, New Zealand) and Mr. Stephen Pye vide the letter from OAG&DOJ to GDC dated 13th February, 2018, the Office of the

Attorney General advised for the appointment of Professor Albert Mumma SC as the Legal Expert.

Brief of the Claimants Case

481. The Claimants' Statement of Case and Reply was based on the following Claims:

i. Failure to pay for drilling works (unpaid invoices breach): The Claimants contended that GDC was in breach of its contractual obligations by failing to pay the sums owed within the contractual period of 45 days. According to the Claimants, the failure to pay outstanding invoices began mid-2014 and continued until the contract was terminated for repudiatory breach.

ii. Failure to pay standby charges (standby breach) and demobilization costs: Pursuant to the contract, the Claimants contended that they were entitled to invoice GDC when the site was on standby. The price schedule in the contract outlined what would amount to standby and a charge of USD 1000 per hour would accrue for reasons outside the Claimants control. The Claimants invoiced GDC for standby on water, delay on payment of invoices and for demobilization.

iii. Misuse of Advance Payment in breach of the drilling contract (Advance Payment Breach): The drilling contract provided that GDC would provide the Claimants with an Advance Payment (AP), secured by way of an Advance Payment Guarantee (APG).

iv. It was the Claimants position that it was an implied term of the contract that the AP was to be set off against invoices progressively at regular intervals during the lifetime of the contract. The Claimants contended that by GDC offsetting the AP against the outstanding invoices for drilling works in a one-off offsetting, was in breach of the implied terms of the contract.

v. Termination of the contract: The Claimants contended that GDC's breaches (as set out above) were repudiatory and therefore justified their termination of the contract.

vi. The Claimants' had six (6) factual witnesses: Mr. Carl Badenhorst; Mr. George Percy; Mr. Reuben Odhiambo Owila; Ms. Sasha Cook; Mr. Jeff

Bjorgan and Mr. Lee Cooke. The Claimants Technical Experts included: Mr. Jim Daniels; Mr. Mathew Shoppe - Quantum Expert and legal expert witness statement from the late Rtd. Justice Havelock.

vii. In brief, the sum of the Claimants' claim was for either USD$ 25,908,978 (under the 500 meters per well drilling programme) or USD$ 26,177,935 (under the 1,000 meters per well drilling programme); categorized as follows:

a. US$ 13,678,487 for unpaid invoices during the period from March 2015 to June 2016, including interest payable;

b. US$ 11,549,114 for damages in the form of lost profits on the remaining work under the Drilling Contract; and

c. US$ 950,334 for consequential losses related to the Respondent's delayed payment (and non-payment) of certain invoices.

Brief of GDC/Respondent's Defence

482. The Respondent's Defence and Counter Claim and Rejoinder addressed the following core issues:

i. The Claimants' ceased works and abandoned site on 28th February, 2015.

ii. The Claimants' were in breach of their contractual obligations for not completing the twenty (20) wells as provided for in the Top Holing Drilling Services Contract. A total of fourteen (14) wells were top holed. Out of these nine (9) wells were successfully completed. Four (4) wells were abandoned, while the last well was left incomplete at 73m.

iii. The Claimants' were required within the contractual period of eighteen (18) months to have completed top holing of a cumulative depth of 20,000M, equivalent to 100% of the scope of the works in accordance with the contract. The Claimants ceased works at a cumulative top-holing depth of 639M, equivalent to 32% of the total scope of works.

iv. The defence also raised the Claimants' negligent representations of their ability and expertise in air-hammer drilling, their breach of the drilling agreement as well as their abandonment of the Project as follows:

a. The Claimants' were negligent in advising the Respondent that the air hammer technique of drilling was appropriate for use in drilling twenty wells on the Menengai site.

b. The Claimants' were negligent in advising the Respondent that by use of the air hammer technique of drilling, they would be able to drill twenty wells in an indicative period of 18 months at the Menengai site.

c. The Claimants were negligent in advising the Respondent that they would require only 20,000 liters of water per day in order to perform the agreement.

d. The Claimants were not in a position to commence works in April 2013 as agreed as they did not have all relevant equipment on site in order enable them to do so.

e. The Claimants were negligent and in breach of contract in using and persisting in the use of air hammer technique of drilling when they knew or ought to have known that the same was unsuitable given the particular formation.

f. The Claimants were neither equipped nor sufficiently skilled or competent to undertake drilling works using the air hammer technique of drilling at the site.

The Claimants' repudiated the contract.

483. The Respondent had twelve (12) factual witnesses: Mr. Cornel Ofworia (General Manager, Geothermal Resources Development); Mr. John Lagat (Regional Manager, North Rift); Mr. Paul Ngugi (Regional Manager, Central Rift) Mr. Ruben Ngasi (Manager, Drilling Equipment Maintenance); Mr. Stephen Kangogo (Manager, Drilling Equipment Maintenance); Ms. Jacklyne Wakhungu (Chief Accountant); Mr. Anthony Ng'ang'a (Senior Engineer, Projects); Mr. Abraham Khaemba (Senior Drilling Engineer); Mr. Wellington Kivure (Senior Drilling Engineer); Ms. Lilian Okwiri (Senior Engineer, Drilling Equipment Maintenance); Mr. Michael Mbevi (Former General Manager, Drilling Services) and Dr. Silas Simiyu (Former MD & CEO).

Arbitral Tribunal's Orders

484. The Hearing of the Arbitration was held from 9th to 16th July, 2018 in London.The Arbitral Tribunal delivered the Award on 3rd June, 2019. The total sum the Claimants recovered as directed by the Tribunal, and paid by GDC was USD$ 2,259,680 and interest thereon of USD$ 593,497.44 (with interest accumulating at the rate of USD $ 463.23 per day, from date of the Award), in total Approx. the sum of USD$ 2,763,153.51.

485. The Claimants' claim succeeded on the payment of 3 invoices and interest only. The invoices were specifically; two (2) wait on water invoices (invoices GRD 041 and GRD 042) and one (1) demobilization cost invoice (invoice GRD 058) totaling the amounts at paragraph 19 above. The balance of the claim was dismissed.

General Comments

486. The Partial Final Award was favourable to the State and GDC.GDC had been sued for a total sum of USD$ 26,177,935 (plus interest and costs). This was a contingent claim estimated to have been approximately in the region of USD$ 34,000,000 (inclusive of interest and costs).

487. GOK obtained a successful outcome and prevented the loss of public funds. The claim was drastically reduced to a total sum of USD$ 2,763,153.51, inclusive of interest and costs.

488. Further, it should be noted that on 29th September 2017, 20th April 2018 and 3rd July 2018, the Claimants' Counsel, Omnia Strategy LLP, led by Ms. Cherie Blair CBW KC sought to settle the matter at US$ 13,000,00. In all the instances, the Office of the Attorney General found that on the assessment of the merits, the matter could not be settled at US$ 13,000,000, and therefore found it prudent for the matter to proceed to a full hearing and over US$ 23,000,000 (as well as interest and costs) was knocked off from the Claimants claim.

Committee Observations/Findings

489. The Committee noted that Cluff Geothermal Limited were in breach of their contractual obligations for not completing the twenty (20) wells as provided for in the Top Holing Drilling Services Contract. A total of fourteen (14) wells were top holed and six (6) wells were never top holed.

490. The Committee noted from the submissions of the Solicitor General on the arbitration case that, GDC paid USD$ 2,763,153.51 to Cluff Geothermal Company which was lower than the total sum of USD$ 26,177,935 claimed by Cluff Geothermal Limited in the Arbitration case.

491. The Committee noted that this was a repayment for the unpaid pending certificates.

Committee Recommendation

492. The Committee recommends that the matter is resolved, however, in light of this, the agency should relook at all the contracts they have entered into and the obligations thereof to avoid such legal expenses.

FINANCIAL YEAR 2019/2020

493. The Auditor General gave a **qualified** opinion and raised the following concerns:

Impact of Accounting Policy Changes on the Financial Statements

211. Steam Revenue

494. The statement of profit or loss and other comprehensive income reflects revenue amounting to Kes.1,000,781,000, which according to Note 5 to the financial statements, was realized from sale of steam from Olkaria wells. Previously, all revenues from sale of steam were recognized in the statement of profit or loss and other comprehensive income in the period which the Company supplied the steam and collectability of revenue was reasonably assured. However, during the year under review, Management changed the accounting policy on revenue from sale of steam, as disclosed in Note 2a to the financial statements. Arising from this change, the portion of steam revenue appropriated for recurrent expenditure in the national budget is recognized as revenue in the statement of profit or loss and other comprehensive income, while the

portion appropriated for development expenditure is recognized in the statement of financial position as capital grants.

495. The above change also resulted in restatement of amounts reported in prior years as capital grants and revenue where part of revenue from sale of steam are now accounted for as capital grants in the statement of financial position, instead of being reported as revenue in the statement of profit or loss and other comprehensive income as before.

496. The accounting policy adopted by the Management constitutes a departure from the requirements of the International Financial Reporting Standards (IFRS) 15, on revenue from contracts with customers. According to the standard, proceeds from sale of steam constitutes revenue from contracts with customers and should therefore be recognized in the statement of profit or loss and other comprehensive income, and not as a capital grant in the statement of financial position. Had the Management accounted for revenue from steam sales in accordance with IFRS 15, the Company would have recognized additional revenue of Kes.2,167,000,000 in the statement of profit or loss and other comprehensive income, and the carrying amount of the capital grants in the statement of financial position would have been reduced by a similar amount and all the prior year adjustments disclosed in Note 26 to the financial statements would have been reversed. Further, the income tax and profit after tax for the year under review would have increased by Kes.541,700,000 and Kes.1,625,250,000 respectively, while shareholders' equity would have increased by Kes.1,625,250,000. In the circumstances, the financial statements were not prepared in accordance with International Financial Reporting Standards, with respect to revenue.

Management Response

The Accounting Officer submitted as follows—

A. Background information on steam charge revenues

497. The government vested 59 wells in Olkaria drilled using government funding to GDC with the aim of fast-tracking geothermal development in the country. The company started receiving payments for the steam generated from the 59 wells in FY 2014/2015 as part of appropriations-in-aid (AIA) approved by the National Assembly in support of development budget for the company.

B. Accounting treatment of steam charge revenue

498. The Company's funding for development and recurrent activities through local appropriations-in-aid (AIA) and as approved by the National Assembly incorporates steam charge payments from Kengen for their utilization of the 59 wells in Olkaria that were vested in GDC by the Government. The development portion is accounted for through the Balance sheet as a grant from government while the recurrent portion is accounted for through the income statement as revenue grant and subjected to corporation tax.

499. The company initially (FY 2014/2015 to 2018/2019) erroneously recognized the entire steam charge receipts from KenGen through its income statement rather than apportioning it as per the approved budget (i.e recurrent and development). This error in accounting for steam charges subsequently resulted in an over declaration of tax liability.

C. Correction of the accounting error

500. The GDC Board reviewed previous years' treatment of steam charge payments and noted that it had been erroneous and resolved to correct the accounting treatment errors made in the previous years in line with the provisions of international financial reporting standards. The key considerations informing the change of policy in treatment of steam charges and correction of previous years' accounting error are as below:

i. The Company is a National Government entity, obliged to comply with the provisions of the Public Finance Management Act, 2012 (PFMA).

ii. In line with the Act, the steam payments received are public money to be spent in accordance with the provisions of the Act. The Act defines "public money" as including "all money that comes into possession of, or is distributed by, a national government entity and money raised by a private body where it is doing so under statutory authority."

iii. Steam charge payments are classified as Appropriations in Aid in the National Budget and as such are applied against a vote as per Section 58 and 60 (1) (b) and 60 (2) of the PFM regulations 2015.

iv. The National Assembly has over the years appropriated the steam payments in the National Budget to support development and recurrent activities of the Company (summary of budget estimates is annexed as IV). The Company believes that this is in line with clause 61(a) of the PFM Regulations 2015 which provides that Development Estimates may include "appropriations-in-aid in form of receipts collected by any authorized national government agency or derived from the sale of goods and services directly derived from projects contained in the appropriate expenditure head".

v. The substance over form of the matter. The Board took into consideration the fact that the recognition of steam charge payments in the financial statements should reflect the underlying reality of the transaction in order to present a true and fair view of the affairs of the entity.

vi. That having been utilized as per the Appropriation Act, the appropriations-in-aid appropriated for development cannot be available to be treated as taxable income and therefore the decision to treat them in the same manner as development grants is correct.

D. Company's position on treatment of steam charge revenue

501. In the opinion of the Company, the accounting treatment of the steam charge revenues is in line with the intention of the Government in funding development of geothermal resources in the country. As part of disclosure requirements in the financial statements, the Company reported the entire steam charge payments and reclassified the portion appropriated for development expenditure which is recognized as a development grant in the Notes to financial statements.

502. The Company believed that this change and correction of error provided for the appropriate treatment of the revenue, recognizing the substance of the receipts imposed by the PFMA 2012 and the PFMA Regulations 2015, and the Constitution of Kenya 2010, on which the two are founded.

Committee Observations

503. The Committee noted that the Accounting Officer did not refute the fact that the revenue generated from the 59 wells was to be treated as Appropriation in Aid but was recorded as revenue in the books of account and therefore categorized as taxable income.

504. The Committee noted that the Accounting Officer had obtained an advisory from the Cabinet Secretary, the National Treasury and Economic Planning advising that the money generated from the 59 wells ought to be treated as appropriation in aid (AIA) and not revenue.

Committee Recommendation

505. The Committee recommends that the revenue generated from the 59 wells owned by GDC be treated as Appropriations-in-Aid, and the proceeds should only be used to develop more wells as per the agreement.

506. The Committee also recommends that the Accounting Officers of GDC and KRA should expeditiously engage with a view of reconciling the outstanding tax arrears.

507. The Committee recommends that the Accounting Officer of GDC should report on the status of the implementation of the above recommendation within three (3) months of adoption of this report to the OAG.

212. Long Outstanding Corporation Tax and Related Penalties

508. A change of the Company's accounting policy on revenue from sale of steam impacted on the outstanding corporation tax and related penalties. As reported in the prior year, the Company is required to comply with tax laws and other related regulations, including remission of taxes to Kenya Revenue Authority (KRA), as per the prescribed rates and remittance dates. The statement of financial position reflects current tax liability of Kes.197,853,000 (2019: Kes.530,395,000, restated). According to the audited financial statements for 2018/2019 financial year, the outstanding taxes amounted to Kes.4,042,976,000 accruing from 2014/2015 to 2018/2019 financial years.

509. Further, Note 15 to the financial statements reflect other payables amounting to Kes.1,145,516,000 (2019: Kes.1,415,125,000 - restated). Included in the amount are accrued interest and penalties amounting to Kes.364,516,000 (2019: Kes.333,759,000 - restated), which arose from non-payment of income taxes. According to the audited financial statements for the year ended 30 June, 2019, the outstanding interest and penalties amounted to Kes.1,440,807,350. However, it is not clear how the tax obligation from prior years was settled. Consequently, change of the accounting policy on proceeds from sale of steam resulted in reduction in taxes payable by the company to KRA. It is also not clear whether the application of the policy and its impact on taxes payable by the Company, from 2014/2015 to 2019/2020 financial years, was approved by The National Treasury and agreed with KRA. In the event that this matter is not resolved with KRA, the Company is at risk of litigation and other tax recovery measures regarding the outstanding taxes, interest and penalties.

Management Response

510. The Accounting Officer submitted that the Government of Kenya vested fifty-nine (59) wells in Olkaria drilled using Government funding to GDC. The vested wells were to generate revenues for further development of geothermal resources in the country. The National Treasury and Economic Planning reviewed the matter and provided guidance on the treatment of steam charges as appropriation in aid. Based on the National Treasury's guidance, there had been engagements between parties to deliberate on the matter. KRA had further requested for additional information from the company which was being compiled for submission. The Company was awaiting KRA's conclusion and position on the matter.

Committee Observations

511. The Committee noted that the Accounting Officer did not refute the fact that the revenue generated from the 59 wells was to be treated as Appropriation In Aid but was recorded as revenue in the books of account and therefore categorized as taxable income.

512. The Committee noted that the Accounting Officer had obtained an advisory from the Cabinet Secretary, the National Treasury and Economic

Planning advising that the money generated from the 59 wells ought to be treated as appropriation in aid (A/A) and not revenue.

Committee Recommendation

513. The Committee recommends that the revenue generated from the 59 wells owned by GDC be treated as Appropriation in Aid, and the proceeds should only be used to develop more wells as per the agreement.

514. The Committee also recommends that the Accounting Officers of GDC and KRA should expeditiously engage with a view of reconciling the outstanding tax arrears.

515. The Committee recommends that the Accounting Officer of GDC should report on the status of the implementation of the above recommendation within three (3) months of adoption of this report to the OAG.

213. Offsetting of Assets and Liabilities

516. The statement of financial position reflects cash and cash equivalents amounting to Kes.24,661,000 as further disclosed in Note 14 to the financial statements. However, according to the Note, a credit balance of Kes.3,000 in one of the accounts held with Co-operative Bank of Kenya was offset against the debit balances. This was contrary to Paragraph 32 of the International Accounting Standards (IAS) 1 – Presentation of Financial Statements which prohibits offsetting of assets and liabilities.

Management Response

The Accounting officer submitted as follows:-

i.Background to the matter

517. The account (dollar) was opened in line with the requirements of the development partner for Bogoria Silali project. It was meant to receive funds from Geothermal Risk Mitigation Facility (GRMF). The negative balance arose from bank charges on the Geothermal Risk Mitigation Fund project account they awaited disbursement of funds. The account was subsequently funded in the month of July 2022.

Committee Observations and Recommendation

518. The Committee observed that at the time of examination, the submissions by the Accounting Officer regarding offsetting of assets and liabilities was satisfactory hence the matter is resolved.

Emphasis of Matter

214. Material Uncertainty Relating to Going Concern

519. The statement of financial position discloses that the Company's retained earnings for the year under review amounting to negative Kes.1,892,861,000 (2019: negative Kes.2,092,648,000 - restated). Further, statement of changes in equity reflects a negative equity balance of Kes.1,890,861,000 (2019: negative Kes.2,090,648,000 - restated). According to this information, the Company's liabilities exceeded its assets by Kes.1,892,861,000 (2019: Kes.2,092,648,000 - restated). The Company has remained in a net liability position for the third consecutive year, indicating that a material uncertainty exists, which may cast significant doubt on the Company's ability to continue as a going concern.

Management Response

The Accounting Officer submitted as follows—

i. Background to the matter

520. The company's retained earnings comprised of cumulative declared profits or losses carried forward. The earnings were impacted by several factors such as revenues, operating expenses among others. The company corrected the accounting error in treatment of steam charge revenues which had led to declaration of profits for the years 2014/2015 to 2018/2019 and restated its financial statements for the respective years to reflect the same. The correction led to a reduction of revenue accounted for in the income statement. This ultimately led to revised profits/losses, hence the negative retained earnings.

ii. Company's evaluation of the negative retained earnings on the going concern of the Company

521. Despite the negative retained earnings, the Directors had assessed the company's ability to continue as a going concern with consideration of the continued Government commitment to fund and support the GDC projects as part of the medium-term expenditure framework (MTEF). These

projects are undertaken on behalf of the State. The Board had in addition evaluated business continuity based on the current and expected profitability. The company had signed three (3) contracts with Independent Power Producers (IPPs) for construction of 35MWe power plants in the Menengai Project. One of the IPPs had started operations and the company envisages that the additional revenue streams will contribute to increase in the company's profitability.

522. Besides the Menengai project, the company was also undertaking drilling activities in Baringo-Silali marking great milestones for the company's future stability. Regarding further utilization of the steam generated from these projects, the company was diversifying the development and utilization of geothermal energy and had put in mechanisms for direct uses that would culminate into the establishment of geothermal resource parks. This would add to the company's revenue stream. The company is also in engagements for partnerships to exploit consultancy opportunities in geothermal, a great milestone for the company and its future. Further assessment had been done regarding the ability of the company to meet its short-term obligations as they fall.

Committee Observations

523. The Committee noted that the Accounting Officer did not refute the claim by the Auditor on the Agency's status as a going concern.

524. The Committee noted that the material uncertainty relating to going concern partly relates to the outstanding corporate tax liability that was erroneously misstated in the books of accounts.

525. Further, the Committee was informed that the Agency had undertaken measures in a bid to mitigate the going concern issue.

Committee Recommendation

526. The Committee recommends that GDC should expeditiously engage KRA to reconcile the tax arrears.

527. The Committee recommends that the Accounting Officer should submit a report on the status of the tax liability within three (3) months of adoption of this report.

528. The Committee recommends that the Accounting Officer should submit a report on implementation of the set mitigation measures to alleviate the going concern status within six(6) months of adoption of this report.

215. Unproductive and Abandoned Wells

529. As reported in the prior year, the statement of profit or loss and other comprehensive income reflects other expenses amounting to Kes.1,029,524,000, as disclosed in Note 9 to the financial statements. Included in the amount is Kes.964,045,000 (2019: Kes.917,002,000) which relates to expenditure on unproductive and abandoned wells, written off during the year under review. According to Management's past responses, success rates for geothermal wells increase as more wells are drilled to provide surface information. The cost of unproductive and abandoned wells written off by the Company are significant and requires enhanced management attention, with the aim of minimizing drilling losses.

Management Response

The Accounting Officer submitted as follows—

i. Background to the matter

530. GDC is mandated to de-risk geothermal prospects in the country, and this invariably has outcomes of both successful (productive wells) and unsuccessful wells (un-productive wells due to low temperature or low permeability and abandoned wells due to drilling or formation challenges).The risk of drilling unproductive wells is normally highest at the initial exploration drilling phase and reduces through appraisal to production drilling phase. Wells 24A and 25B herein below were drilled as appraisal wells to discover the extent of the resource and unfortunately were unsuccessful.

531. The cost of unproductive and abandoned wells for the year comprised of the cost of well 24A of Ksh.516,859,127 & Well 25B of Ksh.400,143,079 respectively (Annex V: Well cost breakdown) that turned out to have low permeability and low temperature. The costs relate to labor costs, material costs and other overhead costs incurred during drilling. GDC staff did the drilling of the above wells.

ii. Mitigation measures

532. In effort to minimize drilling challenges and improve success rate, the company had entrenched collaborative efforts of GDC experts and

external consultants including ELC consultant from Italy, WestJEC, JICA Consultant from Japan and the Geothermal Advisory Board (GAB). In well siting and targeting as well as drilling best practices. Menengai had a complex geological formation inside the caldera that has been quite challenging in terms of location of buried permeable structures where enhanced permeability can be intercepted.

533. To address this challenge, the Company had sought peer review from the Geothermal Advisory Board (GAB) and the other experts on the geo-scientific and drilling activities to provide second opinion on the well siting and improvement of drilling performance. This has led to improvement in success rates.

ii. Current status

534. In addition to working with the consultants, the Board had put in place a Well Abandonment and Write off Policy and increased budgetary allocation to improve on well targeting and drilling efficiency. Great improvements have been noted in the Paka Field.

Committee Observation

535. The Committee observed that at the time of examination, the Accounting Officer submitted that the Management of GDC had developed a Well Abandonment and Write Off Policy.

Committee Recommendation

536. The Committee recommends that having in place the well abandonment and write off policy, the matter is resolved.

537. The Committee also recommends that the Office of the Auditor General should check on the status of the audit query in future audit cycles, to confirm the effectiveness of the strategies adopted by the management to mitigate unproductive and abandoned wells.

216. Late Submission of Financial Statements

538. Section 81(3) and 81(4)(a) of the Public Finance Management Act, 2012 provides that the Accounting Officer of a National Government entity is responsible for the preparation and fair presentation of financial statements in accordance with the relevant accounting standards

prescribed and published by the Accounting Standards Board. The Act requires those financial statements to be submitted to the Auditor-General for audit, not later than three months after the end of each financial year, which should be by 30 September, 2020 in respect of the year under review.

539. However, the Management of Geothermal Development Company Limited did not submit signed financial statements of the Company to the Auditor-General on time as required by law. The financial statements were forwarded to the directors for signature by the appointed auditors, Deloitte & Touche, on 26 August, 2020 but were signed on 4 February, 2022 which was over 18 Months later.

Management Response

The Accounting Officer submitted as follows—

540. The audit of the financial statements commenced on 11th September 2020 by M/s Deloitte and Touche (on behalf of the Auditor General) after submission on 30th September 2020.However, the conclusion of the audit took longer than expected following the Board resolution on 14th January 2021 to revise the treatment of steam charge payments which were considered not to be in line with the provisions of the Public Finance Management Act and the correction of errors arising there from. The resolution of the Board and its implication on the financial statements of the company was communicated to the Auditor General.

541. The process of correcting prior errors by restating the company's financial statements took quite some time due to the technical nature of the matter and the need to engage the various stakeholders involved in the process. This led to the delay in conclusion and submission of the approved financial statements of the company. The audit was concluded despite having taken longer than anticipated due to the changes in treatment of steam charges.

Committee Observations

542. The Committee observed that Accounting Officer did not refute the fact that the financial statements were not submitted on time contrary to section 81(3) and 81(4)(a) of the Public Finance Management Act, 2012.

Committee Recommendation

543. The Committee reprimands the Accounting Officer for not complying with the requirements of Sections 68(2)(k), 81(3) and 81(4)(a) of the Public Finance Management Act, 2012 and section 47 of the Public Audit Act, 2015 and further directs that in future the Accounting Officer of GDC should strictly submit documents on time.

217. Cost of Non-Productive Time

544. As similarly reported in the prior year, the statement of financial position further reflects other operating expenses amounting to Kes. 1,029,524,000 which includes an amount of Kes. 32,173,000 (2019: Kes. 116,288,000), in respect of non-productive time (NPT) on drilling activities written off during the year. According to Management's past responses, NPT costs were mainly caused by operational and drilling program, and logistical challenges. The Management has in the past committed to develop a formal policy on what should constitute acceptable levels of NPT based on international best practices. However, by the time of concluding the audit for the year under review, no such policy had been developed to guide the management on NPT costs. These are avoidable costs which increase the cost of drilling wells and ought not to have been incurred by the Company.

Management Response

The Accounting Officer submitted as follows—

i. Background to the matter

545. GDC management does an analysis of the drilling time to monitor and evaluate its drilling performance with a view of correcting and enhancing efficiency, and proper allocation of costs. Non-productive time is considered as time spent by the drilling crew outside the planned drilling time. This could be because of factors that are either avoidable or non-avoidable. These factors could lead to stoppages in drilling hence the down time.

ii. Non-Productive Time costs

546. In accordance with the company policy and the Financial Reporting Standards, the labor (staff) costs incurred during drilling because of down time do not constitute the cost of the well and are thus expensed through the income statement. During this period, the expensed costs were because of logistical downtimes such as wait on repairs of the equipment, transport, and wait on water for drilling which is a critical component during drilling among other factors. The company has put in place a policy to ensure that the non-productive time was effectively monitored, managed, and recognized.

Committee Observations

547. The Committee observed that the management of GDC had come up with a policy on non- productive time. However, mitigation for occurence in the future had not been expounded.

548. The Committee observed that the Paka and Silale fields had logistical challenges stemming from poor infrastructure and the long distance between the geothermal development fields and the logistical centers in Nakuru and Marigat. This had led the company incurring huge costs in non-productive time.

549. The Committee noted that the management lack of framework contract in the supply of the critical drilling components had greatly contributed to high cost of non-productive time, as sourcing of the components took a long time, thus making the machines and labour idle.

Committee Recommendation

550. Within three months of adoption of this report the management should develop parameters to guide in the payments of staff that corresponds with the performance of the rigs and incorporate it in the human resource policy manual and further, develop mitigation plans to reduce nonproductive time.

551. The Committee directs the office of the Auditor General to keep the query in view by observing it in the subsequent audit cycles.

552. The Committee recommends that GDC to have a framework contract for spares and maintenance of the machines as per section 114 (2) of the Public Procurement and Asset Disposal Act, Cap 412C.

FINANCIAL YEAR 2020/2021

The Auditor General gave an **adverse** audit opinion and raised the following concerns:

218. Misrepresented Balances

218.1. Trading Revenue Recognized as Capital Grants

553. The statement of profit or loss and other comprehensive income reflects steam charges revenue totaling Kes.1,033,399,000, as detailed in Note 5 to the financial statements. The Note indicates that the Company earned Kes.3,028,849,000 from steam-charges during the year under review but, in its accounting policy, reported Kes.1,995,450,000 of the earnings as capital grants applied to fund development projects. However, no satisfactory explanation was provided by Management for capitalization of a portion of revenue. In the circumstances, the accuracy, completeness and validity of the revenue totaling Kes.1,033,399,000 could not be confirmed.

Management Response

554. The Accounting Officer submitted that the actual appropriation in aid for the year was Ksh 3,038,000,000 out of which amount, Kes.1,995,450,000 was recognized as development grant while Kes.1,033,399,000 was recognized as recurrent expenditure grant in line with printed estimates for the year and in line with the accounting policy of the Company. The accounting policy was revised in the financial year 2019/20.The matter was still under review.

Committee Observations

555. The Committee noted that the Accounting Officer did not fully recognize the steam revenue and instead capitalized part of the revenue in the financial statements contrary to IFRS 1.

Committee Recommendation

556. The Committee recommends that the Accounting Officer should recognize the steam revenue in full and reinstate the financial statements to reflect the correct financial position of the GDC as per IFRS 1.

219. Pending Grants Recognized as Revenue

557. The trade and other receivables balance includes grants totaling Kes.82,680,000 listed in the general ledger as receivable from the National Government. No explanation was provided why the grants, which had not been received by the end of the year under review on 30 June, 2021, was recognized as income in the year under review contrary to requirements of International Accounting Standards (IAS) 20 - Accounting for Government Grants and Disclosure of Government Assistance, and the prudence concept of accounting. In the circumstance, the financial statements do not comply with International Financial Reporting Standards on Government grants and Government assistance, and further, the other receivables balance totaling Kes.2,396,127,000 was not fairly stated.

Management Response

The Accounting Officer submitted that—

558. As per the provisions of the accounting standard (IAS 20), the grants receivable of Ksh 82,680,000 related to European Investment Bank (EIB) grants of Ksh 70,180,387 and Exchequer grant of Ksh 12,500,000 which were received on 6th and 9th July 2021. The company treated the grant as receivable because all the conditions for receipt of the grant had been met as at the balance sheet date and were matched to the expenses.

Committee Observation and Recommendation

559. The Committee observed that the submission by the Accounting Officer was satisfactory and the matter is resolved.

220. Unconfirmed balances

560. Several balances reflected in the financial statements were not supported with sufficient appropriate records or information, as explained in the following paragraphs:

220.1. Administration Expenses

561. The statement of profit or loss and other comprehensive income reflects administration expenses totaling Kes.2,133,856,000, as further disclosed in Note 8 to the financial statements. However, the following anomalies were noted in regard to the balances:

220.1.1. Unexplained Apportionment of Employees Benefit Expenditure

562. Administrative expenses on employee benefits totalling Kes.523,473,000 reflected in Note 8 to the financial statements were comprised of salaries and wages totalling Kes.491,772,000 and retirement benefits totaling Kes.31,701,00, as indicated in Note 10. However, examination of the payroll data indicated that salaries and allowances paid to employees totaled Kes.651,224,010, out of which only Kes.491,544,000 or 75% was expensed as recurrent expenditure. Management did not provide documentary evidence, including accounting policies, to explain the basis for the apportionment of 25% of the costs totalling Kes.162,806,003 to capital expenditure. In the circumstance, the accuracy, completeness and fair statement of employee benefits expenses totaling Kes.523,473,000 reported to have been incurred in the year under review could not be confirmed.

Management Response

563. The Accounting Officer submitted that the company undertakes drilling activities using its own employees. The staff costs form part of the project costs. The policy of the company was that head office costs were apportioned to the project on effort basis. Previously, employee benefits were apportioned between the head office and projects based on staff ratios and utilization in project activities on a 75:25 basis which was estimated appropriately though it had not been categorically stated in the policy manual.

564. The policy on allocation of employee benefits between the head office and projects had been put in place with effect from FY 2021/2022 to guide the allocation.

Committee Observation and Recommendation

565. The Committee observed from the submission by the Accounting Officer that a policy on allocation of employee benefits has been put in place hence the matter is resolved.

220.2. Unsupported Overtime Allowance

566. Examination of monthly payrolls indicated that the Company paid overtime allowances totaling Kes.6,232,390 to employees in the year under review. However, the Company's policy on payment of overtime allowances, approvals for the payments, timesheets completed by the payees and the payment rates applied were not provided for audit. As a result, the occurrence, validity and measurement of overtime allowances totaling Kes.6,232,390 could not be confirmed.

Management Response

The Accounting Officer submitted as follows—

567. Overtime was paid to unionisable staff in line with the Human Resource Policy and the Collective Bargaining Agreement (CBA). Requisite documentation and approvals for payment of overtime are clearly stipulated in the company procedures manual. Currently, the company has entrenched computerized processing overtime allowances through an Employee Self Service (ESS) system where its employees lodge claims for overtime allowances online and approvals are done in the ERP (SAP) system.

Current Status

568. The company had incorporated overtime claims and payments through its ERP system for ease of retrieval and processing.

Committee Observations

569. The Committee noted the documents supporting the payments of overtime were not submitted to the auditor on time resulting to the query being raised.

570. The Committee also noted that the Human Resource Policy and Collective Bargain agreement permitted the payment of overtime allowance to union staff.

Committee Recommendation

571. The Committee recommends that the Accounting Officer should henceforth comply with section 68(2)(k), 81(3) and 81(4)(a) of the Public Finance Management Act, 2012 and section 47 of the Public Audit Act, 2015 by providing supporting documentation to the Auditor General in time.

572. The Committee recommends that the matter is resolved.

221. Cash and cash equivalents

573. The statement of financial position reflects cash and cash equivalents totaling Kes.887,789,000 held in various bank accounts as at 30 June, 2021. However, examination of bank reconciliation statements indicated that the balance included an unpresented cheque totaling Kes.1,804,659 drawn on 13 January, 2014 and which had since become stale. In view of the failure to reverse the cheque in the cashbook, the cash and cash equivalents balance was not fairly stated. In the circumstances, the accuracy and completeness of bank and cash balances totaling Kes.886,289,000 could not be confirmed.

Management Response

574. The Accounting Officer submitted that the amount of Ksh.1,804,659 related to valid payments to the beneficiaries of deceased staff that had been processed for release as at 30th of June 2021.The accounting documents attached were first posted in the system in 2014. But no payment had been made due to disagreements between the beneficiaries. However, payment was cleared from the bank in July 2021 hence was still valid.

Committee Observations and Recommendation

575. The Committee noted that the payments have since been cleared hence the matter is resolved.

222. Trade and Other Receivables

576. The statement of financial position reflects trade and other receivables totalling Kes.2,396,127,000 as further disclosed in Note 13 to the financial

statements. However, the following anomalies were noted in relation to the balance:

222.1. Long Standing Interest on Receivables

577. The trade and other receivables balance includes Kes.31,658,983 being interest receivable on late payment of invoices by Kenya Electricity Generating Company Limited (KenGen) for steam power sales made in the year 2018. In view of the failure to collect the long-standing debt its recoverability is doubtful. Further, the receivables balance includes additional debts totaling Kes.1,144,866,125 owed by KenGen. However, KenGen's financial statements for the year under review reflect debts totaling Kes.1,059,884,000 as owed to the Company. No reconciliation was provided by Management for the difference of Kes.84,982,125 and as a result, the actual amount owed by KenGen could not be confirmed.

Management Response

578. The Accounting Officer submitted that balances reported were as per internal records and concurrence from Ken Gen. As part of the audit procedures, KenGen confirmed the amount due from them to GDC and the status of payment in relation to the interest owing of Ksh.31,658,983. This was the basis for the balance as reported in the financial statements of the Company. Further, there was a continuous reconciliation of balances between the two entities to ensure that the balances being reported agree.

Committee Observation

579. The Committee noted at the time of examination that the management of GDC and KENGEN had carried out reconciliation and agreed on the reported balance of Kes.1,148, 418,354.84 as per the letter ref. MN/JM/MW dated 10th May 2022.

Committee Recommendation

580. The Committee recommends that Accounting Officer should submit the invoices for the interest on late payment to the Auditor General for verification within three(3) months of adoption of this report.

581. The Committee recommends that the Auditor General should keep in view the audit query in the following year.

222.2. Value Added Tax Recoverable

582. The trade and other receivables balance further includes Value Added Tax (VAT) receivable totalling Kes.598,671,000. However, no supporting records were provided for withholding VAT totalling Kes.31,298,573 included in the balance. In view of these anomalies the accuracy and extent of recoverability of the trade and other receivables balance totalling Kes.2,396,127,000 could not be confirmed.

Management Response

583. Withholding VAT related to amounts due to and from the KRA by virtue of GDC being a withholding agent of KRA. The amounts were withheld from payments to suppliers and from receipts by GDC from KenGen. As at the end of the financial year the amounts due and receivable in respect of withholding VAT was Ksh.31,298,573.

Committee Observations

584. The Committee observed from the submission of the Accounting Officer that the VAT recoverable amounting to 31,298,573 could not be accounted for and therefore the explanation was unsatisfactory.

Committee Recommendation

585. The Committee recommends that the Accounting Officer should submit a properly reconciliated report on VAT to the OAG within three (3) months of adoption of this report.

223. Current Income Tax Liability

586. The statement of financial position reflects a Nil current income tax liability. However, the audited financial statements for 2018/2019 financial year, indicated there were unpaid taxes totaling Kes.4,042,976,000 that had accrued from 2014/2015 to 2018/2019 financial years. However, change in

the Company's accounting policy on steam charges revenue in the year 2019/2020 reduced the outstanding corporation tax and related penalties outstanding as at 30 June, 2019 by Kes.2,512,581,000 to Kes197,853,000. The balance had, however, not been agreed with the Kenya Revenue Authority (KRA) as at 30 June, 2021. In the circumstance, the accuracy of the Nil current tax liability balance reflected in the financial statements could not be confirmed.

Management Response

587. The Accounting Officer submitted that the matter was awaiting deliberations of the round table meeting.

Committee Observations

588. The Committee noted that the Accounting Officer did not refute the fact that the revenue generated from the 59 wells was to be treated as Appropriation In Aid but was recorded as revenue in the books of account and therefore categorized as taxable income.

589. The Committee noted that the Accounting Officer had obtained an advisory from the Cabinet Secretary, the National Treasury and Economic Planning advising that the money generated from the 59 wells ought to be treated as appropriation in aid (AIA) and not revenue.

Committee Recommendation

590. The Committee recommends that the revenue generated from the 59 wells owned by GDC be treated as Appropriation in Aid, and the proceeds should only be used to develop more wells as per the agreement.

591. The Committee also recommends that the Accounting Officers of GDC and KRA should expeditiously engage with a view of reconciling the outstanding tax arrears.

592. The Committee recommends that the Accounting Officer of GDC should report on the status of the implementation of the above recommendation within three (3) months of adoption of this report to the OAG.

224. Current Income Tax

593. The statement of financial position reflects current income tax recoverable totaling Kes.131,501,000. However, records on tax payments indicated that withholding taxes paid included Kes.42,045,806 for the months of July, August, December, 2019 which therefore related to the 2019/20 financial year and not the year under review. In the circumstance, the current income tax balance totaling Kes.131,501,000 may not be fairly stated.

Management Response

594. The Accounting Officer submitted that the withholding tax amount of Ksh 42,045,806 related to steam charge payments for July, August & December 2019 and had been remitted by KenGen to KRA.GDC recognized the same in the current period and was reflected in i-tax ledger for the company. The taxes were then recognized and remitted.

Committee Observation

595. The Committee noted that from the submissions by the Accounting Officer the withholding tax amounting to Kes. 42,045,806 could not be accounted for and therefore the explanation was unsatisfactory.

Committee Recommendation

596. Within three months of tabling and adoption of this report the management of GDC to submit documentary evidence confirming the remittances of withholding tax amounting to Kes.42,045,806 to the OAG for verification.

597. The Auditor General to keep in view of this audit query in the next financial year.

225. Property, Plant and Equipment

598. The statement of financial position reflects property, plant and equipment with a net book value totalling Kes.44,641,491,000 as further disclosed in Note 17 to the financial statements. However, the following anomalies were noted in relation to the balance:

225.1. Material Differences Between Fair Value of Assets and the Carrying Amounts

599. The assets totaling Kes.44,641,491,000 are stated at historical cost less depreciation in line with the Company's policy on valuation of property, plant, and equipment. However, the Company's assets reflected carrying amounts that were materially different from their fair values. Further several assets that were fully depreciated were in use and in good working condition but were, contrary to International Accounting Standard No.16- Accounting for Property, Plant and Equipment, not revalued and their wear and tear charged against revenues for the year. In addition, the Company's assets register reflected freehold land and buildings located in Nakuru County acquired more than ten years earlier. Although their market values had since risen, the assets had neither been revalued nor the variance between their fair and book values disclosed in the financial statements as required by IAS 16. In the circumstances, the valuation of the property, plant and equipment net book balance totaling Kes.44,641,491,000 could not be confirmed.

Management Response

The Accounting Officer submitted as follows—

600. The company uses the cost model for recognizing property plant and equipment in the financial statement. Under the cost model, property plant and equipment are measured at cost less accumulated depreciation and any accumulated impairment losses. The Company does not depreciate land hence the depreciation charge under this class of assets relates to buildings.

601. The cost model was appropriately applied as per policy but further consultations are underway on changes to be incorporated in the revision of the policy.

Committee Observation

602. The Committee noted from the submissions by the Accounting Officer that GDC had breached the IAS (16) on revaluation of asset.

Committee Recommendation

603. The Committee reprimands the Accounting Office and directs that the Accounting Officer should carry out revaluation of all asset including fully depreciated assets, pursuant to the International Accounting Standard 16-Accounting for Property Plant and Equipment and restate the accounts to reflect the true position of GDC.
The Auditor General to keep in view this audit query in the next financial year.

225.2. Work-In-Progress

604. The property, plant and equipment balance include work in progress costed at Kes.5,103,387,000. In addition, the work-in-progress balance included works costing Kes.815,701,000 which had been completed but not capitalized as at 30 June, 2021. Further, projects costed at Kes.751,740,000 included in the work-in progress balance were unchanged from the previous year which implied that their execution may have stalled. No explanation was provided for the anomaly. In the circumstances, disclosures made in respect to the work-in-progress balance are not sufficient.

Management Response

605. The work in progress as disclosed under PPE are works of capital nature (Graded roads, boreholes) that are not being depreciated because they are yet to be commissioned. The works were completed and commissioned after year end hence depreciated in the FY 2021/22.
A significant portion of the work in progress as at year end related to the steam gathering system which was awaiting construction of the power plant and subsequent connection hence not stalled. One of the Power

plant is now connected. The Accounting officer confirmed that the works totaling Ksh.815,701,000 had since been capitalized.

Committee Observation

606. The Committee noted that the projects associated with the Kes.751,740,000, were related to steam gathering system which had not been fully capitalized due to inadequate power plants to utilize the available steam.

Committee Recommendation

607. The Committee recommends that within one year of adoption of the report, GDC should find a suitable power producer to utilize the unutilized steam.

608. The Committee further recommends that GDC should before drilling a well, identify possible power producers who should utilize the steam to avoid having unutilized steam as described in paragraph 343.

609. The Committee recommends that GDC should not have any unutilized steam within one year of completion of a well.

610. The Committee recommends that the OAG should in future audits of GDC include a paragraph on the status of the complete but uncapitalized steam wells.

225.3. Stalled Fuel Management System Project

611. The work-in-progress balance further includes works costing Kes.59,433,640 on design, supply, installation, and commissioning of an information management system. Examination of records on the project indicated that the Company contracted an international company in December, 2014 to install a fuel management system at a cost of Kes.344,523,712. However, implementation of the project stalled in 2015 after the first works certificate valued at Kes.59,433,640 was paid to the contractor. The procurement execution of the contract was thereafter put under investigation by the Ethics and Anti-Corruption Commission (EACC).

612. In view of the lapse of the contract period and delay in execution of the project whose completion has since become doubtful, the expenditure totaling Kes.59,433,640 incurred on the unused assets of the stalled project ought to have been impaired in accordance with International Accounting Standard No. 36 - Impairment of Assets. In the circumstance,

the work-in progress balance totaling Kes.5,103,387,000 may not be fairly stated. In view of these matters, the valuation, completeness and fair presentation of the property plant and equipment balance totaling Kes.44,641,491,000 could not be confirmed.

Management Response

The Accounting Officer submitted as follows—

Delivery of works

413. Management system items worth Ksh15,529,894 were received and utilized by the company. Management was awaiting the conclusion of the investigations by EACC to determine the appropriate steps to be taken

Committee Observation/Findings

414. The Committee observed that at the time of examination the Accounting Officer had paid the contractor ksh. 59,433,640 for the first milestone. However, the contractor had supplied items worth only Kes. 15,529,894 resulting in an overpayment of Kes. 43,903,746.

415. The Committee noted that the investigation by the EACC had dragged for long, and the current status was that the management of GDC had terminated the contract but had not instituted any steps to recover the overpayment from the contractor.

Committee Recommendation

416. The Committee recommends that EACC should fast track the investigations on the procurement execution of the contract.

417. The Committee recommends that GDC should institute measures to recover the overpayment from the contractor.

Other Matters

226. Prior Year Issues

418. The audit report for the year ended 30 June, 2020 raised several issues in relation to the balances reflected in the financial statements, lawfulness and effectiveness in use of resources and effectiveness of internal control, risk management and governance. Management's report on progress

made in following up on the Auditor's recommendations indicates that some of the issues had been resolved as at 30 June, 2021. The actual status of the issues shall be confirmed after they are discussed by Parliament.

Committee Observations and Recommendations

619. The OAG to keep in view of the matters in the subsequent financial year.

227. Losses Related to Drilling Rigs

227.1. Vandalized Drilling Rigs

620. In the year under review, an arbitrator appointed by the Nairobi Centre for International Arbitration awarded a security services firm Kes.50,027,187 comprised of Kes.46,518,501 for unpaid claims for services rendered to the Company and Kes.3,508,686 for arbitration costs. Review of documents provided for audit indicated that assorted electric cables, batteries, and electronic components for four (4) of the Company's rigs were stolen between 31 December, 2017 and 01 January, 2020. The Company had put the aggregate value of the vandalized items at Kes.51,038,525 and attributed the loss to laxity by the security firm which it had contracted to secure the rigs.

621. Management had withheld payments due to the firm and thereafter lodged a claim against it citing losses totaling Kes.2,896,488,313. The claim cited the stolen parts and loss of business after the four rigs were reportedly put out of service for two years. However, the Arbitrator dismissed the compensation claim after ruling that the Company withheld the firm's payments without following due process. Audit inspections at the locations of the rigs in February, 2022 indicated that Management had not established new measures to prevent similar losses. In the circumstances, failure to establish effective security measures for the Company's key assets may have resulted in the losses totaling Kes.2,896,488,31 cited by the Company.

Management Response

622. The Accounting Officer submitted that the Government had classified energy projects as a critical part of national security, to improve security to help safeguard the company assets. The Company had engaged the Critical Infrastructure Police Unit (CIPU) in addition to the existing security

firms contracted by the company to beef up security in its areas of operation. The matter was still actively being pursued by Government agencies.

Committee Observation and Recommendation

623. The Committee noted that the management of GDC had taken measures to beef up security in their installations by engaging the Kenya Police Wing of Critical Infrastructure Police Unit to assist the engaged security firms hence the matter is resolved.

227.2. Under Used Drilling Rigs

624. Fixed assets records indicated that the Company owned seven geothermal drilling rigs with a net book value of Kes.7,732,797,598 as at 30 June, 2021. The rigs were bought at an aggregate cost of Kes.15,937,787,572 several years ago. However, review of records on their use indicated that four (4) of the rigs with a net year book value of Kes.4,249,024,110 as at 30 June, 2021 and purchase cost of Kes.8,963,025,527 had not been used in the previous four financial years.

625. One of the rigs was acquired and used to drill two wells in 2016 and had been idling ever since. Further, records on the rigs indicated each could drill one standard well in one hundred and twenty days (six months), or two wells per year. However, the Company's rigs averaged less than one (1) well per year, which implied that they were not used efficiently, or were idling for much of the time. In view of the low utilization of the rigs, the Company may not have obtained value for money on public funds totaling Kes.15,937,787,572 spent on their purchase.

Management Response

The Accounting Officer submitted as follows—

Basis for acquisition of the 7 Rigs

626. In acquiring the resources (7 rigs) currently in place, the Country envisioned accelerated drilling of geothermal resources in the several geothermal sites. The plan was to drill in the Menengai, Bogoria - Silali and Suswa blocks. This plan was to be backed by funding from the Government of Kenya that had a grand plan to increase the national generation capacity to 5,000 MW.

Challenges in full utilization of the rigs

627. The budgetary allocation over the years has not been sufficient to enable full deployment and utilization of the available rigs. Additionally, the Suswa block was subject to an arbitration which has since been concluded and GDC given the go ahead to explore the field. The opening up of Suswa block in addition to the ongoing drilling projects in Baringo Silali and Menengai will greatly increase the utilization of the drilling rigs.

Current Status

628. Besides its plans of deploying its rigs to Suswa and Bogoria -Silali, the Company was looking for collaborative partnerships to be able to utilize its rigs for commercial drilling.

Committee Observation

629. The Committee noted the buying of the seven drilling rigs was to achieve the government target plan of generating 5000MW and in the government blueprint this could have been achieved by accelerating geothermal energy development. However, after the purchase of the rigs the GDC did not have sufficient budgetary allocation to fully operate all the seven rigs.

Committee Recommendation

630. The Committee recommends that the Accounting Officer should explore alternative funding models like the public private partnerships and not solely rely on the exchequer funding in order to ensure full utilization of the rigs.

228. Irregularities in Payment of Employee Expenses and Benefits

228.1. Non-Compliance with Salary Deductions Rule

631. Examination of payrolls for the year under review indicated that, contrary to Section 19(3) of the Employment Act, 2007 and Section C.1(3) of the Public Service Commission (PSC) Human Resource Policies, 2016, net monthly salaries paid to sixty-eight (68) employees were less than one-third (1/3) of their basic monthly pay. As a result, Management breached the law and may have exposed the staff to financial embarrassment.

Management Response

The Accounting officer submitted as follows—

632. The company continues to monitor adherence and ensure that staff comply with the 1/3 rule. Management had also included as part of the staff separation process a requirement for the exiting employee to notify Stima Sacco on their impending separation so as to either clear the loan balance or for notification of Loan Guarantors before deductions are instituted on their pay slips.

Committee Observations

633. The Committee noted that the Accounting Officer did not refute the non-compliance to the 1/3 basic salary rule but attributed the violation to deductions of guarantors by Stima Sacco.

634. Further, the Committee noted from the explanation given by the Accounting Officer during the examination that the Accounting Officer had instituted administrative and policy sanctions to all employees who break the rule and had also instituted a training programme on prudent financial management to all staff.

Committee Recommendation

635. The Committee recommends that having instituted administrative and policy sanctions to all employees, the matter is resolved.

228.2. Over Extended Acting Appointments

636. Further review of the payroll data indicated that acting allowances totaling Kes.7,168,205 were paid to thirteen (13) employees appointed in acting capacity for periods lasting more than six months. The appointments were contrary to Section C 14(1) of the Human Resource Policies and Procedures Manual for the Public Service issued in May, 2016 which provides that acting appointments should not last for more than six months. Therefore, by allowing the extended appointments, Management acted in breach of the law.

Management Response

The Accounting Officer submitted as follows—

Insight into the matter

637. The employees were placed on acting terms to hold office, as the recruitment process for the vacant positions (Managers) was undertaken.

Status of the recruitment process

638. The recruitment process aborted twice, albeit with advertisements and interviews having taken place. This led to the renewal of acting for continuity of service. In addition, management also noted that there was a need to review its Human Resource Instruments which were contributing factors in the delayed recruitment process. The matter was awaiting approval of the National Treasury to fill the critical positions.

Committee Observations

639. The Committee noted the Accounting Officer had not complied with the Section C 14(1) of the Human Resource Policies and Procedures Manual for the Public Service,2016 by allowing employees to act in a position for more than six months.

640. The Committee also observed that the Accounting Officer had received approval from State Corporation Advisory Council (SCAC) to fill the position and was awaiting the approval of the National Treasury; however, there is a circular on the freeze on hiring of staff in the public sector.

Committee Recommendation

641. The Committee reprimands the Accounting Officer and further directs the Accounting Officer to fastrack the documentation for approval with the National Treasury with a view of filling the positions substantively within six (6) months of adoption of this report.

229. Irregular Procurement of Goods and Services

229.1. Failure to Implement e-Procurement

642. Regulation 49(2) of the Public Procurement and Asset Disposal Act Regulations, 2020 requires public entities to procure goods, works and services through the e-procurement system integrated to the State Portal. However, none of the Company's procurements in the year under review was done through the state portal. Therefore, Management was in breach of the law and the procurements done may not have been competitive enough to ensure value for money on the public funds spent on the resulting contracts.

Management Response

643. The Accounting Officer submitted that the company uses the SAP system (in-house ERP system) for its procurement and inventory management processes. However, the SAP system had a gap in supplier collaboration (online tender opening and evaluation) which had hampered full implementation of e-procurement. To comply with e-procurement, all tenders and reports are published in the PPIP portal.

Way Forward

644. The Company had earmarked funds in the current financial year for the e-procurement software.

Committee Observation

645. The Committee observed that the Accounting Officer did not refute the fact that their current SAP system had a gap and thus carrying out tender opening and evaluation on e-procurement platform was not possible.

Committee Recommendation

646. The Committee reprimands the Accounting Officer and directs that within three (3) months of adoption of this report the Accounting Officer should integrate their current SAP system to the Public Procurement Information Portal in order to comply with regulation 49 of the Public Procurement and Asset Disposal Regulations, 2020 that requires public entities to integrate their system with the State portal.

229.2. Irregular Procurement of Legal Services

647. The Company's legal records indicated that in the year under review, Management hired a private law firm to represent it in a constitutional petition filed before the Employment and Labor Relations Court by five (5) senior managers. Management used Direct Procurement Method to contract the firm on grounds that it was impractical to apply other methods as the matter was urgent. However, the direct procurement method applied did not meet the conditions set out in Section 103 of Public Procurement and Asset Disposal Act, 2015 as the Company had a list of prequalified lawyers from which a restricted tender could have been considered. In the circumstances, the legal services were hired irregularly and may not have been competitive in price and quality.

Management Response

The Accounting Officer submitted as follows—

The matter

648. The management's choice of direct procurement method was based on the urgency of the matter and the parties involved, which in the company's view was appropriate in the circumstances. The company was able to mitigate attendant risks which could have arisen from non-compliance with the court orders.

Procurement challenges

649. The process of reaching an agreeable cost of services with the lawyers, however, took longer than expected in view of the complexity of the case and contingent liability risk involved.

Committee Observation and Recommendation

650. The Committee observed that the enlisted law firm was among the pre-qualified firms by the company hence the submission by the Accounting officer was satisfactory and the matter is resolved.

230. Overstocking of Drilling Supplies and Equipment

651. The inventories movement schedule provided for audit indicated that the company held inventories of drilling supplies and equipment valued at Kes.4,421,799,100 as at 30 June, 2021. These supplies and equipment were worth Kes.4,248,317,567 and Kes.173,481,581 respectively. However, in the

year under review the Company only utilized items valued at Kes.347,921,814 or 8% of the stock. The low rate of use implied that the Company's stock management system was not economical as it had resulted in a large portion of the Company's capital being invested in slow moving stock that faced the risk of loss from obsolescence. Further, examination of inventories records indicated that the Company did not have a comprehensive inventory management system. For example, stores records did not indicate the dates items were received in the stores and did not mark out those rendered obsolete. As a result, usability of the items in the stores could not be confirmed from the stores records and economy and efficiency in management of the stores was doubtful.

Management Response

The Accounting Officer responded as follows—

Genesis of inventory holding

652. The Company envisioned in its formative stage to drill geothermal resources in the country in various geothermal sites. Part of the plan was to drill in the Menengai, Bogoria - Silali and Suswa blocks. The Suswa block was subjected to an arbitration which has since been concluded and GDC given the go ahead to explore the field. The acquired materials and equipment were in line with the above vision. This plan was to be backed by funding from the Government of Kenya and obtaining of geothermal licenses.

Challenges in utilization of the materials

653. The Company has not been able to get sufficient funding to fully utilize the available materials and equipment. With funding from KfW and GRMF, the company has deployed more rigs to the Bogoria Silali geothermal field in FY 2021/2022. Additionally, Management is looking for collaborative partnerships for funding for its projects to enhance utilization of its available materials.

Committee Observation

654. The Committee noted that the buying of the drilling supplies and equipment was to achieve the government target plan of generating 5000MW and in the government blueprint this could have been achieved

by accelerating geothermal energy development. However, after the purchase of the rigs GDC did not have sufficient budgetary allocation to fully operate all the seven rigs.

Committee Recommendation

655. The Committee recommends that the Accounting Officer to explore for alternative funding model like the public private partnerships and not solely rely on the exchequer funding in order to ensure full utilization of the rigs.

231. Commingling of Company Funds

656. Review of bank accounts and various donor funded projects indicated that funds for the Menengai and Bogoria Silali geothermal projects were banked together with other Company funds in spite of Management having indicated in the prior year that the funds would be separated. The comingling hampered timely reconciliation of revenue and expenditure and therefore elevated the risk of inaccurate reporting and loss of cash.

Management Response

The submission by the Accounting Officer was as follows—

Insight into the matter

657. The company used to hold one bank account held at the Co-operative Bank of Kenya for all its receipts from Exchequer and Steam charge payments for its projects. The funds were then applied to the respective projects.

Project accounting

658. Following the recommendation from the Auditor General to have separate bank accounts for each project, the company effected separation of the bank accounts for its projects and for the company for receipt of ex-chequer funding. The Bogoria-Silali project bank account is maintained at the KCB Kiponde Branch account number 1119615208. The Menengai project account is maintained at Co-operative Bank Upper Hill

Branch account number 0113616085760O. The Company's Recurrent account is maintained at ABSA Bank Plaza Corporate Service Centre account number 2041818169.

659. Steam charge receipts are however, received into the Co-operative Bank account due an existing assignment agreement of the steam charge payments with the bank.

Committee Observation and Recommendation

660. The Committee observed that Accounting has established separate accounts for each project hence the matter is resolved.

3.4. KENYA PIPELINE COMPANY (KPC)(F/Y 2020/2021-2021/2022)

Overview of the state corporation

661. The Kenya Pipeline Company (KPC) is a state corporation under the Ministry of Energy and Petroleum mandated to provide efficient, reliable, safe and cost-effective means of transporting petroleum products from Mombasa to the hinterland. In pursuit of this objective, the Company has constructed a pipeline network, storage and loading facilities for transportation, storage and distribution of petroleum products. Current installed system consists of 1,795 kilometers of pipeline with current capacity to handle about 14 billion liters of petroleum products.

Parliament had examined the audit reports of KPC up to FY 2019/2020.

EXAMINATION OF THE AUDITED ACCOUNTS OF KPA FOR THE FYs 2020/2021 AND 2021/2022

662. Mr Joe Sang, the Managing Director of Kenya Pipeline Company accompanied by a team of employees of the Company appeared before the Committee on 23rd April, 2024, 06th May, 2024 and 07th May, 2024 to adduce evidence on the audited accounts for the Company for the year 2020/2021 and 2021/2022.

FINANCIAL YEAR 2020/2021

The Auditor General gave a qualified audit opinion and raised the following concerns:

232. Unvalued Property, Plant and Equipment

663. The statement of financial position reflects property, plant and equipment with a net book value of Kes. 97,186,140,519 as disclosed in Note 17 to the financial statements. The amount is made up of fair values of the assets determined by an independent valuer engaged by the Management in 2019, which have been adjusted for accumulated depreciation in the two

years up to 30 June, 2021. However, several assets comprising freehold land, buildings, fiber optic cable and motor vehicles with a book value of Kes. 7,382,233,566 as at the time of valuation on 1 July, 2019 were not revalued by an independent valuer, and their current book value is based on the historical costs and previous revalued amounts adjusted for accumulated depreciation. This contravenes the requirements of the International Accounting Standard (IAS) 16 – Property, Plant and Equipment which provides that if an item of property, plant and equipment is revalued, the entire class of property, plant and equipment to which that asset belongs shall be revalued. In the circumstances, the accuracy of the property, plant and equipment balance of Kes. 7,382,233,566 could not be confirmed.

Management Response

664. The Accounting Officer submitted that the matter has since been resolved as the assets are well accounted for in the restated financials in FY2022/2023. The non-valued assets with a book value of **Kes. 7.3 billion** were revalued in July 2023 and the revalued figures adopted in the audited books of accounts in the financial year 2022/2023.

665. As at FY2020/2021, the issue raised by the auditors relating to the assets not being valued was for various reasons as explained below:

i) Balance of **Kes. 3.9 billion** relates to communication equipment including Fibre Optics Cable (FOC) which had elements of both software and hardware components. However, FOC value was considered fair because it had been acquired one year before the revaluation in year 2018.

ii) Some equipment not valued were combined and valued as one unit while they had been capitalized as separate assets with an estimated value of **Kes.1 billion**. This anomaly was corrected in the year 2022/2023.

iii) The other balances relate to non-valued assets, assets earmarked for disposal and buildings earmarked for demolition **Kes.2.4 billion**. These have since been disposed-off.

666. Currently the company has embarked on a companywide verification exercise in preparation for the revaluation exercise scheduled to take place in FY2024/2025-. The exercise is at an advanced stage.

Committee Observation

667. The Committee observed that the at the time of examination, the assets had been revalued and figures adopted in the books of accounts in the financial year 2022/ 2023 hence the matter is resolved.

Committee Recommendation

668. The Committee recommends that in the future, the Accounting Officer should endeavor to comply with the International Accounting Standards(IAS) 16 on revaluation of property, plant and Equipment.

233. Trade and Other Receivables

669. The statement of financial position reflects trade and other receivables balance of Kes.9,160,335,600 as disclosed in Note 23 to the financial statements. The receivables comprise of trade receivables, staff loans and advances, Value Added Tax (VAT) recoverable, prepaid expenses, refundable deposits, and other debtors. Review of the receivables revealed the following inaccuracies:

233.1. Unsupported Trade Receivables

670. Note 23 reflects gross trade receivables balance of Kes. 9,762,372,383. However, the supporting schedule reflects a balance of Kes. 8,782,049,049 resulting in a variance of Kes. 980,322,466 which was explained as a reconciling item. The reconciliation provided in support of the variance reflected a balance of Kes. 6,509,294 described as trade debtors' adjustment account and a balance of Kes. 2,234,957 in respect of system migratory balance respectively. However, the explanation and supporting documents for the two variances were not provided for audit review. In the circumstances, the accuracy and completeness of trade receivables balance of Kes. 9,762,372,383 could not be confirmed.

Management Response

671. The Accounting officer submitted that the Management had been able to resolve the migratory balance of Kes. 2,278,476.75 which was as a result of entries that had partially been posted through the control balance. The trade debtor's adjustment account is an active account and the balance of Kes. 6,509,294 was in respect of the valuation of the debtor's foreign currency denominated transaction balances.

Committee Observation and Recommendation

672. The Committee observed that the management had satisfactorily responded to the matter since the management availed evidence of correspondences with IRA hence the matter is resolved.

233.2. Unsupported Staff Loans and Advances

673. The note also reflects staff loans and advances of Kes. 1,737,480,261 which includes car and house loans, salaries advance, payroll debtors, subsistence allowance advances and imprest all amounting to Kes. 1,789,049,726. The resulting variance of Kes. 51,569,465 was not explained or reconciled. Under the circumstances, the accuracy and completeness of staff loans and advances balance of Kes. 1,737,480,261 could not be confirmed.

Management Response

Description	Balance as at Jun-21 **Kes.**
Staff House Loans	1,503,595,456
Staff Loans – Cars	217,033,857
Salary Advances	15,039,807
Temporary Staff Imprest	1,811,141

674.	Total amount	1,737,480,261

he Accounting Officer submitted that the Staff debts and advances are diligently recovered every month and follow up on those who left service is pursued regularly.The correct balance based on the reconciliation carried out as at 30th June 2021 is **Kes.1,737,480,261** details of which shown in **Table 1** below. There was therefore **no variance** of Kes. 51,569,465 as indicated in

Table 1 - Staff debts and advances

Committee Observation

675. The Committee observed that at the time of examination, the staff loans and advances were supported hence the matter is resolved.

233.3. Long Outstanding and Unsupported Prepayments

676. Prepaid expenses amounting to Kes. 949,551,042 reflected in Note 23 to the financial statements includes an amount of Kes. 91,109,582 classified as vendor prepayments. Review of the prepaid amount revealed an amount of Kes. 56,106,581 which related to payments dated 30 June, 2019 and earlier, therefore had been outstanding for more than three (3) years with some having been made over ten (10) years ago. In 2011. In the circumstances, the accuracy and completeness of trade and other receivables balance of Kes.9,160,335,600 could not be confirmed.

Management Response

677. The Accounting Officer submitted that the Management continues to clean up the vendor prepayments account and the current balance has reduced from Kes. 56.1 million to only Kes.720,833.45 being 3 years or older as at April 2024.The vendors with the outstanding balances have received communication through quarterly circularization and management is pursuing a write back of the balances in case they do not respond within the year.

678. In FY2020/2021, the Kes. 56,106,581 balances related to vendor down-payments on port clearing fees, customs, and excise duty on imports which were still under reconciliation at the time. The delay in the clearing process was occasioned by SAP system challenges in down payment clearing which have since been resolved.

Committee Observations

679. The Committee observed that—

(i) the Company had tremendously reduced the outstanding balances by vendors to Kes. 730, 833.45; and

(ii) management was yet to clean up the vendor prepayments accounts as there still existed an outstanding balance.

Committee Recommendations

680. Within three (3) months of adoption of this report, the Accounting Officer should submit evidence of recovery of the remaining outstanding balances by vendors to the OAG.The OAG to keep in view of this query in the subsequent financial year.

233.4. Value Added Tax Recoverable

681. Note 23 to the financial statements reflects a Value Added Tax (VAT) recoverable balance of Kes. 2,029,844. A reconciliation of the opening balance as at 1 July, 2020 with monthly net position to the closing balance as at 30 June, 2021 reflected Kes. 198,101,524 and Kes. 43,821 in respect of Legacy system balance and Sun system upload balances respectively. The balances relate to tax credits due to the Company which Kenya Revenue Authority (KRA) was yet to move from the discontinued Legacy System (Simba System) to the ITAX System. In addition, the reconciling entries included Kes. 978,803,650 VAT credit expected from Kenya Revenue Authority which was not supported by any acknowledgement from Kenya Revenue Authority. Further, the balance included a balance of Kes. 32,025,616 relating to withholding tax on interest credit which has not been explained. In the circumstances, the accuracy and completeness of VAT recoverable balance of Kes. 2,029,844 could not be confirmed.

Management Response

682. The Accounting Officer submitted that during the year under audit, the returns for February, April and May 2016 were already amended accordingly. However, KRA was yet to move the Tax credit of Kes.

198,101,523.89 from Legacy System (Simba System) to i-tax. KPC has continued to follow up with KRA to implement the update on i-tax. KPC has made a provision for the outstanding Kes. 198,101,524 in the FY2022/2023 financial statements as management continues to engage KRA on the same.

683. The amount of Kes.978,803,650 related to debit adjustment vouchers (DAV's) KRA had issued to KPC reducing KPC's tax credit. KPC contested the decision and KRA admitted that KPC validly claimed but they disallowed an amount of Kes. 84,568,295.68 resulting in net a VAT Automated Assessments (VAA) credit of Kes. 830,419,265. This was resolved and the credit reinstated to KPC. The matter has since been closed.

684. The balance of the Kes.32,025,616 related to withholding tax on interest earned on cash deposits in the banks. These arose due to the timing difference between roll over of fixed deposits and the reporting cut-off of 30th June. The banks files the withholding tax on interest in the successive month which hampers clearing of the balances. The matter has since been closed. The amount of Kes.43,821 in respect of Legacy system balance is being addressed with SAP consultants.

Committee Observation

685. The Committee observed that the submission by the Accounting Officer on recoverability of the Value Added Tax was satisfactorily hence the matter is resolved.

Committee Recommendations

686. The Committee recommends that the Accounting Officer should in the future ensure that KPC books of accounts comply with section 68 (2) (b) of the Public Finance Management Act, 2012.

234. Misstated Work In Progress

687. The statement of financial position reflects property, plant and equipment balance of Kes. 97,186,140,519 which included a balance of Kes. 216,920,335 relating to capital work in progress as disclosed in Note 17 to the financial statements. However, the balance differs with the supporting schedule provided for audit review which reflected a balance of Kes. 218,532,194 resulting in unreconciled variance of Kes. 1,611,859. In the

circumstances, the accuracy and completeness of capital work-in-progress balance of Kes. 216,920,335 could not be confirmed.

Management Response

688. The Accounting Officer submitted that KPC has since resolved the difference of Kes. 1,611,859 which was a system migration legacy balance. The fixed asset balances as per ledger and accounts have reconciled including the amount of Kes.1,611,859 which related to historical upload/legacy balances in 2007. This was mapping error and the W.I.P. has been corrected against the amortization.

Committee Observations

689. The Committee observed at the time of examination that the the accounts have since been reconciled hence the matter is resolved.

Committee Recommendations

690. The Committee recommends that the Accounting Officer should henceforth comply with section 68(2) (k) and 81 of the Public Finance Management Act, 2012 and section 47 of the Public Audit Act, 2015 by providing supportive documentation to the Auditor General on time.

235. Cash and Cash Equivalents

691. The statement of financial position reflects bank and cash balances to Kes.2,462,154,764. The balances were held in fourteen (14) local banks denominated in both local and foreign currency and cash at hand at 30 June, 2021. Review of bank reconciliation statements revealed a receipt in the bank statement not in the cash book in respect of NCBA balance of Kes.12,684,319 which had been outstanding since 2018/2019 financial year. Further the bank reconciliation statement for Cooperative Bank account reflected uncleared items amounting to Kes.1,365,240 comprising of a receipt of Kes.2,343,322 and a payment of Kes.978,082 dated 23 November, 2020 which were not recorded in the cashbooks. No explanation was provided for long delays in recording the transactions. In the circumstances, the accuracy and completeness of bank and cash balances of Kes.2,462,154,764 could not be confirmed.

Management Response

The Accounting Officer submitted as follows—

ii) NCBA Kenya Shilling Account

692. This related to an NCBA Kenya Shilling Account where receipts of Kes. 12,821,413.95 had not been reconciled as at 30th June 2021, the make-up of which is:

i. Insurance compensations amounting to Kes. 6,459,167 related to receipt of insurance claim for damaged vehicle and death of staff involved in an accident. This was posted correctly to staff creditors account for disbursement in the subsequent period since the advice that was being waited on from Legal Department for onward action was later received.

ii. The amount of Kes. 4,737,757.35 relate to receipts from customers. The amount was not posted as at 30th June 2021 since the bank had not reverted to KPC with the customer details. These have since been receipted.

iii. The amount of Kes.1,624,489.60 relate to bounced payments which have been reversed and correctly booked in the accounts

The correct balance as supported by the bank statement is Kes. 12,821,413.95 and not Kes.12,684,319 as stated by the Auditor.

The Cooperative Bank accounts

693. The Cooperative Bank account reflected uncleared items amounting to Kes.1,365,240 comprising of a receipt of Kes.2,343,322 and a payment of Kes.978,082. This relates to the following:

i. Fixed Deposit interest of Kes.2,343,327.00 and Withholding Tax of Kes.978,082.00 were captured in the bank statement on 19 November 2020 and subsequently captured in SAP ERP (Enterprise Resource Planning) system on 23rd November 2020 vide document numbers 1005336198 and 1005336218 and hence there were no unrecorded transactions as at 30th June 2021.

ii. There was a delay to clear this interest with its corresponding Fixed Deposit, but this was later closed on 31st November 2021 vide document 100641149.

All the above items were resolved and cleared in FY 2020/21.

Committee Observations and Recommendations

694. The Committee observed that the accounts have since been reconciled and the matter is resolved.

236. Provision for Bad and Doubtful Debts

695. The financial statements in Note 23 reflects provision for bad and doubtful debts at the beginning of Kes.5,486,896,669 and Kes.5,212,292,957 at the close of the financial year. This represents a net decrease in the provisions of Kes.274,603,712 that should have been credited to the income statement. However, the statement of profit or loss and other comprehensive income was charged with a provision of Kes.59,089,148 resulting in unexplained variance of Kes.333,692,860. In the circumstance, the accuracy of the provision for bad and doubtful debts of Kes.59,089,148 charged for the year ended 30 June, 2021 could not be confirmed.

Management Response

696. The provision accounts in the financial statements has a movement of Kes.274,603,712 but the auditor reported a charge of Kes.59,089,148. The amount reflected in the statement of profit or loss and other comprehensive income is Kes. 274,603,712 as broken down in the table below:

Summary of the movement in the balance sheet balance

DESCRIPTION	DEBIT	CREDIT	Kes.
Opening Balance as per Financial Statements			**5,486,896,669**
ADD:			
Provisions Charge in the Year	**DR. P&L Ledger** - Prov. For Bad & Doubtful Debts	**CR. B/Sheet Ledger** - Prov. For Bad & Doubtful Debts	59,089,148
Less:			

DESCRIPTION	DEBIT	CREDIT	Kes.
Provisions Write-Back	**DR. (i) B/Sheet Ledger** - Prov. For Bad & Doubtful Debts	**CR. (i) P&L Ledger - Prov.** For Bad & Doubtful Debts	(388,591,508)
	DR. (ii) P&L Ledger - Prov. For Bad & Doubtful Debts	**CR. (ii) P&L Ledger** - Revenues	
	DR. (iii) P&L Ledger - Revenues	**CR. (iii) Accounts Receivable** - B/Sheet Ledger	
ADD/(LESS):			
Forex Gain/(Loss)	**DR. P&L Ledger** - Forex Gains/Loss	**CR. B/Sheet Ledger** - Prov. For Bad & Doubtful Debts	54,898,648
Closing Balance as per Financial Statements			**5,212,292,957**

697. The unexplained variance as per audit observations of Kes. 333,692,860 is as summarised in the table below:

Explanation for the Kes. 333,692,860 variances

Description	Movement Kes.	Placement in P&L
Provisions Write Back	(388,591,508)	P&L impact in Revenue
Change due to Forex Valuation	54,898,648	P&L impact in FX Gain/(Loss) Ledger
Unexplained Variance as per	**(333,692,860)**	

Description	Movement Kes.	Placement in P&L
Audit Observations		

698. The Balance Sheet movement of **Kes. 274,603,712** has been explained in table above where the amounts were reported in different P&L ledgers as governed by the International Accounting Standards (IAS) 39.

Committee Observation and Recommendation

699. The Committee observed that the unexplained variances were contained in the balance sheet movement hence the matter is resolved.

Other Matters

237. Encroached Company Land

700. Review of the freehold land documents revealed a piece of land located in Nakuru County with book value of Kes.700,000,000 which measures 47.10 acres which had had been illegally encroached and permanent structures put up by the encroachers. According to the inspection and verification done by a valuer engaged by the Company in 2019 to undertake valuation of the Company assets, only five (5) acres valued at Kes.75,000,000 was occupied by the Company, with the rest of parcel measuring 42.10 acres valued at Kes.625,000,000 were being occupied by the encroachers. As a result, the ownership of the parcel which has been illegally encroached is threatened.

Management Response

701. The Accounting officer submitted that Kenya Pipeline Company Ltd purchased the land known as LR No. 11964/23, in 1991 at the cost of Kes. 11,505,000. The land measured approximately 19.07 Hectares, which translates to 47.12 Acres. The intention of the purchase was for the construction of a pump station, (PS24). The purchase was after the Ministry of Lands and Housing carried a valuation Dated 25th January 1990.

702. Following the construction of PS24, part of the parcel of land remained unutilised and deemed non-core to the organization. In 2006, the process to dispose off the non-core fixed assets was commenced with the request to the Permanent Secretary, Ministry of Finance, on 16th August 2006 seeking approval to dispose off the said land and the approval thereto dated 31st August 2006. The Ministry of Finance granted the approval in line with Section 13 of the State Corporations Act, subject to KPC undertaking a professional valuation and sale by open tender, in line with the provisions of the Public Procurement law.

703. By the letter dated 24th August 2005, KPC had requested M/s Reagent Valuers International (K) Limited to carry out the valuation of the Company's vacant lands among other assets. In their response dated 15th September 2005, Ms. Regent Valuers International Ltd gave the valuation of 15.8 hectares, which is the subject herein at Kes.12,270,000. This information guided the KPC Board of Directors at its 181st meeting held on 2nd August 2005 in which it resolved to sell the 15.8 Hectares surplus land by way of a public tender. The parcel of land LR No. 11964/5 of 19.07 hectares (47.1 acres) which initially belonged to KPC was awarded for sale to M/s Nakuru Express Supplies and Services Ltd.

704. The land was awarded at a price of **Kes.7,980,000.** KPC has written to the Registrar of Companies to confirm the directors of the buyer, M/s Nakuru Express Supplies & Services Limited at the time of the sale and provide a copy of the CR12.

705. During the construction of Line 4, in 2011, a power sub-station was constructed at PS 24 Nakuru. The beacons for the land were already tampered resulting in encroachment on the neighbouring land LR No. 11964/22 by a strip of 3 meters on the northern side of the land LR No. 11964/23 where the station is currently situated. In 2013, the company decided to fence the land using chain-link, the Beacons were reinstated but the project stalled due to the encroachment. Recently, as part of KPC embarked anti-cut, anti-climb fences to reinforce security at the Station. Consequently, an agreement was entered for change of common boundaries to enable KPC to take back the land encroached and cede an equivalent portion of the land by changing co-ordinates.A surveyor was engaged, and new beacon and a beacon certificate has been issued and the surveyor's report pending registration of the amended deed-plan.

706. KPC is processing the amended deed plan from the Ministry of lands. Currently, KPC has concluded the processing of the Title Deed and a new title issued. The 5-acre land was revalued in FY2022/2023, and values adopted in the restated financial statements.

Committee Observation and Recommendations

707. The Committee noted that KPC had erected a perimeter wall on the five acres of land hence the explanation by the Accounting Officer was satisfactory and the matter is resolved.

LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

238. Loss on Leased Facilities

708. As disclosed in Note 7 to the financial statements, are direct costs of Kes.2,911,487,391 in respect of pipeline maintenance. Included in the costs are lease payments to Kenya Petroleum Refineries Limited (KPRL) amounting to Kes.1,209,256,319 for use of pipeline network, storage tanks and associated infrastructure during the year under review. A comparison of total lease costs against total lease income for the year revealed that the Company realised income amounting to Kes.644,256,318 thereby resulting to a net loss on the lease of Kes.565,000,001. In addition, the lease agreement revealed that the lease payments were based on expenses incurred by KPRL during the year covered by the lease agreement. However, the Company was not in control of costs incurred by KPRL and therefore could institute measures that could minimize them in line with realisable income. In the circumstances, the lease affected the overall performance of the Company and may need to be reviewed for efficiency.

Management Response

709. The Accounting Officer submitted that KPRL is a state corporation wholly owned by the Government of Kenya.In 2016, the Cabinet directed KPC to take over KPRL. The Company entered into a lease agreement with KPRL as it pursues the take-over.

710. In line with the Lease agreement, KPC has been taking care of all the operating costs and investing in infrastructure at KPRL geared towards helping KPC in improving its operating efficiency, flexibility and stock management to enhance security of supply of petroleum products in the country and neighbouring countries.At the start of the Lease Agreement, KPC seconded Key staff to KPRL to ensure that costs are effectively budgeted and managed; required developments are identified and implemented; and the takeover process is progressed.

711. In addition, KPC ensured that the costs to be incurred at KPRL (Recurent expenditure and Capital Expenditure) were projected and included in a harmonized handling and storage tariff for Kipevu Oil Storage facility and KPRL which was approved by Energy and Petroleum Regulatory Authority (EPRA). The annual average recurent expenditure for the tariff control period 2020/21 to 2022/23 was Kes1.7 billion for KOSF and Kes1.9 billion for KPRL. This move was to ring fence the performance of existing KPC business from the impact of expenditure at KPRL. It is important to note that all revenues generated at KPRL are collected by KPC and KPC ensures that all expenditure at KPRL are catered for. No lease rent is paid to KPRL.The annual budget estimates for KPRL are prepared and approved by both parties' Management and Board (KPRL and KPC) and progressed for approval by the parent Ministry and National treasury by KPC. KPRL's annual recurent expenditure and revenue budgets for FY2021/22 was Kes.1.68 billion and Kes.386 million respectively while actual recurent expenditure and revenue closed at favourable comparative positions of Kes.1.4 billion and Kes.646 million, respectively.

712. Although the cost incurred at KPRL during the period was higher than the revenue generated directly at the facility, there are other opportunities and benefits which accrue from utilisation of KPRL facility. Some of the unquantified benefits and future opportunities include:

i. Enhanced operational efficiency and flexibility of KPC pipeline system through additional storage capacity. KPC was using KOSF with storage capacity of about 320,000 m3 and the entry of KPRL brought in addition 140,000m³ in 2017 which has been enhanced to 288,000m³ in 2023 with a goal of reaching 484,000m³ by rehabilitating the existing tanks. This has resulted to:

   a) Improved customer satisfaction resulting in throughput growth and enhanced the overall performance of KPC.

b) Management of stock outs and reduced demurrage costs

c) Improved competitiveness to the port of Dar es Salaam

ii. KPC is also looking at leveraging on KPRL to achieve some of its key strategic initiatives such:

a) Development of LPG Bulk import handling and storage facility.

b) Establishment of a petroleum trading hub.

c) Create Petroleum strategic reserves.

d) Development of Natural gas infrastructure

e) Development of Bio-refinery plant

713. Based on the benefits envisioned from the facility, it is expected to generate positive returns in the future. On 18th July 2023, the Cabinet approved the acquisition of KPRL by KPC by way of share transfer without monetary consideration. The share transfer was successfully completed and took effect on 27 October 2023 making KPRL a fully owned subsidiary of KPC. A committee had been appointed to carry out post-acquisition processes.

Committee Observation

714. The Committee noted that despite KPC taking over KPRL, it continued to operate at a loss. However, the acquisition of KPRL had benefitted KPC by enhancing operational flexibility and efficiency through additional storage capacity from KPRL.

Committee Recommendation

715. The Committee recommends that the Accounting Officer of KPC should update the OAG on the post-acquisition process within three(3) months of adoption of this report.

716. Further, the OAG to keep in view of the query in the subsequent financial year.

239. Long Outstanding Receivables

717. The statement of financial position reflects trade and other receivables balance of Kes.9,160,335,600. Further, as detailed in Note 23 to the financial statements, the amount includes Kes.106,656,301 in respect of

prepaid construction costs which has been outstanding since 2007. Although a provision was made in the books of the Company in respect of the amount, no evidence of efforts to recover the same was provided for audit review. In the circumstances, recoverability of the balance of Kes.106,656,301 in respect of prepaid construction cost included in trade and other receivables balance could not be confirmed.

Management Response

The Accounting Officer submitted that—

718. The case is still ongoing and KPC has filed the requisite pleadings. The witness statement, list and bundle of documents were filed on 14 February 2024. Parties are to fix a hearing date at the court registry. This relates to an old balance brought forward during the data migration from the old ERP to SAP. The balance relates to a payment made to Data Logix (a vendor) and the matter is still in court.

Further, since 2007, KPC already holds bad debt provisions in the books of accounts for Data Logix as it awaits the court decision and has made efforts to recover the debt as detailed below together with other clarifications as previously requested:

i) Response on efforts to recover the debt

719. In line with advice given by KPC lawyers in September 2004 and advice received from the then Solicitor General in June 2006 for recovery of the advance payment, KPC:

i) Filed its Defence (21st September 2004) challenging the Plaintiff's claim for Kes 250,367,300/- general damages for breach of contract.

ii) Filed a counterclaim (6th October 2004) for the money advanced being Kes 115,429,583/-

iii) Defended other pecuniary/injunctive claims filed on the same matter over the years between 2006 – 2022 which affected the progression of the main suit.

720. Other cases filed were as follows:

i) By Datalogix in 2006 - an unsuccessful appeal to try and reverse a Ruling made by the High Court denying Datalogix injunctive orders to prevent KPC from awarding a separate tender for ICT services

ii) By Datalogix in 2007 - claiming general damages at Kes 339million for malicious prosecution

iii) By a sister Company to Datalogix in 2012 to be allowed to amend their defence and put in a counterclaim. This case culminated in a court order preventing the progression of the 2006 matter.

ii) Response on Recoverability

721. The High Court in a Ruling dated 22nd March 2006 ruled that Datalogix had failed to establish a prima facie case with a probability of success and thus refused to issue an injunction preventing KPC from progressing its ICT project through a separate tender.

iii) Other Clarifications

i. Copy of the Agreement between Cybercom & KPC of 15th August 2002

The document was submitted as evidence in criminal case.

ii. Who were the Original Shareholders? Does the Company Exist?

722. The documents submitted by the consulting firm indicated that Datalogix was a wholly owned subsidiary of Cybercom (The consultant's Company profile submitted in 1999 and an affidavit filed by one of the directors filed on 28th June 2006). Datalogix is still in existence.

723. The Authority identified a law firm from a prequalified panel. However, the Management was unable to trace the panel that was in place in 2004 since the officers that handled the selection have since left the Company and one is deceased.

724. The Authority Paid to Wekesa and Co. as shown in the table below:

SN	CASE	Fees quoted (Kes)	Advocates Remuneration Order Fees scale	Agreed Fees	Paid	Balance
1	High Court 490 of 2004	12,314,800	12,078,286.47	4,000,000.00 exc. VAT and filing fees	Kes 3,930,000. less VAT and WHT	Nil
2	Appeal235 /2006	8,984,800	8,925,824.37	3,322,851.00	2,544,430	Kes 1,162,998 exclusive of VAT
	(Never progressed after March 2006 when court declined to issue interim injunction & referral to arbitration)					
	Appeal 212/2006					
3	Civil Application 133 of 2007	492,480	4,006,734.97	491,980.00	491,980	Nil
	Appeal by Cybercom arising out of the ruling in					

SN	CASE	Fees quoted (Kes)	Advocates Remuneration Order Fees scale	Agreed Fees	Paid	Balance
	HCCC No. 490 of 2004 dismissing their application seeking stay of the suit by countercla im of KPC against cybercom.					
4	HCC 354 of 2007 The claim is for damages for alleged unlawful arrest, false imprisonme nt, malicious prosecutio n	729,250	8,925,824.37	580,000.00	580,000	Nil
5	Civil Appeal Nairobi 212 of 2012 Court of					

SN	CASE	Fees quoted (Kes)	Advocates Remuneration Order Fees scale	Agreed Fees	Paid	Balance
	Appeal					
	An unsuccessful attempt to counter claim Kes. 79,408,483 and USD 2,061,234.65 arising from the consultancy contract. Dismissed as having no merit.	Quotation in this matter was combined with 2 above	8,925,824.37	Agreed fees in 2 above	Amount paid in 2 above	Balance in 2 above
	Total	**22,521,330**	**42,862,494.55**	**8,394,831**	**7,546,410**	**1,162,998 exclusive of VAT**

725. As indicated in the case matrix above, KPC has defended the main suit and other pecuniary/injunctive claims filed on the same matter over the years between 2006 – 2022 which affected progression of the main suit. In 2022 December, KPC successfully obtained a Court order dismissing the stay of proceedings. The case can now progress with KPC's counterclaim included.

Committee Observation

726. The Committee noted that although this is an old matter, the case is still ongoing in court.

Committee Recommendation

727. The Committee recommends that pursuant to Standing Order 89(2), this matter is sub-judice and the Committee shall await the ruling of the Court on the same.

240. Un-Procedural Waivers

728. The Transport and Storage Agreement (TSA) between Kenya Pipeline Company (KPC) and the Oil Marketing Companies (OMC) provides for penalty charges when OMC products overstay in the KPC facilities. The penalty charge is one of the recognized revenue streams for the Company. Review of billing records revealed that four (4) OMCs were billed and invoiced for overstayed product penalties in the period between 2018 to 2021. The revenues had been recognized in the books of the Company in their respective years of occurrence.

729. However, during the year under review, penalties amounting to Kes.495,942,077 were waived by the Board in a meeting held on 18th May, 2021. The waivers were not accompanied by requisite approval from the Cabinet Secretary for The National Treasury or the Cabinet as provided for under Regulation 146(6) and (8) of the Public Finance Management (National Government) Regulations, 2015, which requires any write off above Kes.100,000 to be approved by the Cabinet Secretary and any write off above 1% of the entity's budget to be approved by the Cabinet. In addition, the waiver reported in the financial statements amounted to Kes.529,641,166 resulting in unexplained variance of Kes.36,699,089. In the circumstances, Management was in breach of the law.

Management Response

730. The Accounting Officer submitted ageing penalty was introduced in KPC to deter Oil Marketing Companies (OMC's) from clogging the system and to discourage speculation. The penalty is levied based on Clause 15.7 to 15.9 of the Transport and Storage Agreement (TSA). The ageing waiver which was granted, was a business decision driven by the market dynamics that caused Oil marketing Companies (OMCs)'s product to overstay in the system beyond their control. The waiver was not

considered a bad debt write off that would trigger the Cabinet approval as the companies are solvent and still trading at KPC.

731. The PFM Regulation 149 (2) stipulates the circumstances where loss of revenue may arise. The write offs envisioned in PFM act, 2012 apply when the affected entities are either insolvent or untraceable. In addition, Regulation 149 (2) on revenue loss states that:
"Uncollectable revenue when debts due to National Government cannot be collected by reason that the debtor cannot be traced or is insolvent"
In this case KPC has not lost revenue on OMC's who are insolvent or untraceable but rather based on a business decision.
The waivers were granted due to the following reasons:

(i) Customers own error on stock transfer documentation with incorrect discharge dates.

(ii) OMC's defaulting on up-take of their product allocation in the Open Tender system (OTS) imports.

(iii) Force majeure arising from notice by the Ministry of Transport of South Sudan to relocate OMC's depot from site that was earmarked for the construction of the Air Traffic Controller at Juba International Airport.

(iv) Jet-A 1 players stocking more than demand as requested by MOEP to secure supply in the country.

Waiver to the four (4) OMCs was Kes. 529 million as detailed in the table below—

Waiver to the four (4) OMCs was Kes. 529 million

Description	Amount USD	Amount Kes
Total(K) Ltd. & Gapco	3,127,595	337,311,091
Rubis Energy	873,970	94,257,656
Gulf Energy	811,141	87,481,549
Finejet	98,200	10,590,869

Total waiver Excl VAT	**4,910,906**	**529,641,166**
Debit Notes to Total & Gapco	312,529	33,699,089
Net Waiver	**4,598,377**	**495,942,077**

732. The unexplained variance of 36,699,089 is incorrect. The variance is Kes.33,699,089 (Difference between Kes.529,641,166 & Kes.495,942,077). The variance is a result of debit notes issued to Total (K) Ltd. and Gapco. Justifications for the waivers for each OMC are as detailed below:

viii. Total Kenya Ltd & Gapco Kenya Ltd waiver request

733. Total(K) Ltd and Gapco Kenya Ltd made request to review their ageing calculation based on Adjustments of stock Entitlement (ASE's) exchanges between the two Companies. They indicated that the quoted Adjustment stock entitlement (ASE's) dates of discharge was erroneous and not based on their actual closing stock dates but on older dates resulting to huge ageing bills. They acknowledged that the errors were committed from their end where they allocated vessels dates of Discharge arbitrarily. Ageing calculation starts from the date the vessel discharges to the date OMC's lifts the product after allowable holding days are deducted. In this case they quoted earlier dates than discharge date thus higher ageing bill which was billed as per TSA billing provisions.

734. To validate this anomaly, EPC used KRA product entries that indicate the loading dates of the consignments in question thus giving vital comparisons with OMCs claims. KRA entries were used to validate the timings of product drawdown which firmed up recomputed billing of October 2018 to March 2019. After the recalculation of the credit, some consignments could not be justified and Total(K) Ltd and Gapco were billed USD 312,529.

ix. Gulf Energy Ltd Waiver Request

735. Gulf Energy requested for waiver through MoEP based on unfavourable market conditions that hindered off-takers picking their products share of

imports hence Gulf suffered penalties in defaulted stocks.Gulf Energy defaulted vessels were Captain Spiro and LR2 Poseidon imported in the months of June and July 2019 respectively thus product overstay in their account.

x. Rubis Energy Kenya Waiver Request

736. Rubis Energy submitted waiver request to MOEP for the billings of Jet A-1 in the period of November 2019 to February 2020. Rubis indicated that they nominated huge Jet A-1 product month on month in circumstances where the Jet nominations were not sufficient to form a sizeable cargo. A sizeable cargo is usually 65,000 MT. Rubis ordered more stocks than required to elevate Jet-A 1 cargo size to secure supply for the country. This resulted in Rubis accruing significant ageing penalties.

ii. Finejet Limited.

737. Finejet requested for a waiver as its business was disrupted due to a issuance of a relocation notice by Ministry of Transport of South Sudan in Juba. Juba International Airport was building an Air Traffic Controller where Fine Jets tanks were located, this allowed the force majeure clause to kick in as stipulated in the TSA.

Steps made to enhance the Ageing Penalty Waiver Process

738. Management has incorporated in the approval process of waivers, the National Treasury through Ministry of Energy and Petroleum (MoEP). This is after subjecting the request to management and Board Approval. Find Ageing waiver request approval by the National Treasury.

739. In a letter dated 8th August 2023, the National Treasury guided that the ageing waivers are operational matters and advised KPC to develop a policy that shall be approved by the Cabinet Secretary, Ministry of Energy and Petroleum. The policy shall provide a framework that will guide on the issue of credit notes for the ageing waivers to deserving OMCs. The policy is now developed and approved by the KPC Board and awaiting approval by the Cabinet Secretary, MoEP.

Committee Observations

740. The Committee noted that—

(i) according to the evidence adduced by the Accounting Officer, the waivers were on penalties and not debts owed to the company;

(ii) the waiver was approved by the Ministry of Energy and Petroleum; and

(iii) at the time of the examination of this query, the management had developed a policy to manage waivers that was pending the approval by the Cabinet Secretary, Ministry of Energy and Petroleum.

Committee Recommendations

741. The Committee recommends that the Management to make a follow-up with the Ministry to fast track the approval of the waiver policy and report back to the OAG within three (3) months of adoption of this report.

742. The Committee further directs the Accounting Officer not to process more waiver until the policy is in place.

743. The Committee recommends that the matter is resolved.

241. Incomplete Marine Loading Arm Project

744. The property, plant and equipment balance of Kes.97,186,140,519 disclosed in Note 17 to the financial statements, includes work in progress costing Kes.216,920,335 as at 30 June, 2021. The amount includes Kes.17,084,749 relating to supply, installation, testing and commissioning of overhung marine loading arm at Kipevu oil terminal. The contract for the project was awarded to a company for a contract sum of Kes.43,438,520 on 1 December, 2017 and signed on 18 April, 2018. The project commenced on 4 November, 2018 and was expected to take thirty-four (34) weeks and be completed on 2 May, 2019.

745. The project was intended to replace existing overhung marine loading arm to increase the discharge flow rate for the Dual-Purpose Kerosene (DPK) arm from 1700M3 /hr. to 2500M3 /hr. According to the manufacturer, the recommended number of years for the existing loading arms had been surpassed hence the need to mitigate any risks of failure. Although materials were delivered to the site and expenditure amounting to Kes.17,084,749 incurred, installations, testing and commissioning were not done. The continued delay in installation poses the risk of failure since the operational period for the loading arms have been surpassed. Additionally, the initial contract period expired, and the subsequent extension granted to the contractor lapsed on 30 June, 2021 without a

clear roadmap on how the project would be completed three (3) years since commencement. In the circumstances, the value for money may not be realized on this project.

Management Response

746. The Accounting Officer submitted that the Marine loading has been transferred at cost from a Work in Progress (W.I.P.) to mechanical spares under inventory in the audited financial statements of FY 2022/2023. This will be used as a spare part in the KPC facilities.

747. As earlier indicated in FY2020/2021, the project for Supply, Installation, testing, and commissioning of overhung marine loading arm at Kipevu was conceived and approved in the FY 2017/18. Its objective was to replace the existing 10-inch Marine loading arm with a 12-inch marine loading arm with anticipated increment in product offloading flow rate to 2500m3/hr from 1700m3/hr, an increase of 47% and consequently reducing any demurrages that may be incurred.

748. The project scope involved, supply of a 12-inch Marine Loading Arm (MLA), supply of a 12-inch Double Block and Bleed (DBB) valves, decommissioning of the existing loading arm, installation of the new loading arm and DBB valve, testing commissioning and training of staff.

749. The procurement was through open tender method where an advert was put in the local daily newspaper following which the project was awarded at a total cost of Kes.43,438,520.00 (inclusive of VAT and all taxes) to M/s Hydrolo Pipeline Limited on 1st December 2017. The contract was signed on 18th April 2018 for a period of 34 weeks (8 months). The contract commencement on 4th November 2018 and lapsed on 30th June 2021 after expiry of the third deed of variation.

750. During the contract period there were three Deeds of variations:

(i) 1st Deed of variation - Dated 26th July 2019; 7 months extension (3rd May 2019 to 2nd December 2019).

(ii) 2nd Deed of Variation – 6 months and 29 days extension (3rd December to 30th June 2020).

(iii) 3rd Deed of variation - Dated 14th August 2020; 12 months extension (1st July 2020 to 30th June 2021).

751. It is worthy to note that all the deeds of variation were undertaken as per procedure. The contractor submitting the request for extension giving reasons, the contract implementation team evaluating and recommending to the CEO, the CEO approving the deed of variation.

752. The company issued notices of non-performance to the contractor. Despite promptly granting design approvals on time, granting 3 contract extensions, and availing a window by Vessel Scheduling Meeting (VSM) for decommissioning and installation of the new loading arm, the contractor was unable to perform their contractual obligations. This forced the Project Engineer to issue 3 notices of non-performance on 14th August 2019, 18th January 2021 and 9th April 2021 as provided in the contract.

753. The contract lapsed on 30th June 2021 after expiry of the 3rd deed of variation, management having rejected the contractors request for extension after it became apparent the contractor was incapable of executing the contract going with the contractor's failure to effectively and appropriately respond to the non-performance notices issued to them as enumerated above. The contract expiry was communicated to the contractor via letter dated 22nd June 2021.

754. Bills of Quantity (BOQ) items not executed at the expiry of the contract include:

i) Allow for Extremely Safe and Precise de-commissioning of the existing 10" overhung marine loading arm at the Kipevu Oil Terminal (KOT) Jetty Mombasa, Kenya. This could be by use of a Sea Barge, ferry or a special ship or any other appropriate and safe method of de-commissioning.

ii) Allow for Extremely Safe and Precise installation, testing and commissioning of the new 12" marine loading arm at the Kipevu Oil Terminal Jetty, Mombasa. This could be by use of a Sea Barge, ferry or a special ship or any other appropriate and safe method of de-commissioning.

iii) Allow for mandatory on-site training after commissioning to the clients' Maintenance and Operation staff(10No. staff).

755. With construction and operationalization of Kipevu Oil Terminal (KOT) 2 with a higher flow rate, JET-A1 offloading currently being undertaken at

KOT1 is planned to be relocated to KOT2 once the right valves are procured and installed at KOT2. In view of the new development, the KOT1 Marine Loading Arm installations works have been overtaken by events and are no longer desirable.

Committee Observation

756. The Committee noted that from the evidence adduced by the Accounting Officer, the incomplete marine loading arm was decommissioned due to its location being affected by the Kenya Ports Authority's new terminal. Further, the Committee noted that currently, the loading arm is used as spare parts for KPC infrastructure and so far Kes. 6,000,000 had been recouped from the marine loading arm infrastructure.

Committee Recommendation

757. The Committee recommends that in the future, before undertaking projects of this nature, KPC should undertake appropriate feasibility study.

758. The Committee recommends that KPC should liaise closely with KPA and share their strategic plans to avoid instances of a similar nature from happening in the future.

759. The Committee recommends that the matter is resolved.

242. Unsupported Donations

760. Advertising and printing expenses amounting to Kes.63,527,697 reflected in Note 11 to the financial statements includes Kes.51,766,383 incurred on donations to various programs on communities for the financial year ended 30 June, 2021. Review of expenditure documents revealed that Company donated Kes.18,859,250 to a charitable trust towards construction of Mount Kenya electric fence on 29 April, 2021.The donation was based on a request dated 24 March, 2021 from the Trust. However, the fencing project was not traced to the Corporate Social Investment (CSI) plan approved by the Board for the year. No documentary evidence in form of project committee minutes, site visit minutes, inspection reports and status report of the fence was provided for audit review. In the circumstances, Management was in breach of the law.

Management Response

761. The Accounting Officer submitted that the proposal was received as an ad-hoc request presented to KPC. The request was subsequently submitted to the Board for due consideration and approval. The aim was to address Climate Change mitigation measures. The Company has also revised the CSI Policy to meet the emerging realities and capture the requirements arising from its recent registration as a foundation.

Committee Observations

762. The Committee noted there is a CSI policy in existence hence the submission by the Accounting Officer was satisfactory and the matter is resolved.

Committee Recommendation

763. The Committee recommends that the OAG to keep in view of this query in the subsequent financial year.

243. Un-Procedural Procurement of Consultancy Services

764. During the year under review, request for quotations were sent to four firms for labor relations services and consultancy services but later terminated as only one of the firms responded. The Company later appointed the firm that had responded for a contract sum of Kes.2,900,000 under single sourcing method with a justification that time was limited for any other procurement method. However, the justification for both request for quotations and single sourcing procurement were not in line with Section 106(2)(a) of the Public Procurement and Asset Disposal Act, 2015 which requires that, the Accounting Officer of a procuring entity to give request for quotations only to such persons as are registered by the procuring entity and Section 60(1) of the Public Procurement and Asset Disposal Act, 2015. In the circumstances, Management was in breach of the law.

Management Response

The Accounting Officer submitted as follows—

(i) Request for Quotation

765. KPC did not have a registered list of Labour Relations Lawyers. Consequently, the Company used Section 56 of Public Procurement and

Assets Disposal Act 2015 and obtained a registered list of Labour Relations legal service providers from another public entity.

Section 56 of the Act provides that:

"To identify qualified persons, a state organ or public entity may seek, in writing, to use another State organ's, public entity's or regulated professional body's registration list of all registered persons in the category"

766. The list was received and added to KPC's list of registered suppliers on 2nd March 2021 and the Request for Quotations were carried out on 31st March 2021. Consequently, KPC complied with Section 106 (2)(a) of Public Procurement and Asset Disposal Act,2015 which provides that:

> *"An accounting officer of a procuring entity shall deal with the request for quotations in accordance with the following—*
>
> *(a) the accounting officer of a procuring entity shall give the request to such persons as are registered by the procuring entity"*

767. However, the process was unsuccessful as only one bidder responded which is contrary to Section 106 (2) (d) of Public Procurement & Assets Disposal Act 2015 which requires a minimum of 3 responses.

Section 60(1) Public Procurement & Assets Disposal Act 2015

The section provides that:

> *"An accounting officer of a procuring entity shall prepare specific requirements relating to the goods, works or services being procured that are clear, that give a correct and complete description of what is to be procured and that allow for fair and open competition among those who may wish to participate in the procurement proceedings."*

768. KPC complied with Section 60(1) of the Public Procurement & Assets Disposal Act 2015 by providing the scope of service/terms of reference to the bidders.

Single sourcing procurement

769. A lot of time was consumed having gone through an entire procurement process and the need for the services became urgent. There were pending industrial relations matters that needed to be closed out successfully which included the conclusion of the Collective Bargaining Agreement negotiations by 30th June 2021. This gave rise to the urgency of the procurement. Consequently, it became impractical to engage in another competitive tendering process hence the use of direct procurement, pursuant to Section 103 (2)(b) of the Act, to the only bidder who had initially responded to the Request for Quotations. In both the Request for quotation method and in the Direct procurement method, the firm maintained their quoted sum as Kes.2,900,000. The firm completed the services, submitted a report, and were paid vide a Service entry sheet 5000288373 and parked invoice 1000012828 remittance advice.

Committee Observation

770. The Committee observed that the explanation and documents submitted by the Accounting Officer on procurement of consultancy services was satisfactory and the matter is resolved.

Committee Recommendation

771. The Accounting Officer should henceforth comply with section 68 (2)(k) of the Public Finance Management Act, 2012 and section 47 of the Public Audit Act 2015 by providing supportive documentation to the Auditor General on time.

244. Un-Procedural Procurement of Security Services

772. During the year under review, the Company procured provision of security services through direct procurement method. Review of documents relating to the tender revealed that an advertisement was placed on 3 November, 2020 for security services which was three months after contracts for existing services had expired. Two firms were found to be responsive. However, the tender process was terminated on grounds that the KPC regions to be guarded were segmented into six (6) sectors.

773. Further, the requirement for bidders to have presence in six sectors had not been included in the bid documents thereby raising doubts as to how it was concluded that the two bidders who qualified were not capable of covering all the sectors, and why no awards were made for the two sectors where the two bidders had presence as the Company retendered for the other sectors. Therefore, the use of direct procurements method for the provision of security services was not justified by the Management.

Management Response

The Accounting Officer submitted as follows—

i. ***Existing Security Contracts.***

774. The contracts reference KPC/PU/134-LP/18 were scheduled to expire on 30th September 2020. However, to allow for a new procurement cycle, the Managing Director approved extension of time on 14th September 2020 for a period of 3 months ie; 1st October 2020- 31st December 2020.

ii. ***Prequalification for guarding and security services KPC/PU-FW/054(SEC)NBI/20-21***

775. A prequalification was advertised on 3rd November 2020 for provision of guarding and security services. A prequalification leads to a tendering process where the successful candidates are invited to participate in the subsequent tender. It is confirmed that two firms were responsive. However, KPC has a practice of segmenting the facilities into sectors and contracting one security firm per sector. This minimizes the risk of exposure in the event of any industrial unrest. During this period there were six sectors and therefore qualification of only two firms left KPC with little room to progress with the process except to terminate. Progressing the two firms to the tendering stage would have meant that the contracts for the various sectors would have commenced at different times .

776. A second extension of time was approved for the period 1st January 2021-31st March 2021 to allow for advertisement and competitive bidding of the same.KPC advertised tender ref: KPC/PU/OT-128/SEC/NBI/20-21 on 12th January 2021. This tender was evaluated and recommended for termination as all the tenderers were non-responsive.

ii. **The use of direct procurements method for the provision of security services was not justified by the Management.**

777. KPC is a strategic Government Facility, and it is crucial that it's premises and assets are secured at all times. Given that the open tender process was unsuccessful a Direct Procurement was carried out to the firms already providing services due to the urgency. The company would have been highly exposed without security services after the open tender process failed. Direct Procurement was the option available as KPC had reached the maximum limit allowed for contract variation, yet the Company had not succeeded to have the service providers on board through a competitive process. This was done in compliance with Section 139(6) of the Procurement Act 2015.

778. Section 139(4) (e) & 6 of the Public Procurement and Assets Disposal Act 2015 provides that:

"(4) For the purposes of this section, any variation of a contract shall only be considered after twelve months from the date of signing the contract and shall only be considered if the following are satisfied—

"(e) The cumulative value of all contract variations do not result in an increment of the total contract price by more than twenty-five per cent of the original contract price."

(6) "Where variations result in an increment of the contract price by more than twenty-five percent, such variations shall be tendered for separately."

779. KPC advertised an open tender ref: KPC/PU/OT-036/SEC/NBI/20-21 on 9th November 2021. This tender was evaluated and awarded for a period of one year ending on 30th April 2023. KPC advertised a tender for provision of security services for a period of two years and the contracts commenced on 1st May 2023. The advertisement for prequalification of security services was placed on 3rd November 2020.

Committee Observation

780. The Committee noted that the explanation and evidence adduced by the Accounting officer was not sufficient enough to clear the audit query.

Committee Recommendations

781. The Committee reprimands the Accounting Officer for using direct procurements method for the provision of security services.

782. The Committee recommends further investigation of the matter by the EACC.

245. Irregular Procurement of Printing Consumables

783. The Company invited bids for supply of printing consumables comprising toners and cartridges through a restricted tender, where five (5) authorized dealers of HP printers in Kenya were invited. Three (3) bidders responded and were subjected to tender opening and preliminary evaluation process but were found non-responsive on grounds that they did not attach mandatory requirements when bidding.

784. The supply was retendered, and the same bidders were invited to bid in a restricted tender. Upon evaluation, the tender was awarded two bidders at a cost of Kes.11,564,151 and Kes.33,066,244 respectively. However, use of restricted tendering method was not justified since the tender did not meet the conditions for use of restricted tendering method as provided for in the Act, given that toners and cartridges are not specialized items in nature. In the circumstances, Management was in breach of the law.

Management Response

785. The Accounting Officer submitted that an Open Tender reference KPC/PU/083-CP/18-19 was initially advertised in the newspapers-MyGov on 19th February 2019. The evaluation committee detected inconsistency and ambiguity in some sections of the tender document and therefore was unable to proceed with evaluation beyond preliminary stage. The tender was subsequently terminated. A second Open Tender, reference KPC/PU/092-CP/18-19, was advertised in the newspapers-MyGov on 17th March 2020. During evaluation, due diligence was carried out on 14No.bidders that had attained the minimum qualifying score of 75%. KPC wrote to HP to confirm whether the bidders were authorised HP dealers. HP responded and confirmed that none of the listed bidders were authorised dealers. The tender was subsequently terminated.

i) ***Use of Restricted Tendering Method justification.***

784. As a result of the failed attempts of the two open tender processes, KPC wrote to HP Europe BV, Amsterdam on 5th October 2020 requesting for a list of authorized Dealers or Agents with their respective contacts in Kenya. HP responded on 6th October 2020 by submitting a list of 5No. dealers. Dealing with HP authorised dealers guarantees supply of genuine HP products from the market as there are several entities supplying counterfeit products.

787. Approval for restricted tender was based on Section 102(1) (c) of the Procurement Act 2015 as the 5No. firms were the "few known suppliers" provided by HP. The Act provides that:

> *"If there is evidence to the effect that there are only a few known suppliers of the whole market of the goods, works or services";*

788. In compliance with Section 102(1) (d), KPC posted a Notice of Intention on the website to give an opportunity to any other suppliers to submit their interests to bid for this tender. No bidder showed interest and approval for restricted tender to the 5No. was granted.

ii) *Toners and Cartridges are not specialized items.*

789. The restricted tender was *not* progressed as a specialised procurement which falls under Section 102(1) (a) of the Act:

> *"Competition for contract, because of the complex or specialised nature of the goods, works or services is restricted to prequalified tenderers".*

790. KPC obtained a list of HP authorized Agents (Partners) from HP Europe BV, to get value for money for the products purchased and also guarantee the quality of the products used in the HP printer machines as the market is infiltrated with counterfeits.

791. The procurement was therefore progressed to conclusion and the awarded suppliers delivered genuine consumables.

Committee Observation and Recommendation

792. The Committee observed that the submission by the Accounting Officer with regards to the procurement of genuine printing consumables was satisfactory hence the matter is resolved.

246. Human Resources Matters

246.1. Un-Procedural Recruitment

793. Section 2.2.1. of KPC Human Resource policies and procedures provides that the grading structure, qualifications, and other requirements for recruitment into the Company are laid down in the Career Guidelines. Review of staff recruitment during the year revealed appointment of an applicant who did not meet the required minimum qualifications for the position appointed to. According to the human resource records, the appointee to a General Manager position lacked requisite experience for appointment to the position both as required in the advertisement and as per the approved career guidelines for the Company. In the circumstance, the suitability of the appointed applicant to the position was in doubt, as well as the objectivity of the recruitments.

Management Response

794. The Accounting Officer submitted that disciplinary action had been initiated against the Staff for falsification of her records on her experience. Upon issuance of a show cause letter and subsequent invitation to appear before the Board's Human Resource Committee for a hearing, she moved to court and obtained an injunction. The injunction maintained a status quo pending the hearing and determination of the case. Due to prolonged period of hearing and determination of the case, Lawyers representing KPC filed an appeal on the injunction. The hearing was scheduled for 13th of April 2024 but has since been rescheduled to 18th of June 2024.

795. Currently the Company is ensuring appropriate due diligence is carried out before appointment of staff.

Committee Observation

796. The Committee noted that there was an active case in court regarding this matter.

Committee Recommendation

797. The Committee recommends that pursuant to Standing Order 89 (2), the matter is sub-judice and the Committee shall await the Court's ruling.

246.2. Un-Procedural Promotions

798. During the year under review, the Company advertised internally and promoted several staff members. A review of the promotions revealed the following anomalies:

i) Three (3) vacancies were declared and advertised for the position of assistant engineer (operations) grade KPC 7. However, four (4) candidates were appointed at the end of the interview process.

ii) According to the advertisement placed for position of dispatch clerk grade KPC 10, six (6) vacancies were declared and advertised but twenty-one (21) candidates were appointed at the end of the interview process.

iii) Three (3) vacancies were advertised for position of chemist Grade KPC 6, but six (6) candidates were appointed at the end of the interview process. No explanation was provided for the appointment of extra officers over and above the declared and advertised vacancies.

iv) Review of personal files for a sample of employees promoted during the year revealed that four (4) members of staff had not attained the minimum qualification for the positions they were promoted to in accordance with the approved career guideline. These included academic qualifications, mandatory courses, and possession of practicing licenses. In the circumstances, Management was in breach of the law.

Management Response

The Accounting Officer submitted as follows—

i. **Filling of more positions than those advertised**

799. It will be observed that many positions were advertised internally in the company at the time, whereupon staff on being promoted would leave vacancies that were hitherto not existing. Consequently, whereas a specific number of positions for diverse designations would be advertised, in view of the many positions that were concurrently being filled at the time as well as natural attrition taking place at the time, it was felt prudent to fill all vacant positions determined at the time of interview rather than basing it on the originally advertised number and/or having to re-advertise the same. This is in consideration that the applicants were drawn from the same pool and the requirements for the positions advertised remained unchanged hence no applicant was disadvantaged. Nevertheless, the management has since taken note of the comments of the auditors and is now strictly filling positions based on the advertised number.

ii. **Technical Operator promoted without meeting the minimum academic qualification i.e., having a "D" instead of "D+".**

800. The staff promoted was done based on a board resolution on how to treat internal staff. The Board resolution put Emphasize on performance and experience as a key consideration and conditional waiver for D+ for the specific group of applicants. The requirements for external recruitment for this group was maintained at D+ as per the Board resolution and in line with career progression guidelines.

iii. **Lacked supervisory/ Leadership course lasting not less than two (2) weeks.**

801. Whereas the requirement of a supervisory course lasting not less than two (2) weeks is contained in the career guidelines, since these were internal promotions with the staff already having been tested on the job provided with several internal training through the staff capacity building programmes, management thought it wise to proceed and promote the suitably identified staff and have them undertake these supervisory courses as they settle in the job. The said training had been identified in KPC's Training Needs Analysis (TNA) for the period 2020-2023 for incorporation.

802. Cognizant of the role played by actual career experience, the public service commission (PSC) through its communication Ref: PSC/ADM/13/(6) dated 11th March 2020 on requirements for promotion has since dropped promotion/ supervisory training requirement.

Committee Observation

803. The Committee noted that the Accounting Officer employed more employees than the number advertised internally.

804. The Committee further noted that the Accounting Officer ought to have submitted a justification for not advertising the positions as it is a disadvantage to other employees who are qualified for the position.

Committee Recommendation

805. The Committee reprimands the Accounting Officer and further directs the Accounting Officer to adhere to the human resource policy on staff establishment.

247. Non-Compliance with the One Third of Basic Salary Rule

806. During the year ended 30 June, 2021 forty-three (43) employees were paid a net salary that is less than a third (1/3) of their basic pay in the month of June, 2021. This contravened Section 19(3) of the Employment Act, 2007. No plausible explanation was given for failure to comply with the law on payment of salaries and allowances. In the circumstances, Management was in breach of the law.

Management Response

807. The Accounting Officer noted the Auditor's comments and submitted the Employees who were below a-third of the Basic Salary due to the reasons detailed in the table below—

Net salary that is less than a third (1/3) of their basic pay

Reason	No of Staff	Amount Kes.
Medical over expenditure Recovery	22	125,520

Other Salary Recoveries	13	111,434
Court Attachments	1	50,141
Persons With Disabilities (PWD) tax deductions	2	41,022
Suspension – 50% salary payment	3	36,712
Subsistence Allowance Recovery	1	16,358
KPC Staff Housing Rent deduction	1	674
Total	**43**	**381,861**

808. The Company complies with Section 19(3) of the Employment Act, 2007 fully. Management has ensured that no staff falls below a Third Rule. Staff Salary was improved, and recoveries are closely monitored each month to ensure compliance with the Act.

Committee Observation

809. The Committee noted at the time of examination of this query that the Accounting Officer adduced evidence of having improved their system and was in compliance with the requirement under section 19(3) of the Employment Act on the a third –rule.

Committee Recommendation

810. The Committee recommends that the matter is resolved.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

248. Accounting for Accrued Expenditure

811. The general ledger for administration expenses for the year under review included accrual reversals of Kes.19,958,429 and Kes.6,374,660 in respect of consultancy services. The reversals were in respect of expenses incurred in June 2020 which are normally cleared upon payment. However, the payment was made on the same month of June 2020 but the accrual

was reversed in July, 2020. Similarly, information communication technology ledger for the year under review included June 2020 accrual reversals amounting to Kes.55,848,007, which had been erroneously included in the expenditure account for the year under review. Whereas the errors were corrected as post-audit adjustments, there was indication of weaknesses in the internal control system which failed to detect the error during processing of the transactions.

Management Response

812. The Accounting Officer of KPC submitted that the internal controls were now in place and the provisions accounts reconciliation are signed off monthly. The Financial Statements for FY 2019/2020 were restated and published with the above amounts to reflect the correct position.The management currently has controls in place in form of monthly reconciliations.

Committee Observation and Recommendation

813. The Committee noted that the Accounting Officer had instituted internal controls to aid reconciliation of accounts hence the matter is resolved.

249. Dormant Human Resources Management Advisory Committee

814. The Company appointed six (6) members to the Human Resource Management Advisory Committee (HRMAC) on 18 September 2019 in line with paragraph 2.13.1, of the Company Human Resource Policy and Procedure Manual. The committee is responsible for reviewing and advising the Managing Director on human resource management and development issues. However, during the year under review the committee did not hold any meeting to review and deliberate on human resource issues as stipulated in the human resource policies and procedures. No satisfactory explanations were provided as to why the appointed committee was not able perform its mandate.

Management Response

815. The Accounting Officer submitted that whereas the Human Resource Management Advisory Committee (HRMAC) is in place as contained in

clause 2.13 of the Human Resource Policy & Procedures Manual (HRPPM), giving diverse mandate, the mandate is also covered in other clauses within the same manual for example, provisions on how to undertake appointments are contained in clause 2.14, disciplinary matters in section 11, staff performance in section 8 etc. By inference therefore the functions of the HRMAC have been on going albeit using the other respective provisions. Nevertheless, and more specifically, upon reconstitution of this committee on 22nd June 2022, it has since proceeded to conduct hearings for the FY 2020/21 and FY 2021/22 performance rating appeals from staff.

816. On 24th February 2023, HRMAC conducted a meeting with the following agenda:

i) Calibration of FY 2021/22 performance appraisal scores.

ii) Hearing of staff appeals 2021/22 appraisal scores.

iii) Justification by supervisors for excellent performance rating awards to staff.

Committee Observation

817. The Committee noted that HRMAC had been reconstituted and was currently functional hence the matter is resolved.

Committee Recommendations

818. The Committee recommends that the management should liaise with the State Corporation Advisory Committee (SCAC) to develop and align its Human Resource policies with the law.

250. Dormant Corporate Social Investment Committee

819. The Managing Director through a letter dated 15 April 2019 appointed six (6) members into Corporate Social Investment Committee to operationalize the corporate social investment policy. However, during the period under review the committee did not meet to review and

deliberate CSI initiative plan for 2020/2021. The approved CSI plan for the period 2020/2021 was reviewed by only two (2) members drawn from the Company's foundation department. Further, there was no evidence that the committee had ever met to deliberate on matters pertaining to the corporate social investment during the year under review.No explanation was provided on why the appointed committee members did not perform their mandate of reviewing the plan for the period under review.

Management Response

The Accounting officer submitted as follows—

820. It should be noted that the review committee consisted of only four members. During the year under review a meeting was convened on 28th October 2020. Two (2) members of the committee sent their apologies leaving only two (2) who included the Foundation Manager and the Senior Foundation Officer. The two (2) attended and transacted the business of the day. The meeting was convened in October during the COVID 19 pandemic which disrupted many activities and especially face to face meetings.

Current Status

821. The Kenya Pipeline Foundation is now fully registered as a Charitable Trust and the Board has appointed Trustees who hold a fiduciary role in the management of all the assets and the financial resources of the KPC Foundation. The coming on board of the Trustees will introduce a second tier in the management of the affairs of the Foundation considering that their proposals will ultimately be approved by the KPC Board. The Trustees will be meeting on a quarterly basis to oversee and guide the Foundation staff in the implementation its projects/programmes.

Committee Observation and Recommendation

822. The Committee noted that the Corporate Social Investment Committee had been replaced by the Kenya Pipeline Foundation, a charitable foundation that oversees the implementation of the CSI programmes hence the matter is resolved.

FINANCIAL YEAR 2021/2022

The Auditor General gave a qualified audit opinion and raised the following concerns:

251. Unvalued Property, Plant and Equipment

823. The statement of financial position reflects property, plant and equipment with a net book value of Kes.85,978,670,508 as disclosed in Note 17 to the financial statements. As previously reported, the balance is made up of fair values of the assets determined by an independent valuer engaged by the Management in 2019, which have been adjusted for accumulated depreciation in the three (3) years up to 30 June, 2022. However, several assets comprising freehold land, buildings, fibre optic cable and motor vehicles with a book value of Kes.7,382,233,566 as at the time of valuation on 1 July, 2019 were not revalued by the independent valuer, and their current book value is based on the historical costs and previous revalued amounts adjusted for accumulated depreciation. This contravenes the requirements of the International Accounting Standard (IAS) 16 – Property, Plant and Equipment which provides that if an item of property, plant and equipment is revalued, the entire class of property, plant and equipment to which that asset belongs shall be revalued. In the circumstances, the accuracy of the property, plant and equipment balance of Kes.85,978,670,508 could not be confirmed.

Management Response

824. The Accounting Officer submitted that the matter has since been resolved as the assets are well accounted for in the restated financials in FY2022/2023. The non-valued assets with a book value of Kes. 7.3 billion were revalued in July 2023 and the revalued figures adopted in the audited books of accounts in the financial year 2022/2023.

825. As at FY2021, the issue raised by the auditors relating to the assets not being valued was for various reasons as explained below:

i) Balance of Kes. 3.9 billion relates to communication equipment including Fibre Optics Cable (FOC) which had elements of both software and hardware components. However, FOC value was

considered fair because it had been acquired one year before the revaluation in year 2018.

ii) Some equipment not valued were combined and valued as one unit while they had been capitalized as separate assets with an estimated value of Kes.1 billion. This anomaly was corrected in the year 2022/2023.

iii) The other balances relate to non-valued assets, assets earmarked for disposal and buildings earmarked for demolition Kes. 2.4 billion – See Appendix 1-1-2. These have since been disposed of.

The company embarked on a companywide verification exercise in preparation for the revaluation exercise planned for in FY2024/2025-See assets verification memo on Appendix A-1-3.

Committee Observations

826. The Committee observed that the at the time of examination, the assets had been revalued and figures adopted in the books of accounts in the financial year 2022/ 2023 hence the matter is resolved.

Committee Recommendation

827. The Committee recommends that in the future, the Accounting Officer should endeavor to comply with the International Accounting Standards(IAS) 16 on revaluation of property, plant and Equipment.

252. Irregular Disposal of Company Land

828. The statement of financial position reflects leasehold land valued at Kes.18,580,547,383 as further disclosed in Note 18 to the financial statements. Included in the value is a piece of land located in Nakuru County measuring 19.07 hectares (47.10 acres) with book value of Kes.697,661,254 from which a portion measuring15.8 hectares (39 acres) was sold to a private company in 2007 at a cost of Kes.7,980,000, and transfer of title signed on 21 September 2021. Despite the land having been sold in 2007, the title of the land remained in the Company name until September 2021 when the lease title was signed off. In addition, the Company has over the years continued to reflect the value of the entire parcel in its books. An independent valuer engaged by the Company in

2019 to undertake valuation of the Company assets reported that the Company occupies only five (5) acres valued at Kes.75,000,000, with the rest of parcel measuring 42.10 acres valued at Kes.625,000,000 being occupied by the encroachers who had erected permanent structures on the land.

829. Further, documents supporting the disposal of the land including approval from the Company's Board of Directors and The National Treasury, land valuation reports, invitation, receipt and evaluation of bids, from interested parties, and evidence of receipt of cash from the sale were not provided for audit review.

830. In the circumstances, the accuracy, ownership and valuation of leasehold land valued at Kes.18,580,547,383 at 30 June, 2022 could not be confirmed. Additionally, the regularity and value for money in respect of the sale of Company land could not be confirmed.

Management Response

831. Kenya Pipeline Company Ltd purchased the land known as LR No. 11964/23, in 1991 at the cost of Kes. 11,505,000. The land measured approximately 19.07 Hectares, which translates to 47.12 Acres. The intention of the purchase was for the construction of a pump station, (PS24). The purchase was after the Ministry of Lands and Housing carried a valuation Dated 25th January 1990.

832. Following the construction of PS24, part of the parcel of land remained unutilised and deemed non-core to the organization. In 2006, the process to dispose off the non-core fixed assets was commenced with the request to the Permanent Secretary, Ministry of Finance, on 16th August 2006 seeking approval to dispose off the said land and the approval thereto dated 31st August 2006. The Ministry of Finance granted the approval in line with Section 13 of the State Corporations Act, subject to KPC undertaking a professional valuation and sale by open tender, in line with the provisions of the Public Procurement law.

833. By the letter dated 24th August 2005, KPC requested M/s Reagent Valuers International (K) Limited to carry out the valuation of the Company's vacant lands among other assets. The responses from Vide their response dated 15th September 2005, Ms. Regent Valuers International Ltd gave the valuation of 15.8 hectares, which is the subject herein at Kes.12,270,000 on.

834. This information guided the KPC Board of Directors at its 181st meeting held on 2nd August 2005 in which it resolved to sell the 15.8 Hectares surplus land by way of a public tender.The parcel of land LR No. 11964/5 of 19.07 hectares (47.1 acres) which initialy belonged to KPC was awarded for sale to M/s Nakuru Express Supplies and Services Ltd.The land was awarded at a price of Kes.7,980,000. Copies of the KPC title LR No. 11964/23, lease transfer and sale agreement.

835. KPC has written to the Registrar of Companies to confirm the directors of the buyer, M/s Nakuru Express Supplies & Services Limited at the time of the sale and obtained a copy of the CR12.

836. During the construction of Line 4, in 2011, a power sub-station was constructed at PS 24 Nakuru. The beacons for the land were already tampered resulting in encroachment on the neighboring land LR No. 11964/22 by a strip of 3 meters on the northern side of the land LR No. 11964/23 where the station is currently situated.

837. In 2013, the company decided to fence the land using chain-link, the Beacons were reinstated but the project stalled due to the encroachment. Recently, as part of KPC embarked anti-cut, anti-climb fences to reinforce security at the Station. Consequently, an agreement was entered for change of common boundaries to enable KPC to take back the land encroached and cede an equivalent portion of the land by changing co-ordinates.

838. A surveyor was engaged, and new beacon and a beacon certificate has been issued and the surveyor's report pending registration of the amended deed-plan.

839. KPC is processing the amended deed plan from the Ministry of lands.Currently, KPC has concluded the processing of the Title Deed and a new title issued as per the attachment Appendix 8-15.The 5-acre land was revalued in FY2023, and values adopted in the restated financial statements.

Response by the Principal Secretary, Ministry of Lands, Public Works, Housing and Urban Development, State Department of Lands and Physical Planning.

840. The Committee on a meeting held on 08th August, 2024, further invited the Principal Secretary, State Department for Lands and Physical Planning to

shed more light on the circumstances regarding the audit query on irregular disposal of Company Land.

841. Response by the Principal Secretary, State Department for Lands and Physical Planning:

(i) The LR. No. 11964/5 whose subdivision gave rise to LR. No. 11964/22, the property in question emanates from LR. No. 11964. The grant for LR. No. 11964 was issued by the President of the Republic of Kenya to Joyce Tapkili on January 13, 1973.

(ii) Upon the demise of the registered proprietor, grant of letters of administration were registered giving rise to new registered owners, namely:

(a) Tapyotin Langat
(b) Michael Chettle
(c) James Kipkoech Kogo
(d) David Cheruiyot; and
(e) Peter Maritim

(iii) The beneficiaries of the estate of Joyce Tapkili (deceased) subdivided the land and individual titles were registered in favour of the beneficiaries. One of the resultant subplots which is LR. No 11964/5 measuring approximately 19.07 hectares was registered in the name of Michael Chettle on March 30, 1989. On May 29, 1990, LR. No 11964/5 was transferred to Kenya Pipeline company Limited vide a transfer dated May 10, 1990 for a consideration of Kes. 11, 515,000/.

(iv) In 2008, Kenya Pipeline Company Limited made an application to the then Municipal Council of Nakuru to change the user and subdivide LR No. 11964/5 into 2 portions. This proposal was also approved vide a Notification of Approval of Development Permission (P.P.A 2) No. 397 dated August 13, 2010. A consent to subdivide and change use of the parcel from Agricultural to Industrial and Residential was also issued by the Nakuru Land Control Board on October 2, 2010. This proposal was also approved by the then Ministry of Lands vide a letter Ref. 116536/66 dated October 4, 2011.

(v) Upon Subdivision, LR No. 11964/5 gave rise to LR No. 11964/22 measuring approximately 15.80 hectares and LR No. 11964/23

measuring approximately 3.270 hectares. The lease for L.R No. 11964/22 was registered on January 15, 2016 while the one for L.R No. 11964/23 was registered on September 24, 2021. On December 14, 2016, Kenya Pipeline Company Limited transferred L.R No. 11964/22 measuring approximately 15.80 hectares to Nakuru Express Supplies and Services Limited for a consideration of Kes. 7, 980, 000/-.

(vi) In 2017, Nakuru Express Supplies and Services Limited further subdivided L.R No. 11964/22 resulting into 81 subplots being L.R. Nos. 11964/28-11964/107 of different acreages. The subdivision was approved by the County Government of Nakuru and the Ministry as per survey plans 433/30 & 604/1.

(vii) L.R No. 11964/106 which was a resultant sub-plot of L.R No. 11964/22 has undergone further subdivision resulting into 31 subplots measuring approximately 0.045 hectares each. This subdivision was approved by the County Government of Nakuru and the Ministry. L.R No. 11964/106 was converted to Nakuru Municipality Block 37/216 and its subdivision resulted to Nakuru Municipality Block 37/217-247.

Committee Observation

842. The Committee noted that the explanation and documents submitted by the Accounting Officer was not satisfactory.

Committee Recommendations

843. The Committee reprimands the Accounting Officer and the Board of KPC at the time for disposing off the assets of KPC at a loss thus failing to comply with section 72(1) (b) of the Public Finance Management Act, 2012.

844. The Committee recommends that the Ethics and Anti-Corruption Commission should investigate the matter with a view of preferring charges to the persons found culpable.

253. Trade and Other Receivables

253.1. Inaccuracies in Provision for Bad and Doubtful Debts

845. The statement financial position reflects trade and other receivables balance of Kes.8,299,164,842 which has been reported net of provision for bad and doubtful debts and long -term portion of the receivables. As

disclosed under Note 23 (b) to the financial statements, the Management made general and specific provisions for bad and doubtful debts of Kes.6,543,415,620 in respect of the receivables for the year under review. Review of the receivables' ledger reflected a balance of Kes.5,356,240,930 in respect of outstanding trade debtors as at 30 June, 2022 that was over 180 days. A provision of 10% of the outstanding trade debtors for over 180 days in line with the Company's policy on general provision would have translated to Kes.535,624,093.

846. However, the Management made provisions totaling Kes.1,324,742,232 resulting in over provision of Kes.789,118,139 which was not explained. In addition, the Management had made specific provisions amounting to Kes.941,341,586 in respect of amounts owed by oil marketers who were still trading with the Company and the Kenya Airports Authority, and other provisions of Kes.21,243,253 in respect of staff debtors. These provisions were not supported by justification as well as the requisite approvals in line with the Company policy and Government Financial Regulations. In the circumstances, the accuracy and completeness of the provision for bad and doubtful debts could not be confirmed.

Management Response

The Accounting Officer submitted as follows—

847. The movement in provisions is made up of Specific, General & Other provisions. As per the policy, a provision of 10% of the outstanding trade debtors for over 180 days ought to be made but specific provisions have to be excluded first in the 5,356,240,930. The opening balance for Provision account is Kes. 5,212,292,957 which closed with a balance of Kes. 6,536,835,189. This had a movement of Kes. 1,324,542,232 as demonstrated in **Table 1** below:

Description	Amount Kes
Opening Bal	**5,212,292,957**
Specific Provisions	941,341,586
General Provisions	28,244,728

Other Provisions	22,076,686
Change in forex valuation	332,879,231
Closing Balance	**6,536,835,189**

Table 2 -Movement of the Provisions Account

848. The justification for making specific provisions relate to trade debtors, among them Oil marketing Companies (OMCs) with outstanding debt over 365 days. The provision for Tullow oil (early oil project) was outstanding for over 365days but has since been reversed as they have honored their debt in FY2023. Provisions for KAA was made for amounts outstanding for over 7 years that the entity though continuously engaged has been reluctant to honor (see attached correspondences). Telcom Kenya have disputed amounts that management is pursuing to resolve but discussions on collections are on-going.

849. 10% of trade debtors over 180days is derived after excluding specific provisions done in prior and current year and not a block 10% on outstanding Debtors. Prior to making the provisions, approvals are sought as per policy the provisions made in FY2021.Management continues to make the provisions based on prudence concept to ensure faithful representation of the financial statements. In summary, 10% of Kes.5,356,240,930 amounting to Kes.535,624,093 cannot capture an accurate provision since specific provisions were already made in full.

Committee Observation and Recommendation

850. The Committee noted that the submission by the Accounting Officer on reconciliation of bad and doubtful debts was satisfactory and the matter is resolved.

253.2. Inaccuracies in Value Added Tax Recoverable

851. Note 23 to the financial statements reflects Value Added Tax (VAT) recoverable of Kes.1,744,055,338 as at 30 June, 2022. A reconciliation of the VAT account and file returns reflected an amount of Kes.914,987,561 described as VAT credit expected from Kenya Revenue Authority (KRA).

Review of correspondences between the Company and KRA revealed that the amount relates to input credits disallowed due to VAT Auto Assessment (VAA) which KRA was reviewing as at the time of the audit.In the circumstances, the accuracy and completeness of VAT recoverable balance of Kes.1,744,055,338 could not be confirmed.

Management Response

852. The amount of Kes. 914,987,560.68 relates to debit adjustment vouchers (DAV's) KRA issued to KPC reducing KPC's tax credit. KPC contested the decision and KRA admitted that KPC validly claimed but they disallowed and amount of Kes. 84,568,295.68 resulting in net a VAT Automated Assessments (VAA) credit of Kes. 830,419,265. This was resolved and credit reinstated as shown in **Appendix A-3-1**. The returns for February, April and May 2016 were amended accordingly. However, The legacy balance of Kes. 198,101,523.89 is still pending reconciliation by KRA.

853. KPC has made a provision for the outstanding Kes 198,101,524 million in the FY2023 financial statements as management continues to engage KRA on the same.

Committee Observation and Recommendation

854. The Committee observed that the submission by the Accounting Officer on recoverability of the Value Added Tax was satisfactorily hence the matter is resolved.

855. The Committee recommends that the Accounting Officer should in the future ensure that KPC books of accounts comply with section 68 (2) (b) of the Public Finance Management Act, 2012.

254. Unreconciled Related Entities Balances

856. The statement of financial position reflects Kes.3,878,502,140 in respect trade and other payables as disclosed in Note 30 to the financial statements. The payables balance included Kes.210,869,118 due to the Kenya Petroleum Refineries Limited (KPRL) as at 30 June, 2022. However,

KPRL books and financial records as at 30 June, 2022 reflected an amount of Kes.520,109,608 as receivable from the Company resulting in a variance of Kes.309,240,490. Although Management provided a reconciliation for the variance, the same was not acknowledged and was disputed by KPRL Management. In the circumstances, the accuracy of the trade and other payables of Kes.3,878,502,140 respectively could not be ascertained.

Management Response

857. The disputed balances were acknowledged by KPRL management and correspondences shared with the Office of the Auditor General acknowledging the variance as per the attached Appendix.The reconciling items are as detailed below and what had not been captured in KPRL books of accounts.

Table 2- Reconciliation of KPC-KPRL Trade Payables

Particulars	Kes.
Balance as per KPRL statement	520,109,608.48
Less:	
Withheld tax on lease rental payments @ 10%	297,812,446.51
Long outstanding payable	3,238,887.78
Early Oil Pilot System (EOPS) Payables	6,496,693.55
Pending payroll remittances – (Rent & Pension Deductions)	1,692,462.33
Balance as per KPC report	**210,869,118.31**

858. The variance with KPRL largely related to withheld tax of 10% on lease rental payments at Kes. 297,812,446.51. These amounts are withheld as per the respective Acts & KRA Ruling –Tax certificates in respect of the withheld amounts had also been issued through the tax system (i-tax) withholding certificates

859. The other payables relate to contested invoices for Early Oil Pilot System (EOPS) and rent payments recovered from staff residing in KPRL staff housing estate that are now resolved.

Committee Observation and Recommendation

860. The Committee noted the submission by the Accounting Officer on reconciliation of the balances was satisfactory hence the matter is resolved.

Emphasis of Matter

255. Land Without Titles

255.1. Freehold Land

861. The statement of financial position for the year ended 30 June, 2022 reflects property, plant and equipment balance of Kes.85,978,670,508. As disclosed in Note 17 to the financial statements, the balance included freehold land of Kes.1,911,111,785 out of which five (5) parcels of land valued at Kes.42,350,000, allocated to the Company in the 1970s and 1990s for pipeline infrastructure, had no title deeds. According to Management, the land was allotted from trust land and there have been delays in demarcation of the areas and adjudication processes required to facilitate acquisition of title deeds. However, there was no evidence of efforts made by Management to ensure that the process of land adjudication is concluded and yet the parcels of land were allocated to the Kenya Pipeline Company more than twenty (20) years ago.

862. Further, review of the records maintained at the Company revealed that a parcel of land purchased from a private vendor could not be registered as the title deed for the plot is charged to the Kenya Commercial Bank for loan taken by the owner. Although Management indicated that it is engaging the Kenya Commercial Bank directly to resolve the matter, no evidence of such engagement was provided. Further, no records of the said land were available at the Company and as such the carrying amount of the said parcel of land could not be confirmed. In the circumstances, the accuracy and completeness of property, plant and equipment of Kes.85,978,670,508 could not be ascertained.

Management Response

863. The Accounting Officer submitted that numerous correspondence by KPC's external lawyers to KCB on the status of discharge of the charge to them did not yield any results from 2014 to 2022. KPC opted to engage the bank directly on the negotiations for the discharge of the charge to finalize the same. Direct engagements with the KCB's team had enabled progression towards discharge as detailed below:

i) KPC shared a copy of a letter dated 6th July 2001 from the seller to KCB in which he had informed the bank to release the title to KPC who had bought the land.

ii) KCB confirmed that the bank still holds the title to the property and that they could only release the title to KPC once the encumbrance/charge is discharged.

iii) Internal investigations confirmed that the seller, Mr. Peter Ngángá Githiomi ('Githiomi') was deceased and could therefore not execute a discharge of the charge to KCB for the bank to release the property to KPC.

iv) KPC succeeded in tracing the Administrators of the estate of the late Githiomi, one of whom resides abroad.

v) Negotiations have been held with Githiomi's family's lawyers, M/s Kamunye Gichigi & Co. Advocates who are in Kenya and confirmed to the bank that they had been instructed to handle KPC's request on condition that KPC bears the costs associated with the discharge.

vi) The Lawyers have written to KCB lawyers, drafted, and shared with the bank, a Discharge of Charge. They have further confirmed to the bank that they have been instructed to authorize the release of the duly executed Discharge of Charge and original title to KPC.

vii) KPC expects the release of the original Title and Discharge of Charge to the Company whereupon, KPC's lawyers will process the registration of the parcel of land in KPC's name.

864. Further the Accounting Officer informed the Committee that the Authority's lawyers on record who were instructed to handle the matter updated the Authority that despite numerous correspondences with KCB they had not received any update on the same. The Authority opted to engage the bank directly with a view to jump start the negotiations for the discharge of the charge to ensure they finalize the same.

865. Direct engagements with the KCB's team in February 2023 had opened the possibility of KPC confirming whether indeed, the bank still has an interest in LR No. Block 4/4224 with respect to a loan granted to the original owner. Current indications are that there is a possibility that the original landowner liquidated the loan and failed to discharge the charge to KCB. KCB has confirmed that the bank still holds the Title to the property. It has requested KPC to provide a copy of the Sale Agreement to support the Company's request for the title. In view of the passage of time, since the sale of the land to KPC in 1992, KPC has not been able to trace the Sale Agreement so far, however, efforts in this regard are continuing.

866. Separately, KPC is trying to trace the seller for no objection for registration of the parcel in KPC's name.

	LAND PARCEL HISTORY & DEVELOPMENTS	CURRENT STATUS	WAY FORWARD

	LAND PARCEL, HISTORY & DEVELOPMENTS	CURRENT STATUS	WAY FORWARD
1. **NAIVASHA MUCHIRINGIRI** **BLOCK 4/4224** **0.04Ha - (Title Absolute)** KPC bought the land measuring 0.04Ha in 1992 from Peter Nganga Githiomi (now deceased) but was unable to obtain title as the land was charged to KCB for a loan the seller took from the bank.		KPC successfully engaged the administrators of the estate of Mr. Githiomi and their lawyers. The charge on the property was discharged and the Original Title & Transfer released to KPC. KPC has obtained the Title.	This matter is now closed.
2. **PUMP STATION(PS) 26A L.R. NO. UASIN GISHU/ BURNT FOREST/2/99**		Correspondence	KPC will

	LAND PARCEL HISTORY & DEVELOPMENTS	CURRENT STATUS	WAY FORWARD
	In 1993/94, KPC purchased the parcel of land for the construction of permanent installations for the transition point at Snendet, Burnt Forest. The land was later found to have been sold off to another buyer and KPC land had not been excised. KPC's ownership of PS 26 parcel is uncontested.	on the progress for titling are attached. Assurance has been given that they will deliver the title to KPC in 2024.	continue following up for issuance of the title.

KPC held a meeting with the PS, State Department for Lands on 27th September 2023 to discuss the issue of the pending titles relating to: **Makindu (PS6)** - Kiboko "A" Settlement Scheme; **Mtito Andei (PS 5)** - LR No. 2454 (Mangélete Scheme) **Maungu** - LR No. 15030/2.

3. **MAKINDU PS 6**

KIBOKO "A" Settlement Scheme **29 Acres**	Confirmation was made by the Ministry of lands in June 2023 that the parcel of land	Vide a letter dated 31st October 2023, the Director, land

	LAND PARCEL HISTORY & DEVELOPMENTS	CURRENT STATUS	WAY FORWARD
		belongs to KPC.	adjudication and settlement requested for submission of KPC's certificate of registration for the Company. This was done.
	KPC was allotted the land by the Government of Kenya vide an offer letter dated 8th December 2005. KPC accepted the offer on 14th December 2005 and paid the acquisition fees.		KPC followed up and was informed that the process of preparing a discharge and a transfer of the land to KPC was ongoing.
4.	**MAUNGU** **FS-3 L.R No. 15030/2** **13.26Ha** KPC was allocated an unsurveyed plot of land in Maungu by the	Vide a letter dated 18th September 2023, KPC wrote to the Director of Surveys to fast track the exercise	The letter from the Director, Land Adjudication & settlement did not address the issue of Maungu pump station. However, upon inquiry on the status, the

	LAND PARCEL HISTORY & DEVELOPMENTS	CURRENT STATUS	WAY FORWARD
	Commissioner of Lands in 1975. The process of acquisition of the title commenced on 20th July 2006. A Part Development Plan was prepared and forwarded to the Director of Physical planning on 13th July 2007.	of preparation and provision of a Survey Plan, Verification and Approval of the PDP.	officers at the Survey office confirmed that they were still trying to obtain the land records of the said parcel of land. We shall continue to follow up.
5.	**MTITO ANDEI - (PS-5)**		
	Mangelete Scheme/2454/Mtito Andei **L.R No. 2454: 20.14 Ha** The plot falls under the Mangelete Settlement Scheme.	Due to the unregistered status of the Mangelete Scheme, the title Deed for the plot is yet to be processed.	The scheme is earmarked for finalization during FY 2023/2024. We shall continue to follow up.

	LAND PARCEL HISTORY & DEVELOPMENTS	CURRENT STATUS	WAY FORWARD

Committee Observations

867. The Committee noted that in regards to the Parcel of land in Naivasha, KPC had obtained title on the land.

868. The Committee also noted that KPC was yet to acquire title for the Makindu PS 6 and Pump Station (PS) 26A LR NO. UASIN GISHU/BURNT FOREST/2/99 parcels of land and the titling process was ongoing.

869. The Committee noted that the records relating to the Maungu PS 3 L.R.NO.13030/2 plot of land were unavailable and therefore KPC was unable to acquire title.

870. The Committee noted that the Mangelete Scheme/2454/Milto Andei L.R. NO.2454 was in an unregistered scheme hence the certificate of title was yet to be processed.

871. The Committee noted the existence of circular Ref. No OP.CAB.9/1A dated 27th July, 2011 which directed all state corporations to initiate the process of acquiring title deeds for all parcels of land in their possession within one year from the date of the circular.

Committee Recommendations

872. The Committee recommends that the Accounting Officer should adhere to the contents of the circular Ref. No OP.CAB.9/1A and expedite acquisition of titles on the parcels of land accordingly. (annexture 1)

256. Leasehold Land

873. Included in the leasehold land balance of Kes.18,580,547,384 as disclosed in Note 18 to the financial statements is a parcel of land with a net book value of Kes.5,210,102,489 which the Company was allocated by the Government in 1976. However, the Company did not have a title deed for the parcel. Further, information provided during the audit indicates the parcel where Embakasi Depot sits and carried in the books at Kes.5,210,102,489 had its title deed issued to the Kenya Airports Authority. Additionally, a parcel of land located in Mombasa County was carried in the books at Nil netbook value since it had been fully amortized. However, during the re-valuation of the Company's assets by an Independent valuer in 2019, the land was valued at Kes.750,000,000. The Company could not carry the new cost to its books due to the expiry of the allotment on 1 July, 2019. However, the Company continues to possess critical, strategic and high value infrastructure in the two parcels of land which serves the country both at Jomo Kenyatta International Airport and Moi International Airport. Although Management had written severally to the Ministry of Lands and Housing, National Lands Commission and the Kenya Airports Authority to have the parcels transferred and lease renewed on the matter, no responses were received. As a result, the ownership and completeness of the leasehold land balance of Kes.18,580,547,384 could not be ascertained.

Management Response

The Accounting Officer submitted that—

874. The parcels of land referred on the observations relate to land where KPC aviation depots are situated, i.e JKIA and Mombasa International Airport. Kenya Airports Authority has never issued KPC with title deeds to those parcels of land even after several follow ups. KPC has on several occasions written to the then Ministry of Petroleum & Mining as well as Ministry of Lands for assistance. The Ministry of Lands and Physical Planning did not respond to the latest letter.

875. KPC wrote to the Principal Secretary, Ministry of Petroleum and Mining (MOEP) vide letter dated 27th June 2022 requesting the Ministry to deal with the matters via an Executive Order from the Presidency seeing as the previous correspondence from the Ministry of Lands & Physical Planning have failed to bear any fruits.

876. KPC further wrote a letter dated 30th June 2022 to the PS, Ministry of Petroleum & Mining updating him on the Board members' resolution that a letter be written to the Head of Public Service for the purpose of finding a workable solution to the undesirable situation that has persisted for decades. In the past the National Land Commission also wrote to the K.A.A. requiring them to surrender the titles.

877. The company has this financial year again highlighted the challenges relating to PS 9 and PS12 depot land parcels to the PS, MoEP on 14th December 2022. The history of the matters and the proposed way forward, namely the pursuit of separate titles for the depots has been escalated to the PS- MoEP.

878. KPC also wrote to the new PS-MoEP on 14th February 2023 and made a fresh two-pronged appeal for issuance of titles to KPC by the Ministry of Lands and Physical Planning, which request is made through the Parent Ministry based on: -

i) Section 69(1) and (4) the Physical Land Use Planning Act of 2019 mandates the CS Ministry of Lands and Physical Planning to give policy guidelines to any public institution on projects of strategic importance and approve developments on the same.

The strategic nature of the 2 depots to the country was underscored at inception in the early 1970s and 1980s by Government that set apart land for development of infrastructure and facilities that support aircraft refueling with ready to plane fuel at JKIA and MIA, these two being international airports that contribute significantly to the country's socio-economic development agenda.

The two depots do not operate in isolation but are a part of the inter-county fuel storage and distribution network of fuel storage and distribution facilities securing sufficient petroleum products supplies from the Port of Mombasa to Western Kenya regions and beyond.

ii) The gazettement by the Minister of State for Provincial Administration and Internal Security in 2011 of the two KPC fuel storage and distribution depots **L.R.No.MSA/Block VI/4406** and **L.R.No. 209/9042/225**, amongst other KPC depots across different counties in Kenya, as **"Protected Areas"**.

Committee Observations

879. The Committee observed that KPC did not have any ownership rights on the land. However, the Committee noted from the explanation of the Accounting Officer that KAA had agreed to grant KPC a long-term lease. However, KAA was required to review their policy in regards to leasing of land.

880. The Committee noted at the time of examination that KPC had only an allotment letter for the parcel of land it was claiming.

Committee Recommendation

881. The Committee recommends that pursuant to the Circular Ref. No OP.CAB.9/1A by the Head of Public Service on acquisition of land by State Corporations, the Accounting Officer of KPC should expedite the acquisition of the certificate of lease on the said parcels of land.

882. Further, the Committee recommends that the management of KAA should fast track the review of the KAA policy to enable KPC attain the certificate of lease on the land.

257. Disputed Amount Payable to a Vendor

883. As disclosed in Note 37 to the financial statements, contingent liabilities during the year amounted to Kes.21,301,991,119 comprising of Kes.21,213,920,267 and Kes.88,070,852 in respect of pending lawsuits, and guarantees and letters of credit respectively. Included in the pending lawsuits is an amount of USD 3,845,695 (Kes.453,147,487) claimed by a vendor of hydrant pit valves and associated spare parts supplied to the Company in 2017/2018 financial year. The Company had made a 40% advance payment to the vendor, with the remaining 60% payable upon delivery and acceptance of the items. Although the valves were received and later utilized at the Company, the price of the items was disputed and subjected by criminal investigations and prosecutions by the Ethics and Anti-Corruption Commission (EACC). The vendor has since moved to court demanding for payment of the remaining 60% of the invoice amount. Management indicated that both cases were still pending before the High Court awaiting determination. In the circumstances, value of the items supplied by the vendor and the amount of liability owing to the vendor could not be ascertained.

Management Response

884. The Accounting officer submitted that the following were the cases against Aero Dispenser Valves

i. Milimani Acc No 50/2018: Republic Vs Aero Dispenser Valves Ltd & 13 Others,

ii. Nairobi Hcc No 224 Of 2017: Aero Dispenser Valves Ltd -Vs- Kpc

iii. Nairobi Acec Suit No 8/2020: Eacc -Vs- Aero Dispenser Valves Ltd & 13 Others,

A brief on the Cases

i.Introduction

885. In the month of October 2014, Kenya Pipeline Company initiated a procurement process to replace non-compliant Hydrant Pit Valves at JKIA in order to conform to the Third Edition of API 594, JIG/IATA requirements. Sixty(60) Hydrant Pit Valves did not conform to the required standards.

ii.The Tender Process

886. At its sitting held on 9th December 2014, the KPC Tender Committee Meeting No. 18-2014/2015 approved the direct procurement of the items from M/S Cla- Val Co.Ltd based in the US with explanation that the Company was the original equipment manufacturer of Cla-Val pit valves .Complete tender documents were sent out on 10.12.2014 to M/S Cla-Val Co. Ltd with a closing date of 07.01.2015. On 15th December 2014; M/S Cla-Val Co. Ltd authorized Allied Inspection and Testing Inc. Canada to supply the pit valves and spares to Kenya Pipeline Company under tender number SU/QT/3264F/14.

887. On 15th December 2014, Allied Inspection and Testing Inc Canada appointed a local Kenyan Company; Aero Dispenser Valves Ltd to bid for the supply of the hydrant pit valves and related parts and spares to the Kenya Pipeline Company. The response was received from M/S Aero Dispenser Ltd on 07.01.15, with the tender sum of USD 6,441,700.40. The Tender was evaluated and the resultant report tabled before Tender Committee on 03.02.2015.Following approval by the Tender Committee

Meeting No.22-2014/2015, the Tender Processing Committee conducted negotiations with the supplier and secured a 2% price discount, thereby reducing the tender sum to USD 6,409,491.

888. At its sitting of 18.02.2015, the Tender Committee TCM NO.22-2014/2015 awarded the tender to Aero Dispenser Valves Ltd at a total cost of USD 6,409,491.89. A letter of award dated 19.02.2015 was issued and accepted by the supplier on 25.02.2015. A Performance Bond of Kes 60,000,000 from African Merchant Assurance Co. Ltd was provided. A contract (LPO No. 45-86963) duly approved by the Managing Director was issued to the supplier on 16.03.2015 with the mode of payment being Letter of Credit on Sight.

iii.Payment details

889. Aero Dispenser Valves Ltd requested for payment via a transferable irrevocable LC as per payment mode on the LPO with three milestones:

(i) 40% with confirmation of order

(ii) 30% against Bill of Lading and Certificate of Clearance from Kenya Bureau of Standards

(iii) 30% upon delivery and acceptance of the materials.

890. The request was accepted by Kenya Pipeline Company. The first milestone (40%) was met, and the amount paid was USD 2,563,769.79. Payment on the other milestones was never made.

iv.Delivery of the goods to KPC Premises

891. The valves and spares were delivered on 14th July 2015. However, the items were not formally received into KPC stores because at the time of delivery, the supply of the valves was the subject of investigations by EACC. The items were therefore not immediately inspected and formally received in as much as they were offloaded within KPC premises.

v.Receipt of the Goods

892. KPC sought guidance from EACC on whether to formally receive the items. On 19th December 2017, EACC wrote to KPC and nominated two of its officers to carry out stock-taking of the Hydrant Pit Valves Plus spares

that were delivered to KPC stores on 14th July 2015. This exercise was carried out on 9th January 2018 in the presence of the Contractor and signed off by the EACC officers, after which KPC sent the original schedule of the quantities physically ascertained to have been delivered to KPC in accordance with the LPO Contract.

vi. Utilization of the Delivered Goods

893. On 24th July 2017, KPC once again wrote to EACC on the subject goods which had been delivered to KPC premises after commencement of investigations by the agency but had not been utilized. On 8th March 2018, after the January 2018 joint verification exercise, EACC wrote to KPC and confirmed that it had no objection to KPC utilizing the procured items to avoid possible loss of public funds.

vii.Demands by Aero Dispenser Valves Ltd against KPC :

Nairobi HCC NO 224 of 2017: Aero Dispenser Valves Ltd -vs- Kenya Pipeline Company Limited

894. On 18th May 2017, the supplier through their Lawyer, Odhiambo Oronga & Co Advocates, filed suit against KPC demanding payment of the outstanding 60% being USD 3,845,695.13, simple interest thereon from July 2015 until payment in full, loss of investments and business opportunity quantified at USD 2,035,102, costs of the suit and interest on all the foregoing from the date of filing suit until payment in full.

Status of the suit

895. On 15th July 2021, the proceedings in this suit were stayed pending the outcome of *Anti-Corruption and Economic Crimes (ACEC) Suit No 8 of 2020: EACC -VS- Charles Ndegwa Maitai & Thirteen Others*

Milimani Anti-Corruption and Economic Crimes Case no 50 of 2018; Republic -vs-Charles Kipyatich Tanui & Thirteen Others

896. In December 2018, 12 employees of KPC , plus several directors of both Aero Dispenser Valves Ltd and Allied Inspection & Testing Inc were charged with offences relating to Conspiracy to Defraud contrary to Section 317 of the Penal Code , Cap 63 of the Laws of Kenya.

Status of the suit

897. Hearing of the Complainant's case proceeded, and a ruling on whether or not the Defendants have a case to answer is awaited in June 2024.

Anti-Corruption and Economic Crimes (ACEC) Suit No 8 of 2020; EACC -VS- Charles Nderitu Maitai & Thirteen Others

898. On 21st February 2020, EACC filed a suit against twelve former employees of KPC and two contractors seeking to recover the sum of USD 2,546,076.31 paid to the 14th Defendant on account of the procurement of Hydrant Pit Valves with Isolation Valves and Two-Year operating Spares on the allegations that the contract price was grossly exaggerated.

Status of the suit

899. The matter did not proceed as scheduled on 23rd November 2023. A new hearing date is awaited.

Previous Procurement of Hydrant Pit Valves

900. Aero Dispenser Valves Ltd has dealt with KPC before to supply ten (10) Cla-Val pit valves and spares in 2013 and 2015 respectively. The procurement of the two lots largely followed the same process as outlined above. The valves were delivered and installed.

A comparison of the prices for the valves is as follows:

Cost Summary Of Hydrant Pit Valves				
Purchase Order	Supplier	Description	Unit cost USD	% Variance

Date				e vs 2013
05.09.2013	Aerodispenser	HPV-Complete with isolation valve-SPECIFIC TO CLAVAL	9,555	
09.03.2015	Aerodispenser	HPV-Complete with isolation valve-SPECIFIC TO CLAVAL	10,725	12%

Committee Observations

901. The Committee noted that KPC had contracted M/S Cla- Val Co. Ltd to supply hydrant pit valves and spares. M/S Cla-Val Co Ltd authorized Allied Inspection and Testing Inc. Canada who appointed Aero Dispenser Valves Ltd to bid for the supply of the hydrant pit valves and related parts and spares to KPC. The valves and spares were delivered but were not formally received by KPC because EACC was contesting the part payment made for the supplies, as it claimed that the 40% paid was sufficient since the contract had been inflated.

902. The Committee also noted at the time of examination that, there was a pending lawsuit by the vendor claiming to be paid the 60% outstanding amount as per the contract.

Committee Recommendation

903. The Committee recommends that pursuant to Standing Order 89(2), the matter is sub-judice and therefore the Committee shall await the ruling by the Court.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

258. Long Outstanding Balances

904. The statement of the financial position reflects trade and other receivables of Kes.11,656,908,350. As disclosed under Note 23 to the financial statements, the balance includes Kes.10,065,175,278 in respect of trade debtors among them Oil Marketing Companies (OMCs), which had been outstanding for more than 180 days according to the aging analysis. According to the Transportation Service Agreements between OMCs and the Kenya Pipeline Company (KPC), the Company shall have a lien on equivalent Product Quantity up to the extent of the exposure belonging to OMC in the custody of KPC after 45 days and shall be at liberty to sell all such products and apply the proceeds of such sale in or towards the satisfaction of such lien and all proper charges and expenses in relation thereto.

905. However, there were no measures put in place to ensure that the debts are collected from the Oil Marketing Companies within the existing framework.Under the circumstances, it has not been possible to confirm the effectiveness of internal controls measures put in place to collect outstanding debt.

Management Response:

906. The Accounting Officer submitted that the total Trade debtors Receivable as at 30th June 2022 (oil marketing companies) was Kes. 8,310,057,984.19, while total the Trade debtors over 180 days was Kes. 5,356,268,194.79 out of which Kes. 3,396,261,485.75 relates to Kenol-Kobil debt in which the case is now settled.

907. The Company has put in place measures to ensure that debts are recovered within reasonable time. Customers are sent reminder before due dates and services are suspended if the customers do not pay within 30 days. Suspension is lifted on payment or written payment program for the debt. Most of the outstanding debts are collected within 45 days for active customers and undisputed invoices.

908. For dormant customers, management makes provision for debts over and above line fill. Management has appointed 11 lawyers to sell line fill for 11 No. OMCs with the highest debts.The company is also in the process of selling line fill and operational stocks in an attempt to recover the debts. This is ongoing and KPC is liasing with KRA to facilitate the sale.

Committee Observations and Recommendations

909. The Committee observed at the time of examination that the Agency had put in place measure for debt recoverability hence the matter is resolved.

910. The OAG to keep in view of the query in the subsequent financial year.

259. Corporate Social Investment

259.1. Non-Compliance with Policy on Budgeting

911. Review of the budget for the Corporate Social Responsibility programs revealed that Management set aside Kes.120,000,000 during the year which is above the threshold provided in the Company's Corporate Social Investment (CSI) Policy which provides for 1% of the Company's profit before tax from the preceding year or Kes.100 million, whichever is higher, to be set aside for CSI programs. The higher of the two is Kes.100 million which ought to have been the basis for budgeting for the corporate social responsibility programs. Therefore, the Board and the Management are in breach of the set policies which may result in unplanned expenditure.

Management Response

912. The company received a request for the additional **Kes. 20 million** from Rhino Ark Trust with support letter from Kenya Forest Service recommending that KPC supports the construction of an additional 60km electric fence at Mt. Kenya beyond Tigithi River. The Company sought the necessary approvals from the Board of Directors and the National Treasury for the reallocation as per the Treasury Circular Ref: DGIE/A/1/10 in consideration of the crucial need to conserve Mount Kenya Ecosystem as a critical water tower in the country.

913. The Company has also revised the CSI Policy to meet the emerging realities and capture the requirements arising from its recent registration to meet the emerging realities and the requirements upon registration of the Foundation.The revised CSI Policy been approved.

Committee Observation and Recommendation

914. The Committee noted from the submission of the Accounting Officer that there was an extension of the project by 60 km that necessitated the request for additional budget. Further, the Committee noted that there is a CSI policy in place hence the matter is resolved.

259.2. Unbudgeted Expenditure

915. During the year under review, the Company paid Kes.20,000,000 to a Charitable Trust towards labor costs to extend the Mt. Kenya fence by 60 kilometers from Tigithi River towards Nanyuki Forest Station as part of Social Corporate Investment. The donation followed a request on 19 May 2022 for the Trust for additional support. However, the project was factored in the approved annual Corporate Social Investment plan for the year under review.

916. In addition, the Company donated Kes.18,859,250 to the above Trust for similar works in April 2021. According to a monitoring and evaluation report done by Kenya Pipeline Company dated November 2022, the construction of the fence of the 60 kilometers was at 50% completion stage and was expected to be completed in December 2022. However, the additional funding of the project was done without ascertaining the completion status of the project.Under the circumstances, the regularity and validity of the expenditure could not be confirmed.

Management Response:

917. The company received a request for the additional Kes.20 million from Rhino Ark Trust with support letter from Kenya Forest Service recommending that KPC supports the construction of an additional 60km electric fence at Mt. Kenya beyond Tigithi River as part of KPC contribution on environmental conservation. Attached find correspondences and Board Approval. Further, the progress reports and expense reports for the period ended December 2023 indicate that 61.7Km of the fence have been built.

Committee Observation and Recommendation

918. The Committee noted from the submission of the Accounting Officer that there was an extension of the project by 60 km that necessitated the

request for additional budget. Further, the Committee noted that there is a CSI policy in place hence the matter is resolved.

260. Procurement of Goods and Services

260.1. Irregular Award of Tender to a Technically Non-Responsive Tenderer

919. During the year under review, the Management advertised a tender for the construction of security fence at Pump Station 9-JKIA Embakasi on 12 October, 2021. The tender was opened on 8 December, 2021 and subsequently evaluated. The Evaluation Committee in its report recommended re-tendering since all the six (6) bidders evaluated were technically non-responsive. A professional opinion dated 17 January, 2022 recommended termination of the tender.

920. However, the Accounting Officer rejected the opinion and recommended re-evaluation of the tender. The Evaluation Committee re-evaluated the tender and recommended termination and re-tendered noting that all the six (6) tenderers failed the technical evaluation. The technical requirement was for the bidders to provide relevant experience with fencing material manufacturer in similar works in the last five (5) years. Despite the recommendation of the Evaluation Committee upon re-evaluation, the head of procurement recommended to the Accounting Officer to award the contract to one of the bidders in a professional opinion issued on 8 February, 2022, at a cost of Kes. 37,964,458. Under the circumstances, the legality of the award and suitability of the bidder to undertake the works could not be confirmed.

Management Response

921. The construction of a perimeter security fence was to replace the existing chain -link fence. The perimeter fence is anti-climb modern high security it is used for securing similar facilities worldwide. The chain link fence that enclosed the KPC'S Airport depot was made of fabricated angle lines posts. Some sections of the fence were old and worn out, hence were very porous posing a serious security threat. Storage capacity of Embakasi depot is about 54,141 m³ of highly flammable product. An attack on such an installation would be catastrophic. Oil and gas industry is one of the most attractive targets for growing global terrorism and sabotage. Other security

threats that depot is exposed to include vandalism, civil protests and organized crime.

922. Embakasi being a strategic installation, which handles very sensitive and whose proximity to Jomo Kenyatta International Airport renders it as a target, safeguarding the depot and the Airport was done as an emergency.

923. The evaluation report submitted by the evaluation committee indicated that the bidder submitted references for their works from two clients against the required three in the tender document. Upon review, it was confirmed that the bidder had relevant experience for their works from KenGen, State House, African Gas and Oil Company Limited (AGOL), Grain Bulk Handers Limited and Shukrani Enterprises. These were more than the required refences from three clients. It was unfair to disqualify the bidder on this basis.

924. Head of procurement is permitted in Section 84(2) of the PPADA Revised in 2022 enables to issue an Independent Professional opinion on the procurement proceeding.

925. It is worth noting that the work was completed in accordance with the contract that met the intended purpose and passed the required test on completion to the satisfaction of KPC. The contractor was expected to make good any defects and deficiencies that could arise during the defect's liability period to the satisfaction of KPC. The defect liability period was for six-months effective 4th July 2023 to 3rd January 2024.

Committee Observations

926. The Committee noted that there was a contradiction between the recommendations of the Evaluation Committee and the professional opinion issued by the Head of Procurement on the qualifications of the bidder.

927. The Committee noted that the Head of procurement issued two contradicting professional opinions on the tender. The first opinion recommended termination and re-tendering whereas the second opinion recommended award of the tender to one of the bidders.

928. Further, the Committee noted that the Accounting Officer concurred with the second professional opinion issued by the Head of Procurement to award the tender to the bidder.

929. The Committee noted that the query as raised was on the procedure that led to the award of the tender.

930. The Committee observed that the submission by the Accounting Officer was not sufficient as the evidence to support the award of the tender was not satisfactory.

Committee Recommendations

931. The Committee recommends further investigation of the matter by EACC.

260.2. Procurement of Works Without Scope

932. The Company awarded a contract for repair works of a petroleum storage tank on 1 April, 2021 at a cost of Kes.145,695,636. Review of documents in respect of the works revealed that the tank was last rehabilitated in 2007 where corrosion defects on the tank bottom, shell and floating roof were repaired, and the tank epoxy lined internally and painted externally for corrosion control. The tank started showing signs of wetness at the foundation indicative of product release from underneath the tank bottom in 2017.

933. According to the tender and other documents reviewed, the tender was initiated and awarded without undertaking inspection by an expert to determine the scope of work to be done as required under paragraph 6.4.2.2 of the American Petroleum Institute (API) 653 on Tank Inspection, Repair, Alteration, and Reconstruction. On 27 September, 2021 Management engaged an expert to carry out the inspection while the repair works were ongoing to determine the scope of works. The expert recommended complete replacement of the tank floor which had suffered significant corrosion metal loss to entail replacement of 16% of tank floor area and welding of repair patch covering 30% of tank floor area. The additional work resulted in additional costs of Kes.97,173,865.In the absence

scope determination before commencement of work, the basis and necessity of the initial repair works could not be confirmed. As a result, it could not be confirmed whether the Company received value for money incurred on the tank repair works.

Management Response

934. Tank 14-TK-502 was last rehabilitated in 2007, this is when comprehensive repairs were carried out on the tank bottom, shell and floating roof. The tank started showing signs of leak through the bottom in 2017. Tender for emergency repair was advertised in FY 2017-18 but failed due to inadequate budget. There was a retender in 2019-2020 FY which was terminated as the bids received were higher than the budget. The tender finally succeeded in 2020-21 FY and was awarded to M/s Weldcon.

935. KPC advertised both tenders for inspection of tanks and the repair of the tank 14-TK-502 in the same financial year due to the following factors.

i) KPC had initially planned for inspection of the tank in FY2018-2019 and had advertised tender No. KPC/PU/011-OT/18-19 for API 653 Inspection of tank 14-TK-502. (See attached **Tender Opening Register**). However, the awarded Tenderer delayed submitting performance bond within the tender validity period resulting in termination of the procurement process. This being a single year procurement, there was no budgetary provision for inspection of the tank in the succeeding year i.e. FY2019/20.

ii) KPC was allocated the budget for both inspection and repair of the tanks in the financial year 2020/2021. However, it was a challenge to procure for the inspection service followed by the procurement of the repairs within the same financial year, therefore the services were both procured in the same financial year. This is due to the fact that release of tanks at Kipevu Oil Storage Facility (KOSF) is a process that requires stakeholder involvement i.e. EPRA, Ministry of Petroleum, Oil Marketing Companies etc. Buy-in from the stakeholders is always a determinant before decommissioning of the tank because tank outage affects product supply in the country & the region. It also affects pump prices and increases demurrage charges. To ensure availability of ullage and minimal disruption of supply of product to the market the tank was to be

decommissioned only once to allow for both the inspection and the repair of the tank. If KPC were to inspect the tanks first and wait for the report, then go through the process of tendering, award and contracting for the repair of the tanks, it would have resulted in a lengthy delay which would disrupt the supply of product to the market.

iii) Considering the duration, the tank had been leaking product since 2017, the resultant product losses, environmental pollution and risk of KPC being issued with adverse order from the Aviation Joint Inspection Group (JIG), it was not economically and operationally viable to tender separately for tank inspection and repair beyond FY2020-2021.

iv) The contract for repair of tank 14-TK-502 is categorized as "measured contract" which means that the contractor shall be paid for the actual work and not necessarily quantities that were provided in the tender document which were estimates.

v) M/s Weldcon had already moved to site and commenced repair works, therefore it became difficult to engage another contractor to do additional repair work on the same tank for standardization and compatibility reasons. This could also introduce risk of voiding any guarantees on the works done and was going to be a potential cause of contractual conflicts. To effectively repair the tank and restore its structural integrity, direct procurement for additional work was required.

vi) Contract variation was not possible since the estimated variation was more than 25% of the contract sum.

Mitigation Plan

936. KPC has entered into a framework contract No. KPC/PU/FW-354/CORR/NBI/22-23 for API 653 tank inspection dated 12th February 2023, that will allow data collection during scheduled tank cleaning exercises. Tank inspection data collected during the tank cleaning exercise will form basis for preparation of scope of works for tank repair tenders/contracts.

937. KPC notes the concern, however, given that this Tank is strategic to the supply of jet fuel decommissioning the Tank to carry out inspection without

any work being done would have resulted to long lead times and hence compromise the supply of fuel in the country. Currently the company is incurring demurrage from lack of ullage due to the ongoing works. The additional works were tendered differently but from the same contractor to ensure that no double payments will be incurred.

938. Tank 14-TK-502 started showing signs of tank bottom leak in late 2017. Tender for API 653 for tank 14-TK-502, KPC/PU/011-OT/18-19, was advertised in FY FY2018-2019 and awarded to M/s Murban Engineering Ltd but unfortunately the Tenderer failed to submit performance bond within the tender validity period. A re-tender in FY2019/20 was not possible for lack of budget. To mitigate on product losses that was now on its 4th year, continued environmental pollution and increased risk of JET A-1 contamination, the most technical feasible option was to advertise both tenders for API 653 inspection and repair simultaneously in FY2020/21.

939. Sequencing of the inspection and repair activities was impracticable for the following reasons:

i) Decommissioning the tank for inspection could have aggravated the leaks (product losses) because of rigorous tank cleaning and desludging processes that precede the API 653 inspection and therefore the tank could not be put back to service immediately after inspection to allow for procurement of the repair contractor.

ii) Extended tank unavailability waiting for procurement of tank repair contractor could result in increased demurrage cost due to lack of sufficient storage of JET A-1 fuel at the Depot.

iii) Uncertainty of outcome of procurement process. A request for review at PPRA8 by a dissatisfied Bidder in the procurement of tank repair contractor posed a risk to extended tank unavailability associated with increase in demurrage charges.

The project meant to improve storage capacity for the purpose of reducing demurrage charges while ensuring customer satisfaction.

Committee Observation

940. The Committee noted that the Accounting Officer did not refute the claim that the tender for repair works of the tank was awarded before the tender for inspection of the tank.

Committee Recommendations

941. The Committee reprimands the Accounting Officer for awarding a repair tender before the inspection tender thereby leading to additional costs being incurred by the organization thus failing to comply with the provisions of section 72(1) (b) of the Public Finance and Management Act, 2012.

261. Unprocedural Implementation of Mzima Springs Water Project

942. The statement of financial position reflects property, plant and equipment balance of Kes.85,978,670,508 as at 30 June, 2022. As disclosed in Note 17 to the financial statements, the amount includes work in progress of Kes.373,526,780 which further includes Kes.6,529,608 in respect of Line 1 conveyance for Mzima Water Project. The Mzima Springs Water Project was initiated through a Presidential directive communicated through Head of Public Service letter dated 25 March, 2022 to the Ministry of Petroleum and Mining in March, 2022. In the directive, the Ministry of Petroleum and Mining was to facilitate the utilization of the Mombasa-Nairobi Line 1 Oil Pipeline for supply of water from Mzima Springs to Mombasa City and its environs. The Board of Directors had earlier on February 9, 2022 approved the conversion of a portion of Line 1 pipeline to deliver water to Mombasa in collaboration with other Government agencies subject to a business case to justify the project been developed by the Management, and that all approvals required from the relative Authorities including wayleaves permit, National Environment Management Authority (NEMA), Energy and Petroleum Regulatory Authority (EPRA), National Construction Authority (NCA) and the Ministry of Water be issued before decommissioning of the line. The project was allocated a budget of Kes.745,487,000 to be executed in two phases.

943. Subsequently, Management appointed a business case technical team to determine the viability of the project. The technical team came up with a business case which recommended two options comprising converting line1 for water conveyance and lease it to the Coast Water Works Development Authority (CWWDA) at the current gazetted water tariff of Kes.68 per m3 , or refurbish the 14-inch line 1, replace the corroded sections of the line to

enable utilization of existing pumps and other associated facilities to complement the 20-inch Line 5 which has already attained its optimal capacity. This would improve flow rates to 880m3/hr and increase evacuation from Mombasa and alleviate village.

144. However, the following anomalies were observed:

(i) The Company operating a water pipeline was outside its mandate and had not obtained approval from the Water Services Regulatory Board (WASREB) before embarking on the project.

(ii) No evidence was provided to indicate that the business case was presented to the Board for deliberation and which of the two options was adopted for implementation. However, the conversion of the pipeline for water conveyance was ongoing and was at 64% completion as at the time of the audit.

(iii) The Company intended to sell water in bulk to the Coast Water Works Development Authority (CWWDA) once the project was completed. However, there was no Service Level Agreement or Memorandum of Understanding signed between the Company and CWWDA. As a result, there is no guarantee that CWWDA will agree to the proposal.

(iv) The use of a petroleum pipeline for transportation of water may pose risks of contaminating the water with the residue petroleum in the pipe and effluent which may cause health and environmental concerns.

(v) On 19 January, 2022, the Management wrote to the National Environment Management Authority (NEMA) and sent all necessary documents for Environmental Impact Assessment (EIA) on decommissioning of Line 1 excavation, recovery, and relocation of a portion of 54 kilometres of the pipeline and use of 161 kilometres portion of the pipeline stretching from Mzima Springs to Mombasa for supply of portable water to Mombasa. NEMA responded indicating that the proposed project requires an Environmental Impact Assessment (EIA). However, no Environmental Impact Assessment (EIA) was carried out before commencing the project contrary to Section 58 of the Environmental Management and Coordination Act, 1999 and Regulations, 2003, Legal Notice No. 101.

Further, a consultant engaged by Management to conduct an assessment for the proposed decommissioning and utilization of Line 1 to deliver water to Mombasa was yet to conclude and prepare a final report on the same.In the circumstances, the propriety of expenditure incurred on the project and its value for money could not be confirmed.

Management Response

The Accounting Officer Submitted as follow—

945. The Mzima Springs Water project which was initiated through a presidential directive communicated to the Ministry of Petroleum and Mining involved utilization of the Mombasa-Nairobi Line 1 Oil Pipeline for supply of water from Mzima Springs to Mombasa City and its environs. An approval of the Company Board was subject to a business case to justify the project been developed by the management, and that all approvals required from the relative Authorities including Wayleaves permit, National Environment Management Authority (NEMA), Energy and Petroleum Regulatory Authority (EPRA), National Construction Authority (NCA) and the Ministry of Water be issued before Management proceeds with the decommissioning.

946. Management appointed a business case technical team to determine the viability of the project. The technical team came up with a business case which recommended two options: the company to invest in line1 for water conveyance and lease it to CWWDA or refurbish the line to continue being used for petroleum products to increase evacuation from Mombasa and alleviate ullage. Further, issues on the project are highlighted in the table below:

Table 1: Key issues on the Mzima Springs Water project

SN	Issue	KPC's response
1.	The Company operating a water pipeline was outside its mandate and had not obtained approval from the Water Services Regulatory	The water project is a JV between Ministry of Petroleum and Mining and Ministry of Water, sanitation and irrigation as evidenced in the Presidential Executive Order issued to both

SN	Issue	KPC's response
	Board (WASREB) before embarking on the project	ministries on the 25th March 2022.
2.	No evidence was provided to indicate that the business case was presented to the board for discussion and which option was adopted before embarking on the project which was at 64% completion as at the time of audit	
3.		
4.	Available information indicate that Kenya Pipeline Company will sell water in bulk to Coast Water Works Development Authority (CWWDA) once the project is completed. However, there is no Service Level Agreement or Memorandum of Understanding signed between the Company and CWWDA. As a result, there is no guarantee that CWWDA will agree to the proposal which ought to have been obtained before embarking on the project	The water project is a JV between Ministry of Petroleum and Mining and Ministry of Water, sanitation and irrigation as evidenced in the Presidential Executive Order issued to both ministries on the 25th March 2022. CWWDA falls under the latter Ministry. The initiative has been a JV between KPC and CWWDA. The latter have a heavy presence in the project as evidenced in the resource (Human and Machines) allocation to the project and Minutes of Meetings held on diverse dates. Their Participation in the project is a guarantee that there is consensus.

SN	Issue	KPC's response
5.	The use of a petroleum pipeline for transportation of water may pose risks of contaminating the water with the residue petroleum in the pipe and effluent which may cause health and environmental concerns.	To forestall contamination, the following Procedure shall be adopted before putting the water for human consumption: - i) Upon completion of the project, the water will be allowed to flow to KPRL Tank 102 and be released to the environment through the Oil Water Separator in a controlled manner. The primary objective of this is to clean the pipeline as much as possible to rid of any remnant materials. ii) The Pipeline shall be disinfected iii) The line shall be internaly Lined with Cured-in-Place-Pipe Linin (CIPP) to convert it to food grade standard. iv) Samples shall be drawn from the pipeline at various sampling points and be tested to EAS 12:2018 East African Standard Portable Water Specification and Dutch standards 2000 limits. v) Thirdly, stakeholders shall be invited to extract samples and do an independent test on the water quality for results comparison.

Committee Observations

947. The Committee was informed that currently the project was stopped and the management was in discussion with the National Environmental Management Authority (NEMA) to be granted a license to decommission the pipeline.

948. The Committee noted that the directive to start the project was from the executive, and the budget for implementation was solely borne by KPC and so far, Kes. 400m had been spent to detour the old KPC line to Mama Springs.

949. The Committee was concerned that despite the project being conceived through a Presidential directive, the country's laws and regulations governing project implementation should have been adhered to.

950. The Committee took note that no feasibility study was conducted to establish the viability of the water project.

951. The Committee was concerned why the management of KPC accepted such a project given that it would have compromised the health of residents of the intended beneficiary areas as the pipes had been used to supply petroleum products.

Committee Recommendations

952. The Committee reprimands the Accounting Officer and directs the EACC to investigate the matter with a view of recovering the Kes. 400 million

262. Incomplete Marine Loading Arm Project

953. The contract for the supply, installation, testing and commissioning of overhung marine loading arm at Kipevu Oil Terminal (KOT 1) was awarded to Hydro Pipeline Limited on 1 December 2017 and signed on 18 April 2018 at a contract sum was Kes.43,438,520. The project commenced on 4 November 2018 and was expected to take thirty-four (34) weeks and be completed on 2 May 2019. The project objective was to replace the overhung marine loading arm as per the manufacturer's recommendation and to increase the discharge flow rate for the Dual-Purpose Kerosene (DPK) arm from 1700M^3/hr to 2500M^3/hr. In addition, the manufacturer's recommended number of years for the existing loading arms has been surpassed hence the need to mitigate any risks of failure.

954. Although materials were delivered to the site and expenditure amounting to Kes.17,084,749 incurred, installations, testing and commissioning had not

been done. Management indicated that with the operationalization of the new Kipevu Oil Terminal (KOT 2), the project has since been overtaken by events as the old oil terminal where the marine loading arm would have been fixed will be decommissioned. The fate of the project and the equipment that were delivered and are lying idle is therefore unknown.In the circumstances, the value for in the use of public resource has not been achieved as delayed completion of the project denies the company efficiency in discharge of products.

Management Response

955. The Marine loading has been transferred at cost from a Work in Progress (W.I.P.) to mechanical spares under inventory in the audited financial statements of FY 2022-2023. This will be used as a spare part in the KPC facilities.The project for Supply, installation, testing, and commissioning of overhung marine loading arm at Kipevu was conceived and approved in the FY 2017/18. Its objective was to replace the existing 10-inch Marine loading arm with a 12-inch marine loading arm with anticipated increment in product offloading flow rate to 2500m3/hr from 1700m3/hr, an increase of 47% and consequently reducing any demurrages that may be incurred. The project scope involved, supply of a 12-inch Marine Loading Arm (MLA), supply of a 12-inch Double Block and Bleed (DBB) valves, decommissioning of the existing loading arm, installation of the new loading arm and DBB valve, testing commissioning and training of staff.

956. The procurement was through open tender method where an advert was put in the local daily newspaper following which the project was awarded at a total cost of Kes.43,436,520.00 (inclusive of VAT and all taxes) to M/s Hydrolo Pipeline Limited on 1st December 2017. The contract was signed on 18th April 2018 for a period of 34 weeks (8 months). The contract commencement on 4th November 2018 and lapsed on 30th June 2021 after expiry of the third deed of variation.

957. During the contract period there were three Deeds of variations:

i) 1st Deed of variation - Dated 26th July 2019; 7 months extension (3rd May 2019 to 2nd December 2019).

ii) 2nd Deed of Variation - 6 months and 29 days extension (3rd December to 30th June 2020).

iii) 3rd Deed of variation - Dated 14th August 2020: 12 months extension (1st July 2020 to 30th June 2021).

It is worthy to note that all the deeds of variation were undertaken as per procedure. The contractor submitting the request for extension giving reasons, the contract implementation team evaluating and recommending to the CEO, the CEO approving the deed of variation.

958. The company issued notices of non-performance to the contractor. Despite promptly granting design approvals on time, granting 3 contract extensions and availing a window by Vessel Scheduling Meeting (VSM) for decommissioning and installation of the new loading arm, the contractor was unable to perform their contractual obligations. This forced the Project Engineer to issue 3 notices of non-performance on 14th August 2019, 18th January 2021 and 9th April 2021 as provided in the contract.

959. The contract lapsed on 30th June 2021 after expiry of the 3rd deed of variation, management having rejected the contractors request for extension after it became apparent the contractor was incapable of executing the contract going with the contractor's failure to effectively and appropriately respond to the non-performance notices issued to them as enumerated above. The contract expiry was communicated to the contractor via letter dated 22nd June 2021.

960. Bills of Quantity (BOQ) items not executed at the expiry of the contract include:

i. Allow for Extremely Safe and Precise de-commissioning of the existing 10" overhung marine loading arm at the Kipevu Oil Terminal (KOT) Jetty Mombasa, Kenya. This could be by use of a Sea Barge, ferry or a special ship or any other appropriate and safe method of de-commissioning.
ii. Allow for Extremely Safe and Precise installation, testing and commissioning of the new 12" marine loading arm at the Kipevu Oil Terminal Jetty, Mombasa. This could be by use of a Sea Barge, ferry or a special ship or any other appropriate and safe method of de-commissioning.
iii. Allow for mandatory on-site training after commissioning to the clients' Maintenance and Operation staff (10No. staff).

With construction and operationalization of Kipevu Oil Terminal (KOT) 2 with a higher flow rate, JET-A1 offloading currently being undertaken at KOT1 is planned to be relocated to KOT2 once the right valves are procured and installed at KOT2. In view of the new development, the KOT1 Marine Loading Arm installations works have been overtaken by events and are no longer desirable.

Committee Observation

961. The Committee noted that from the evidence adduced by the Accounting Officer, the incomplete marine loading arm was decommissioned due to its location being affected by the Kenya Ports Authority's new terminal. Further, the Committee noted that currently, the loading arm is used as spare parts for KPC infrastructure and so far, Kes. 6,000,000 had been recouped from the marine loading arm infrastructure.

Committee Recommendations

962. The Committee recommends that in the future, before undertaking projects of this nature, KPC should undertake appropriate feasibility study.

963. The Committee recommends that KPC should liaise closely with KPA and share their strategic plans to avoid instances of a similar nature from happening in the future.

964. The Committee recommends that the matter is resolved.

263. Loss on Leased Facilities

965. The statement of profit or loss and other comprehensive income reflects an expenditure of Kes.13,791,313,695 as direct costs which, as disclosed in Note 7 to the financial statements, includes an amount of Kes.2,530,110,019 in respect of pipeline maintenance. Included in the costs are lease payments to the Kenya Petroleum Refineries Limited (KPRL) amounting to Kes.1,308,851,308 for use of pipeline network, storage tanks and associated infrastructure during the year under review. Comparison of total lease costs against total lease income for the year revealed that the Company realised income amounting to Kes.12,491,324 resulting to a net loss on the lease of Kes.1,296,359,984.

966. In addition, the lease agreement revealed that the lease payments were based on expenses incurred by KPRL during the year covered by the lease

agreement. However, the Company was not in control of costs incurred by KPRL and therefore could not institute measures that could minimise the costs in line with realisable income. In the circumstances, the lease affected the overall performance of the Company and may need to be reviewed for efficiency.

Management Response

The Accounting Officer submitted as follows—

967. KPRL is a state corporation wholly own by the Government of Kenya as shown in the CR12 on Appendix C-1-1.In 2016, the Cabinet directed KPC to take over KPRL. The Company entered into a lease agreement with KPRL as it pursues the take-over.

968. In line with the Lease agreement, KPC has been taking care of all the operating costs and investing in infrastructure at KPRL geared towards helping KPC in improving its operating efficiency and flexibility and stock management to enhance security of supply of petroleum products in the country and neighbouring countries. At the start of the Lease Agreement, KPC seconded Key staff to KPRL to ensure that costs are effectively budgeted and managed, required developments are identified and implemented, and the takeover process is progressed.

969. In addition, KPC ensured that the costs to be incurred at KPRL (Recurrent expenditure and Capital Expenditure) were projected and included in a harmonized handling and storage tariff for Kipevu Oil Storage facility and KPRL which was approved by Energy and Petroleum Regulatory Authority (EPRA). The annual average recurrent expenditure for the tariff control period 2020/21 to 2022/23 was Kes1.7 billion for KOSF and Kes1.9billion for KPRL. This move was to ring fence the performance of existing KPC business from the impact of expenditure at KPRL. It is important to note that all revenues generated at KPRL are collected by KPC and KPC ensures that all expenditure are catered for. No lease rent is paid to KPRL.

970. The annual budget estimates for KPRL are prepared and approved by both parties Management and Board (KPRL and KPC) and progressed for approval by the parent Ministry and National treasury by KPC. KPRL's annual recurrent expenditure and revenue budgets for FY2021/22 was Kes.1.68

billion and Kes.386million respectively while actual recurrent expenditure and revenue closed at favourable comparative positions of Kes.1.4 billion and Kes.646 million, respectively. Although the cost incurred at KPRL during the period was higher than the revenue generated directly at the facility, there are other opportunities and benefits which accrue from utilisation of KPRL facility. Some of the unquantified benefits and future opportunities include:

971. Enhanced operational efficiency and flexibility of KPC pipeline system through additional storage capacity. KPC was using KOSF with storage capacity of about 320,000 m3 and the entry of KPRL brought in addition 140,000m³ in 2017 which has been enhanced to 288,000m³ in 2023 with a goal of reaching to 484,000 m³ by just rehabilitating the existing tanks. This has resulted to improved customer satisfaction resulting in throughput growth and enhanced the overall performance of KPC. Management of stock outs and demurrage costs improved competitiveness to the port of Dar es Salaam

972. KPC is also looking at leveraging on KPRL to achieve some of its key strategic initiatives such:

(i) Development of LPG Bulk import handling and storage facility.
(ii) Establishment of a p etroleum trading hub.
(iii) Create Petroleum strategic reserves.
(iv) Development of Natural gas infrastructure
(v) Development of Bio-refinery plant

973. The acquisition of the facility is on-going. KPC has engaged a transaction advisor to facilitate the acquisition process as per Government directive. See a copy of the contract between KPC and the transaction advisor, and the Board Minutes of meeting that sanction implementation of MoEP's take-over instructions.

974. Based on the benefits envisioned from the facility, it is expected to generate positive returns in the future. On 18th July 2023, the Cabinet approved the acquisition of KPRL by KPC by way of share transfer without monetary consideration. The share transfer was successfully completed and took effect on 27 October 2023 making KPRL a fully owned subsidiary of KPC. A committee has been appointed to carry out post-acquisition processes.

Committee Observations

975. The Committee noted that despite KPC taking over KPRL, it continued to operate at a loss. However, the acquisition of KPRL had benefitted KPC by enhancing operational flexibility and efficiency through additional storage capacity from KPRL.

Committee Recommendations

976. The Committee recommends that the Accounting Officer of KPC should update the OAG on the post-acquisition process within three(3) months of adoption of this report.

977. Further, the Committee recommends that the OAG to keep in view of the query in the subsequent financial year.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

264. Composition of Board Committees

978. Circular number OP/CAB.9/1A, dated 11 March, 2020 and Paragraph 82 of Mwongozo, the Code of Governance for State Corporations provides that a Board may establish not more than four (4) Committees including Audit Committee to deal with the conventional issues appertaining to the running of the state cooperation. The guidelines also provide that the Board may however constitute Ad-Hoc Committees to deal with emerging issues that require focused attention, and which do not fall in the domain of regular Board Committees. Such Ad Hoc Committees should have clear terms of reference and a limited lifespan. The number of Members to any Committees should be no more than one third (1/3) of the Full Board to obviate the risk of a Committee conducting its business within the framework of a Full Board structure.

979. During the year under review, the Company's Board of Directors comprised nine (9) Members. Review of membership and record of minutes of Committee meetings revealed the following anomalies:

(i) Membership of Board Committees is expected to be a maximum of one third (1/3) of Board membership as guided by the Mwongozo Code of Governance for state corporations. However, the Audit Committee, the Human Resource Committee and the Technical Committee have five (5) Members each while the Finance Committee has six (6) Members instead of the maximum three (3) Members.

(ii) Review of the reconstituted Board Committee Members revealed that two of the Directors were Members of all the four Board Committees which contravened Paragraph 4 of the Office of the President circular referenced OP/CAB.9/1A dated 11 March, 2020, on Establishment of Board Committees which provides that Members can only sit in a maximum of two Board Committees.

(iii) The Managing Director was a member of three of the Board Committees comprising Board Human Resource Committee, Board Technical Committee and the Board Finance Committee. However, Section 1.22(1) of the Mwongozo guidelines stipulates that the role of the Board should be separated from that of the Management.

In the circumstances, the Board did not adhere to the guidelines.

Management Response

980. The Accounting Officer submitted as follows—

i) The reconstitution of committees was done by the Board considering the need for Parent Ministry and The National Treasury representatives to be in the Audit, Technical and Finance committees for effective oversight and guidance of the Company. KPC will be seeking approval as guided by the March 11th, 2020 Circular, of the committee membership with five members for approval/concurrence.

ii) The latest reconstituted Board Committees has ensured that no member sits in more than two committees.

iii) Unlike some State Corporations that have constitutive legislation specific for their establishment, KPC was incorporated under the Companies Act and is subject to the State Corporations Act, CAP 446 of the Laws of Kenya. Section 6(4) of the State Corporations Act explicitly states that the Boards of State Corporations include of the Chief Executive. The composition is stated in mandatory terms, unless a

contrary composition is stated in the Articles of Association which is not the case for KPC.

iv) Section 8(e) of CAP 446 states that quorum for the meeting is two thirds of total number of members present which includes the MD. Article 1.1 item 4 of the Mwongozo states that the MD shall be a member of the Board with no voting rights. The MD is an ex-officio member of the Board, similar to the directors from Government that are representatives of offices set out in the Act and is only excluded in matters where a vote is required to be taken since all agenda is technically generated and owned by the CEO.

v) Section 9 and sections 6 read together expressly state that a state corporation may establish committees consisting of members of the Board which members explicitly include the CEO. The CEO sits in the Committees as a substantive member and to table Management papers as the principal agent of the Board who executes Board policy and directives.

981. The legal provisions above supersede Mwongozo and unless amended, the MD is expressly designated under Section 6 of CAP 446 as being part of the Board.The only committee membership that excludes the CEO is Board Audit Committee for purposes of maintaining independence since the CEO is the primary auditee. The composition is well defined in the Public Finance Management Act,2012.

Additional Response:

982. KPC Board membership stands at 10 members,1/3 of which is 3. The latest reconstituted Board Committees have 3 Directors plus MD who is Ex-officio. The latest reconstituted Board Committees has ensured that no member sits in more than two committees. Article 1.1 item 4 of the Mwongozo code states that the MD shall be a member of the Board with no voting rights. See a copy of Mwongozo.

983. Section 6(1) of the State Corporations Act explicitly states in mandatory terms that the Boards of State Corporations shall include of the Chief Executive, unless a contrary composition is stated in the Articles of Association which is not the case for KPC. Section 9 and Section 6 of the said Act, prescribe the establishment of committees consisting of members of the Board. Members of the Board under Section 6 include the CEO. The CEO sits in the Committees as a substantive member and to table Management

papers as the principal agent of the Board who executes Board policy and directives.

Committee Observation and Recommendation

984. The Committee noted from the submission of the Accounting Officer that the Board Committees had been reconstituted and the Agency was compliant with section 6(1) and 9 of the State Corporations Act, Cap 446, hence the matter is resolved.

3.5. KENYA MARITIME AUTHORITY (KMA) (F/Y 2018/2019-2020/2021)

EXAMINATION OF THE AUDITED ACCOUNTS OF KMA FOR THE FYs 2018/19 TO 2020/21

985. The management of Kenya Maritime Authority, led by the Director General Dr. Erustus Omingo appeared before the Committee to adduce evidence on the audit queries that had been raised by the Auditor General for the FY 2018/19 to FY 2020/21.

FINANCIAL YEARS 2018/2019

The Committee was informed that the Auditor General gave a qualified opinion and raised the following audit issues:

265. Cash and Cash Equivalents

986. The statement of financial position reflects a cash and cash equivalents balance of Kes.908,207,382 which, as disclosed in Note 20 to the financial statements, included an amount of Kes.279,311,839 held in a current account with a local commercial bank. However, and as previously reported, the June 2019 bank reconciliation statement for the account reflected an amount of Kes.4,344,000 in respect of payments in bank statement not recorded in cash book dating back to the month of June, 2018. Available records indicated that the payment was made to a legal firm representing the Authority. However, the payment was not supported by a payment voucher, supporting documents used for the procurement of the services, evidence of services rendered and authorization of remittance of the funds to the law firm. Consequently, the accuracy and completeness of the cash and cash equivalents balance of Kes.908,207,382 could not be confirmed.

Management Response

987. The Accounting Officer submitted that the payment was captured through Journal voucher No. ALBERTJV-01156 to recognize the payment of

Kes.4,344,000 legal fees. This necessitated a restatement of Cash and Cash equivalents as shown in FY2020/2021 audited Financial Statements.

Committee Observation and Recommendation

988. The Committee noted at the time of examination that the accounts had been reconciled and the amount was restated in the audited financial statements of FY 2020/2021 hence the matter is resolved.

266. Domestic Air Travel and Local Duty Travel Allowance

989. The statement of financial performance reflects an amount of Kes.273,447,225 under general office expenditure which, as disclosed in Note 17 to the financial statements, includes domestic and overseas air travel costs of Kes.20,070,669 and duty travel allowances - domestic and foreign of Kes.44,452,868, all totaling Kes.64,523,537. However, the expenditure included Kes.737,410 spent on domestic air travel and Kes.1,342,242 spent on local duty travel allowances, all totaling to Kes.2,079,652 for staff of the State Department for Shipping and Maritime Affairs. However, the Management did not provide explanations why Kenya Maritime Authority incurred the expenditure on behalf of the State Department, which has its own budget. Consequently, the propriety and validity of domestic and overseas air travel and duty travel allowances of Kes.2,079,652 could not be confirmed.

Management Response

990. The Accounting Officer submitted that the airfare were incurred during travels in furtherance of the Authority's mandate. The officers attended the International Maritime Organization Council, Seafarers wage council and blue economy meetings to champion the government policies in regards to the subject matters. Further, 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.To ensure the activities are clearly identified, the Authority created a Collaboration vote

which caters for expenditures with other parties/agencies which would aid in the furtherance of Authority's mandate.

Committee Observation

991. The Committee noted that the submission by the Accounting Officer was not satisfactory.

Committee Recommendation

992. The Committee recommends that the Accounting Officer should submit to the OAG the correspondence from the Principal Secretary showing that the staff did not draw double allowances within three (3) months of adoption of this report.

267. Unsupported Bank Balance - House Loan Guarantee

993. The statement of financial position reflects a balance of Kes.214,673,878 in respect of mortgage guarantees, which as disclosed in Note 24 to the financial statements, includes an amount of Kes.184,173,878 relating to house loan guarantee held in a local commercial bank. However, the supporting certificate of bank balance as at 30 June, 2019 was not provided for audit verification. In the circumstances, the accuracy and completeness of the house loan guarantee balance of Kes.184,173,878 could not be confirmed.

Management Response

994. The certificates of balance were obtained from the bank and availed to the Auditor. Certificate confirming loans issued through A/C MM1412200083 amounted to Kes 158,204,293.04 and Certificate for A/C MM1804742742 confirming cash held of Kes 25,969,585.26.

Committee Observation and Recommendation

995. The Committee noted at the time of examination the certificates confirming the loans had been availed to the Auditor for verification hence the matter I resolved.

268. Inventories

996. The statement of financial position reflects an inventories balance of Kes.4,852,851 as at 30 June, 2019. However, included in the balance is an amount of Kes.3,057,037 whose physical stock count balance was valued at Kes.2,540,203. thus resulting into an unreconciled and unexplained variance of Kes.516,834. Consequently, the accuracy and completeness of inventories balance of Kes.4,852,851 could not be confirmed.

Management Response

997. The Authority noted the deficiencies in store requisition and automated the issuance process.

Committee Recommendation

998. The Committee observed that the submission by the Accounting Officer was unsatisfactory.

Committee Recommendation

999. The Committee recommends that the Accounting O fficer should submit to the OAG a reconciled inventory account within three (3) months after adoption of this report.

269. Budgetary Control and Performance

1000. The statement of comparison of budget and actual amounts indicates that the Authority had an approved budget of Kes.1,656,560,000 compared to actual receipts of Kes.1,521,905,508 or 92% of budgeted receipts. Similarly, the Authority's actual expenditure amounted to Kes.790,153,466 against a budgeted expenditure of Kes.1,097,918,000 resulting to an under-expenditure of Kes.307,764,534 or 28% of the budgeted expenditure. The under-expenditure may have affected the planned activities of the Authority and could have impacted negatively on service delivery to the public.

Management Response

1001. The management submitted that the main source of revenue for the Authority is MS fee that rely on the import and export cargo. Any slight

change in volumes affect the amount collectible by the Authority. Some of the Macro economic factors that affect the import and exports are beyond the Authority control. Targeted activities were achieved at reduced cost without compromising service delivery to the public.

Committee Observation and Recommendation

1002. The Committee noted that the submission by the Accounting Officer on budgetary control and performance was satisfactory hence the matter is resolved.

270. Unresolved Prior Year Audit Matters

1003. As disclosed under the progress on follow up of Auditor recommendations section of the financial statements, various prior year audit issues remained unresolved as at 30 June, 2019. Management has not provided reasons for the delay in resolving the prior year audit issues.

Management Response

1004. Most of the prior year matters had been resolved.

271. Outstanding Imprests

1005. As disclosed in Note 20(a) to the financial statements, the statement of financial position reflects a cash and cash equivalents balance of Kes.908,207,382 as at 30 June, 2019. Included in the balance is an amount of Kes.8,439,817 in respect to outstanding imprests to staff and Kes.1,613,000 in respect of outstanding imprests to Directors, all totalling to Kes.10,052,817. However, imprests amounting to Kes.2,863,099 had fallen due but had not been surrendered, contrary to Regulation 93(5) of the Public Finance Management (National Government) Regulations, 2015 which provides that a holder of a temporary imprest shall account or surrender the imprest within seven (7) working days after returning to duty station. Management was, therefore, in breach of the Law.

Management Response

1006. The imprests were surrendered and recovered in full.

Committee Observation

1007. The Committee observed that the imprest had been recovered in full.

Committee Recommendations

1008. The committee reprimands the Accounting Officer and further recommends the authority to strictly adhere to regulation 93 (5) of the Public Finance Management Regulations, 2015, henceforth.

1009. The Committee recommends that the matter is resolved.

272. Trade and Other Receivables from Exchange Transactions

1010. The statement of financial position and Note 21 to the financial statements reflect trade and other receivables from exchange transactions balance of Kes.85,495,420. However, the following observations were made:

272.1. Trade Receivables

1011. As previously reported, included in the trade receivables from exchange transactions balance of Kes.85,495,420 is an amount of Kes.13,492,209 in respect of trade receivables, out of which Kes.6,604,812 had been outstanding since 1 July, 2015. The Management did not provide satisfactory explanations why these debts had not been collected and no evidence was provided to indicate that the matter had been referred to an agency for collection as provided in the credit policy. The policy provides that any amount outstanding for over forty-five (45) days should be referred to an agency to ensure follow up and subsequent settlement. Consequently, the recoverability and validity of trade debtors balance of Kes.6,604,812 could not be confirmed.

Management Response

1012. Majority of the long outstanding debtors are small vessel owners most of whom are no longer in business and not traceable. Through enhanced multiagency safety awareness campaigns collection efforts have improved over the period. Although the credit policy stipulates that the long outstanding debts should be handed over to debt collection agency, the cost of engaging the agency outweigh the debts involved. To address the

problem, prepaid inspection has been preferred.The Authority has reviewed the Credit policy to address the gaps cited by the Auditors.

Committee observation

1013. The Committee noted that the submission by the Accounting Officer was unsatisfactory.

Committee recommendation

1014. The Committee recommends that the Accounting officer should submit an amended credit policy that provides for specific cases and a progress report on the debt recovery within three (3) months of adoption of this report.

272.2. Other Non-Trade Receivables

272.2.1. Supply, Review and Installation of Enterprise Resource Planning

1015. The trade receivables also include an amount of Kes.52,561,795 in respect of other non-trade receivables, out of which an amount of Kes.2,275,749 related to a claim from a supplier for non-performance of contractual obligations. The payment represented 20% of the contract sum of Kes.11,378,743 which was payable after first project meeting, contract sign off and signing of the project charter. The contract for supply, review, upgrade, installation and support of the Enterprise Resource Planning (ERP) system and integration with the electronic data management system and other systems was signed on 15 December, 2016 for a contract period of twelve (12) weeks.

1016. Available records showed that the Project stalled before reaching the second milestone and the Management indicated that efforts to recover the claim was ongoing. However, as at the time of audit in the month of September, 2019, thirty-two (32) months after the expiry of the contract period, the service provider had not completed the work.Consequently, the recoverability of other trade debtors of Kes.2,275,749 could not be confirmed.

Management Response

The Accounting Officer of KMA submitted as follows—

1017. The Contract was for a duration of twelve (12) weeks. The Project had a Workplan, which was pegged on individual deliverables. The first deliverable entailed organizing meetings, contract charter sign off and project sign off. The costs for the first deliverable at a total amount of Kes. 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 deliverables 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.

1018. The Authority terminated the contract and has escalated the matter to PPRA for further action including debarment of the contractor as the recovery of the amount paid was being pursued.

Committee Observation

1019. The Committee noted that the submission by the Accounting Officer was unsatisfactory.

Committee recommendation

1020. The Committee recommends that PPRA to fast track action on this matter with a view of recovery of the amount paid.

1021. The Committee recommends that EACC to investigate the officials of KMA involved in the procurement and implementation of the ERP system.

272.2.2. Advance Payment for Construction of Headquarters

1022. Included in the other non-trade receivables balance of Kes.52,561,795 is an amount of Kes.40,885,915 in respect to an advance payment to a contractor for construction of the Authority's Headquarters. However, the validity of the advance payment security lapsed on 31 January, 2018 and had not been renewed as at 30 June, 2019. Further, the Management provided a partial advance security of Kes.11,569,634 issued by a Bank on 05 November, 2019 and valid up to 02 February, 2020.

1023. The balance of Kes.29,316,281 or 72% of the advance payment was therefore not secured. The payment was therefore, contrary to Section 147(1) of the Public Procurement and Asset Disposal Act, 2015 which provides that under exceptional circumstances, advance payment may be granted and shall not exceed twenty per cent (20 %) of the price of the tender and shall be paid upon submission by the successful tenderer to the procuring entity of an advance payment security equivalent to the advance itself and that security shall be given by a reputable bank or any authorized financial institution issued by a corresponding bank in Kenya recognized by the Central Bank of Kenya. In case the successful tenderer is a foreigner.In the circumstances, the validity, regularity and recoverability of other non-trade receivables balance of Kes.29,316,281 could not be confirmed.

Management Response

1024. At the time of payment the advance payment Guarantee issued on February 01, 2017 covered the advance of Kes 182,523,994. At the time of notification of the anomaly a further Kes 28,819,349.05 had been recovered through IPC No. 18 in December 2020 and the Advance Payment Guarantee of Kes 11,569,634 sufficiently covered the balance.

Committee Observation

1025. The Committee observed that the explanation and documents submitted by the Accounting Officer was unsatisfactory since supportive documentation were not availed.

Committee Recommendation

1026. The Committee reprimands the Accounting Officer and directs that the Accounting Officer submits the supporting documents within three(3) months of adoption of this report to the OAG for verification.

1027. The Committee recommends that the Accounting Officer should ensure proper records are availed within reasonable time to the Auditor General pursuant to Section 68(2)(b) of the Public Finance Management Act, 2012. Further, disposal through donations should be streamlined through clear policy.

272.2.3. Provision for Doubtful Debts

1028. As disclosed in Note 21 to the financial statements, the Authority made a provision for doubtful debts amounting to Kes.11,644,824 representing 86% of the trade receivables balance of Kes.13,492,209. As previously reported, according to the Authority's policy on provision for bad and doubtful debts, receivables outstanding for more than 100 days qualify to be provided for. However, there was no evidence of the debt collection strategies implemented by the Authority. Further, the reasonableness of the policy to provide for all debts outstanding for one hundred (100) days and above could not be confirmed.

Management Response

1029. The Accounting Officer submitted that majority of the long outstanding debtors were small vessel owners most of whom were no longer in business and not traceable. To ensure the long outstanding debts are collected the Authority instituted multiagency safety awareness campaigns through which collection efforts have improved over the period. Prepaid inspection had been preferred while offering services.The credit policy which stipulates that debts outstanding for one hundred (100) days and above to be provided as a bad and doubtful debts had been amended to make provision for specific cases.

Committee Observation

1030. The Committee noted that the Accounting Officer's submission was unsatisfactory

Committee Recommendation

1031. The Committee recommends that the Accounting officer should submit an amended credit policy that provides for specific cases and the progress on the debt recovery within three(3) months of adoption of this report.

273. Capital Work in Progress

1032. As disclosed in Note 27 to the financial statements, the property, plant and equipment balance of Kes.1,572,223,087 includes an amount of Kes.1,235,282,101 in respect of capital work in progress being the cumulative cost of the ongoing works on Kenya Maritime Authority Headquarters Project at a total cost of Kes.1,728,176,418. The works consists of main building works, electrical, plumbing and drainage, air conditioning and elevator installation works. The following observations were made:

273.1. Payment of General Preliminaries

1033. As previously reported, the capital work in progress balance of Kes.1,235,282,101 includes an amount of Kes.539,431,019, being payments for interim certificate numbers 2, 3 and 4. Audit review of the interim certificates indicated that, the payments were made by the Authority for particular preliminaries included in the Bill of Quantities, at a cost of Kes.3,500,000 which was paid in full plus 15% or Kes.525,000 profit for groundbreaking ceremony. The preliminaries, being provisional amounts, are reimbursed on production of evidence of actual costs incurred. However, the Authority paid the contractor the full amount without evidence of actual cost incurred. Consequently, the propriety and validity of ground-breaking ceremony cost of Kes.3,500,000 could not be confirmed.

Management Response

1034. The ground-breaking ceremony cost of Kes.3,500,000 was recovered from Interim Payment Certificate.

Committee Observation

1035. The Committee observed the submission by the Accounting Officer was unsatisfactory.

Committee recommendation

1036. The Committee recommends that the Accounting Officer of KMA should submit bank transaction documents showing proof of recovery of the ground-breaking ceremony to the OAG within one (1) month of adoption of this report.

273.2. Payment of Rent

1037. As previously reported, included in the capital work in progress balance of Kes.1,235,282,101 are payments for rent amounting to Kes.2,070,000, being costs incurred by the 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 is contrary to Paragraph 30 (b) of International Public Sector Accounting Standard No. 17 – Property, Plant and Equipment - which provides that the cost of an item of property, plant, and equipment comprises: 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".

1038. 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, the Appendix to the conditions of contract clearly provided Kes.5,000,000 as the minimum for insurance of other property. Consequently, the validity of Kes.2,070,000 in respect of work in progress could not be confirmed.

Management Response

1039. The Reef Apartment rent amounting to Kes.2,070,000 was recovered from Interim Payment Certificate 18

Committee Observation and Recommendation

1040. The Committee observed that the outstanding rent had been recovered hence the matter is resolved.

273.3. Construction of Headquarters Subcontracts

1041. Included in the contract sum of Kes.1,728,176,418 for construction of Kenya Maritime Authority Headquarters, are prime costs and provisional sums amounting to Kes.390,452,000 or 22.6%, contrary to the guidelines provided

by the Public Procurement Oversight Authority, which provides under Section VII Bills of Quantities Paragraph 3.0(d)(i) 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'. Consequently, the Authority contravened the Law and the validity and propriety of prime costs and provisional sums amounting to Kes.390,452,000 could not be confirmed.

Management Response

1042. The documents used to procure the works were sourced from standard PPOA issued documentation. Therein participation of specialized contractors is well captured and applied with specialized work also tendered at the same time as the main contractor. Provision of Provisional Cost and Prime Cost sums were allowed for in the main document as captured from the consultants and client. Subsequently, the specialized works were tendered and evaluated as standalone contracts, but with agreements with the main contractor as they share site and site coordination.

1043. The contractor declined to revert back to the read-out amounts as all others had done through an addendum dated 26th July, 2018, under that circumstance, the project manager advised the Authority to disengage from the contract because it was not legally enforceable. The matter saw the Authority seek Legal advisory from the Attorney General twice.

Committee Observation and recommendation

1044. The Committee noted that the sub contract had been tendered and evaluated as stand-alone contracts but with agreements with the main contractor to share the site hence the matter is resolved.

273.4. Electrical Works Sub- Contract

1045. The Authority evaluated sub-contractors to carry out works listed in provisional sums and prime costs under the supervision of the main works contractor. However, review of the procurement of the electrical works contractor revealed that the lowest evaluated bidder had quoted Kes.115,976,976 which was corrected to Kes.224,292,876 at evaluation stage, contrary to Section 82 of the Public Procurement and Asset Disposal Act, 2015 which states that "the tender sum as submitted and read out during the tender opening shall be absolute and final and shall not be the subject of correction, adjustment or amendment in any way by any person or entity.

1046. Further, records provided for audit indicated that the Authority disengaged from the subcontract on 5 November, 2019 and the subcontractor acknowledged the disengagement on 19 November, 2019. However, based on the professional advice by the Solicitor-General on 1 November, 2019, the Kenya Maritime Authority has no contractual relationship with the subcontractor, but the main contractor. Therefore, the subcontractor may seek legal redress and be awarded damages.Consequently, the Management was in breach of the Law. Further, the validity and regularity of the electrical contract price of Kes.224,292,876 could not be confirmed.

Management Response

1047. The contractor declined to revert back to the readout amounts as all others had done through an addendum dated 26th July, 2018, under that circumstance, the project manager advised the Authority to disengage from the contract because it was not legally enforceable. The matter saw the Authority seek Legal advisory from the Attorney General twice.

Committee Observation

1048. The Committee noted that the explanation and submission by the Accounting Officer was insufficient.

Committee recommendation

1049. The Committee recommends that pursuant to Standing Order 89(2), this matter is sub-judice and the Committee shall await the ruling of the Court on the same.

274.Non-Submission of Financial Statements for Audit- Mortgage Guarantees

1050. As previously reported, the statement of financial position reflects a balance of Kes.214,673,878 in respect of mortgage guarantees. Available information indicated that the Authority had a staff car loan scheme with a balance of Kes.30,500,000 and a housing mortgage scheme with a balance of Kes.183,620,370 as at 30 June, 2019, operated by two local commercial banks.

1051. However, the financial statements for the two schemes were not submitted to the Auditor-General for audit, contrary to Section 81(1.4) of the Public Finance Management Act, 2012 which provides that at the end of each financial year, the Accounting Officer for a national government entity shall prepare financial statements in respect of the entity and submit the same to the Auditor-General. In addition, Paragraph 5 of Part 4 of the Salaries and Remuneration Commission's Circular SRC/ADM/CIR/1/13 Vol.II (128) dated 17 December, 2014 on the management of car loan and mortgage schemes for state officers requires each scheme to be subjected to annual audit. As a result, the completeness and legality of mortgage guarantees balance of Kes.214,673,878 could not be confirmed.

Management Response

1052. The Authority had been accounting for the funds in the Staff Car Loan and Mortgage Scheme as Investments. The Authority prepared and submitted the Financial Statements for the scheme from inception and have been audited by the Auditor-General.

Committee Observation and Recommendation

1053. The Committee noted from the submission of the Accounting Officer, that the Staff Loan and Mortgage Scheme were accounted as investments. The

financial statements for the Scheme had been submitted to the OAG at the time of examination hence the matter is resolved

275. Employee Costs

1054. As disclosed in Note 13 to the financial statements, the statement of financial performance reflects an expenditure of Kes.415,217,915 relating to employees' costs. The following observations were made:

275.1. Training in Foreign Country Organized by Local Organization

1055. The staff training expenditure also included accommodation allowances of Kes.494,179 paid to two (2) Directors of the Authority that attended a training on corporate governance organized by Strathmore Business School in Dar-es-Salaam, Tanzania. It was not clear why the Management allowed the two Directors to be trained in a foreign country by an institution based in Kenya, contrary to Paragraph 4.2.1 of the Guidelines on Managing Training in the Public Service of February, 2017 which provided that an approval to train in foreign based institutions will be granted only in instances where the course applied for was not available in any local institution.

1056. In the circumstances, the Management was in breach of the Law and the regularity and propriety of the expenditure amounting to Kes.494,179 on training could not be confirmed.

Management Response

1057. As provided by the Guidelines on Managing Training in the Public Service of February 2017, Strathmore Business School is Kenyan training institution and were offering the course the Directors attended.The training offered by Strathmore Business School was scheduled to take place in Dar-es-Salaam and not within the Country. During that time the two (2) Board Members had the opportunity to be trained while they were not engaged in Board matters.

Committee observation and Recommendation

1058. The Committee noted that the training was a scheduled training by Strathmore Business School to take place in Dar-es-Salaam hence the matter is resolved.

275.2. Employees Above the Age of Sixty (60) Years

1059. Audit of the payroll for the year ended 30 June, 2019 indicated that the Authority engaged two (2) employees on 3 January, 2019 and on 28 March, 2019 on three (3) year contracts. However, the two employees were above the mandatory retirement age of sixty (60). This is contrary to Paragraph D.21 of the Human Resource Policies and Procedures Manual for the Public Service, 2016 which provides that all officers shall retire from the Service on attaining the mandatory retirement age of 60 years, 65 years for persons with disabilities or as may be prescribed by the government from time to time. Consequently, the Management was in breach of the law.

Management Response

1060. In a letter dated 23rd October 2019 Ref: KMA/ADM/2/1/1 to the PS, Ministry of State for public Service indicate that among other issues, dire unavailability of the specialized skilled workers in the labour market led the Authority to employee the staff above the age of 60 years.The Authority initiated a mentorship and coaching initiative that replaced one of the contracted employees with a junior employee.

Committee observation and Recommendation

1061. The Committee noted from the submission of the Accounting Officer that there was unavailability of specialized skilled workers that led to the employment of staff above 60 years on contract hence the matter resolved.

276. Irregular Procurement of Training Services

1062. Included in the expenditure of Kes.89,043,531 in respect of staff training was an amount of Kes.4,513,148 not included in the procurement plan of the

Authority. This is contrary to Regulation 51(3) of the Public Finance Management (National Government) Regulations, 2015 which states that the Accounting Officer should make an expenditure commitment only against the procurement plan approved for that entity in accordance with the Public Procurement and Asset Disposal Act, 2015 and the Regulations made thereunder. Consequently, the Authority contravened the provisions of the Public Procurement and Asset Disposal Act, 2015 and the propriety of staff training costs of Kes.4,513,148 could not be ascertained.

Management Response

1063. Different institutions had varying training calendars and matching with training plans for each employee became a challenge. The Authority had been sending its employees to the Kenya School of Government (KSG), Kenya School of Monetary Studies and other Government training institutions as a first priority; where such training is not provided by the Government institutions, the Authority seeks such services through the procurement process for in-house training.

Committee Observation and Recommendation

1064. The Committee observed that the submission by the Accounting Officer on procurement of training services was satisfactory hence the matter is resolved.

277. Employees with Net Salaries Less than One Third of Basic Salary

1065. Audit of the payroll for the year ended 30 June, 2019 revealed that the net pay for four (4) employees totaling to Kes.265,753 was less than a third of their corresponding basic pay of Kes.1,282,917, contrary to Section 19(3) of the Employment Act, 2007 which states that the total amount of all deductions made by an employer from the wages of his employee at any one time, shall not exceed two-thirds of such wages.

Consequently, the Management was in breach of the Law.

Management Response

1066. Currently the Authority has upgraded the ERP system that's used for processing the payroll and the module does not allow deductions beyond a third of the basic salary.

Committee Observation

1067. The Committee noted from the submission of the Accounting Officer that the ERP system has been upgraded to disallow the deductions beyond a third of the basic salary.

Committee recommendation

1068. The Committee recommends that the matter is resolved and further recommends the Authority to strictly adhere to section 19 of the Employment Act on a third rule.

278. General Office Expenditure

1069. As disclosed in Note 17 to the financial statements, the statement of financial performance reflects an amount of Kes.273,447,225 under general office expenditure. The following observations were made:

278.1. Irregular Procurement of Motor Vehicles and Boat Insurance

1070. The general office expenditure includes insurance expenses of Kes.7,720,395 out of which an amount of Kes.3,003,788 is in respect of motor vehicles and boat insurance. However, the following anomalies were noted:

i. Requests for quotations provided for audit review did not specify the risks to be covered and limits of cover. Further, review of documents submitted by bidders revealed that each bidder quoted for different cover limits and risks, hence the bid prices were not comparable.

ii. Audit review of tender evaluation minutes revealed that no technical evaluation of the bids was done.

iii. Audit review of the quotations revealed that only two (2) bidders responded out of the six (6) invited. However, the quotations were evaluated, contrary to Section 106 (2)(a) of the Public Procurement and Asset Disposal Act, 2015 which requires the Accounting Officer to ensure that at least three (3) persons shall submit their quotations prior to evaluation.

iv. The Authority used requests for quotations procurement method. However, a list of the insurance providers and details on how the bidders identified were not provided for audit verification.

1071. In the circumstances, the Management was in breach of the Law and the validity, regularity and propriety of the expenditure on motor vehicles and boat insurance services amounting to Kes.3,003,788 could not be confirmed.

Management Response

1072. The Authority didn't have the requisite expertise to develop the risks to be covered and the cover limits. The procurement section also had manpower challenges.The Authority noted the oversights and subsequently ensured the risks to be covered are specified and limits of cover indicated in the request for quotations. Provisions of Section 106 (2)(a) of the Public Procurement and Asset Disposal Act, 2015 have also been adhered over the ensuing period.

1073. The Authority didn't have the requisite expertise to develop the risks to be covered and the cover limits. The procurement section also had manpower challenges.The Authority noted the oversights and subsequently ensured the risks to be covered are specified and limits of cover indicated in the request for quotations. Provisions of Section 106 (2)(a) of the Public Procurement and Asset Disposal Act, 2015 have also been adhered over the ensuing period.

Committee Observation

1074. The Committee observed that the submission by the Accounting Officer was unsatisfactory.

Committee Recommendations

1075. The Committee reprimands the Accounting Officer recommends that the Accounting officer should submit a detailed documentation on the due procurement process in the procurement of Motor Vehicle and Boat Insurance to the OAG within three(3) months of adoption of this report.

1076. The Auditor General to keep in view of this query in subsequent financial year.

278.2. Goods Supplied Beyond the Validity Period - Office Uniforms and Clothing

1077. The general office expenditure also included an amount of Kes.615, 820 in respect of office uniforms and clothing. However, included in this amount is Kes.470,835 in respect of goods procured through Purchase Orders (POs) raised in the month of April, 2018 but delivered in November, 2018, about six (6) months after the validity period of the POs had lapsed. This is contrary to Regulation 53 of the Public Finance Management (National Government) Regulations, 2015 which provides that the validity period of Local Purchase Order is thirty (30) days. Consequently, the Management was in breach of the Law in respect of the expenditure.

Management Response

1078. The work was awarded under AGPO reserved group. The office uniforms and clothing for staff were being tailor-made. The process of taking measurements of staff spread out throughout the country, and time taken to tailor the uniform to the required standards took longer than initialy anticipated. The suppliers having already committed their funds to the supply of the uniforms and showed commitment to delivery, the Authority saw it fit to allow more time for delivery.

Committee observation and Recommendation

1079. The Committee observed that although the supplier needed more time, the staff uniforms were delivered hence the matter is resolved.

278.3. Loans to Members of Staff Beyond Approved Limit

1080. During the year under review, two (2) employees of the Authority were provided with car loan benefits through a scheme administered by a bank on behalf of the Authority. However, scrutiny of the loan beneficiaries revealed that car loans were advanced to two (2) employees in excess of the approved Salaries and Remuneration Commission limits as summarized below

Kenya Maritime Authority	Civil Service Job Group	Maximum Loan Limit	Principal Loan Amount Advanced (Kes.)	Excess Loan Advanced (Kes.)
8	H	800,000	1,349,634	549,634
3	R	3,000,000	3,576,000	576,000
Total		**3,800,000**	**4,925,634**	**1,125,634**

1081. The excess car loan of Kes.1,125,634 is contrary to Salaries and Remuneration Commission Circular No. SRC/023/12/2014 of 17 December, 2014 which provides the thresholds for Car Loan and Mortgage Scheme benefits for various cadres of public officers in the Public Service. In the circumstances, the Management was in breach of the Law.

Management Response

1082. In the spirit of the circular by the SRC of Ref. No: SRC/ADM/CIR/1/13 Vol. III (128) dated 17th December, 2014:

"It is expected that implementation of the benefits will motivate public officers and immensely contribute towards attraction and retention of requisite skills in the public service with the constitutional principle under Article 230 (5) of the constitution".

1083. The Authority facilitated its employees to access the car loans for motivation and retention purposes. In the same spirit the Authority ensured that the officer's deduction will not exceed two thirds of their monthly emoluments.

1084. Notwithstanding the above, the Authority is aware of the current market rates for vehicles that are authorized entry into the Kenyan market. This has made it difficult for staff in the lower cadre to access the car loan scheme because of the given limits against the market rates.

The beneficiaries of the loans were:

Employee Name	KMA JG	Civil Service JG	Loan Amount (Kes.)
Hassan Mwachangoma	8	H	1,349,634
Dave Mull	3	R	3,576,000

Total		4,925,634

Committee Observations

1085. The Committee observed that the car loans beyond the approved limit was due to the fact that the market rates of cars was beyond the approved limit.

1086. The committee further noted that the car loans were granted to motivate and retain employees. That notwithstanding, the deductions did not exceed a third of the basic salary of the employees.

Committee Recommendations

1087. The Committee recommend the EMA to align its car loan and mortgage policy in accordance with the latest Salaries and Remuneration Commission Circular No. SRC/023/12/2014 of 17 December, 2014.

1088. The Committee recommends that the matter is resolved.

279. Operating a Bank Account Without Approval of the National Treasury

1089. Section 28(1) of the Public Finance Management Act, 2012 provides that The National Treasury shall authorize the opening, operating and closing of bank accounts and sub accounts for all National Government entities. During the year under review, the Management opened a bank account for Multinational Lake Victoria Maritime Communications and Transport Project at a local Commercial Bank. However, the authority by The National Treasury to open the bank account was not provided for audit verification. In the circumstances, the Management is in breach of the Law.

Management Response

1090. The approval was sought and concurrence given by the National Treasury.

Committee Observation

1091. The Committee noted that the Accounting Officer had obtained the approval of the National Treasury.

Committee Recommendation

1092. The Committee recommends to resolve the matter.

1093. The Committee recommend that the Accounting Officer should hence forth submit document on time to the OAG in line with section 68 (2) (k) of the Public Finance Management Act, 2012.

280. Interest Rate on Un-Utilized Car Loan Guarantee Fund

1094. The statement of financial position reflects a balance of Kes.214,673,678 under mortgage guarantees which, as disclosed in Note 24 to the financial statements, includes a car loan guarantee of Kes.30,500,000. Paragraph 6(a) of the Service Agreement between the Authority and the bank operating the Scheme requires the parties to set interest rate for unutilized deposits held by the bank. However, no record was provided to show the interest rate had been set during the four (4) years that the car loan guarantee Fund had been in operation (from 27 June, 2015 to September, 2019). Further, review of the ledger revealed that no interest had been earned by the Authority on unutilized funds as the car loan guarantee ledger balance of Kes.30,500,000 as at 30 June, 2019 comprised Kes.14,134,509 being outstanding car loans and Kes.16,365,491 being the balance held by the bank as un-utilized deposits. Consequently, the Management was in breach of the Law and Service Agreement.

Management Response

1095. During the period the bank placed the funds in FDR accounts at 0% to enable on lending to staff at an interest rate of 3%. The loans were also lent at nil processing fees. The Authority later negotiated with the bank and they were able to pay 8% per annum interest on the unutilized funds.

Committee Observation

1096. The Committee observed that the management negotiated for an interest rate of 8% per annum on the unutilized funds.

Committee Recommendation

1097. The Committee reprimands the Accounting Officer for failure to adhere to the service agreement and directs that in future the Accounting Officer should ensure that the service agreement is followed to the later.

1098. The Committee recommends that the matter is resolved.

FINANCIAL YEAR 2019/2020

The Auditor General gave a qualified Audit opinion raising the following concerns—

281. Cash and Cash Equivalents

281.1. Kenya Commercial Bank Current Account

1099. The statement of financial position reflects a cash and cash equivalents balance of Kes.897,237,466 as at 30 June, 2020 which, as disclosed in Note 21 to the financial statements, included an amount of Kes.841,941,248 held in a current account with a local commercial bank. However, and as previously reported, the June, 2020 bank reconciliation statement for the account reflected an amount of Kes.4,344,000 in respect of payments in bank statement not recorded in cash book dating back to June, 2018. Available records indicated that the payment was made to a legal firm representing the Authority. However, the payment was not supported by a payment voucher, supporting documents used for the procurement of the services, evidence of services rendered and authorization of remittance of the funds to the law firm.

Management Response

1100. Voucher No. ALBERTJV-01156 to recognize the payment of Kes4,344,000 legal fees. This was necessitated a restatement of Cash and Cash equivalents as shown in FY2020/2021 audited Financial Statements.

Committee Observationand Recommendation

1101. The Committee observed the Prior year column was restated in the financial statements of 2021/2022 and the matter is resolved.

281.2. National Bank of Kenya -Dollar Account

1102. The cash and cash equivalents balance of Kes.897,237,466 also includes an amount of Kes.9,801,466 in the National Bank of Kenya Current Account (USD) and whose bank reconciliation statement for the month of June, 2020 reflects a bank statement balance of USD 118,692.22. However, the certificate of bank confirmation as at 30 June, 2020 reflects an amount of USD 117,982.86, thus resulting in an unreconciled variance of USD 709.36. Consequently, the accuracy and completeness of cash and cash equivalents balance of Kes.897,237,466 as at 30 June, 2020 could not be confirmed.

Management Response

1103. The variance of USD 709.36 was due to a deposit of cheque number 011571 from Rais Shipping on 29/06/2020, which was to mature on 2nd July 2020 (value date). The National Bank of Kenya provided the cleared balance of USD 117,982.86 as the certified amount instead of the book balance of USD 118,692.22. A reconciliation statement was provided on the same.

Committee observation and Recommendation

1104. The Committee observed from the submission of the Accounting Officer that the account was reconciled and the matter is resolved.

282. Budgetary Control and Performance

1105. The statement of comparison of budget and actual amounts indicates that the Authority had an approved budget of Kes. 1,602,000,000 compared to actual receipts of Kes. 1,580,953,742. Similarly, the Authority's actual expenditure amounted to Kes. 822,004,874 against a budgeted expenditure of Kes. 1,049,261,000 resulting to an under-expenditure of Kes. 227,256,126 or 22% of the budgeted expenditure. The underexpenditure may have affected the planned activities of the Authority and could have impacted negatively on service delivery to the public.

Management Response

1106. The Accounting Officer submitted that the main source of revenue for the Authority is MS fee that rely on the import and export cargo. Any slight change in volumes affect the amount collectible by the Authority. Some of the Macro economic factors that affect the import and exports are beyond

the Authority control. Targeted activities were achieved at reduced cost without compromising service delivery to the public.

Committee Observation and Recommendation

1107. The Committee noted that the submission by the Accounting Officer on budgetary control and performance was satisfactory hence the matter is resolved.

283. Unresolved Prior Year Audit Matters

1108. As disclosed under the progress on follow up of auditor recommendations section of the financial statements, various prior year audit issues remained unresolved as at 30 June, 2020. Management has not provided reasons for the delay in resolving the prior year audit issues.

284. Trade and Other Receivables from Exchange Transactions

1109. As disclosed in Note 22 to the financial statements, the statement of financial position reflects a balance of Kes.73,987,705 under trade and other receivables from exchange transactions. However, the following observations were made:

284.1. Trade Receivables

1110. Included in the trade receivables balance of Kes.73,987,705 is an amount of Kes.13,713,210 in respect of trade receivables, out of which Kes.6,604,812 has been outstanding since 1 July, 2015. The Management did not provide satisfactory explanations why the debts had not been collected and no evidence was provided to indicate that the matter had been referred to an agency for collection as provided in the credit policy. The policy provides that any amount outstanding for over forty-five (45) days should be referred to an agency to ensure follow up and subsequent settlement. Consequently, the recoverability and validity of trade debtors balance of Kes.6,604,812 could not be confirmed.

Management Response

The Accounting Officer submitted as follows—

1111. Majority of the long outstanding debtors are small vessel owners most of whom are no longer in business and not traceable. Through enhanced multiagency safety awareness campaigns, collection efforts have improved over the period. Although the credit policy stipulates that the long outstanding debts should be handed over to debt collection agency, the cost of engaging the agency outweighs the debts involved. To address the problem the Authority introduced prepaid inspection as the preferred service delivery method.

Committee observation

1112. The Committee noted that the submission by the Accounting Officer on trade receivables was unsatisfactory.

Committee recommendation

1113. The Committee recommends that the Accounting Officer should submit an amended credit policy that provides for specific cases and a progress report on the debt recovery within three (3) months of adoption of this report.

284.2. Other Non-Trade Receivables

284.2.1. Supply, Review and Installation of Enterprise Resource Planning

1114. The trade receivables also included an amount of Kes 40,926,031 in respect of other non-trade receivables, out of which an amount of Kes.2,275,749 related to a claim from a supplier for non-performance of contractual obligations. The payment represented 20% of the contract sum of Kes.11,378,743 which was payable after first project meeting, contract sign off and signing of the project charter. The contract for supply, review, upgrade, installation and support of the Enterprise Resource Planning (ERP) system and integration with the electronic data management system and other systems was signed on 15 December, 2016 for a contract period of twelve (12) weeks. Available records showed that the Project stalled before

reaching the second milestone and the Management indicated that efforts to recover the claim were ongoing.

1115. However, as at the time of audit in the month of September, 2020, forty- four (44) months after the expiry of the contract period, the service provider had not completed the work. Consequently, the recoverability of other trade debtors of Kes.2,275,749 could not be confirmed.

Management Response

1116. The Contract was for a duration of twelve (12) weeks. The Project had a Workplan, which was pegged on individual deliverables. The first deliverable entailed organizing meetings, contract charter sign-off and project sign off. The costs for the first deliverable at a total amount of Kes. 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 deliverables' 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.

Committee Observation

1117. The Committee noted that the submission by the Accounting Officer on Supply, Review and Installation of Enterprise Resource Planning was unsatisfactory.

Committee recommendation

1118. The Committee recommends that PPRA to fast-track action on this matter with a view of recovery of the amount paid.

1119. The Committee recommends that EACC to investigate the officials of KMA involved in the procurement and implementation of the ERP system

284.2.2. Advance Payment for Construction of Headquarters

1120. Included in the other non-trade receivables balance of Kes.40,926,031 is an amount of Kes.36,157,869 in respect to an advance payment to a contractor for construction of the Authority's Headquarters. However, the

validity of the advance payment security lapsed on 31 January, 2018 and had not been renewed as at 30 June, 2020. Further, the Management provided a partial advance security of Kes.11,569,634 issued by a Bank on 05 November, 2019 and valid up to 02 February, 2020. The balance of Kes.24,588,235 or 68% of the advance payment was therefore not secured.

1121. The payment was therefore, contrary to Section 147(1) of the Public Procurement and Asset Disposal Act, 2015 which provides that under exceptional circumstances, advance payment may be granted and should not exceed twenty per cent (20%) of the price of the tender and should be paid upon submission by the successful tenderer to the procuring entity of an advance payment security equivalent to the advance itself and that security should be given by a reputable bank or any authorized financial institution issued by a corresponding bank in Kenya recognized by the Central Bank of Kenya, in case the successful tenderer is a foreigner. In the circumstances, the validity, regularity and recoverability of other non-trade receivables balance of Kes.24,588,235 could not be confirmed.

Management Response

1122. At the time of payments, the advance payment Guarantee issued on February 01, 2017 covered the advance of Kes.82,523,994. At the time of notification of the anomaly a further Kes.28,819,349.05 had been recovered through IPC No. 18 in December 2020 and the Advance Payment Guarantee of Kes.1,569,634 sufficiently covered the balance.

Committee Observation

1123. The Committee observed that the explanation and documents submitted by the Accounting Officer was unsatisfactory since supportive documentation were not availed.

Committee Recommendation

1124. The Committee reprimands the Accounting Officer and directs that the Accounting Officer submits the supporting documents within three(3) months of adoption of this report to the OAG for verification.

1125. The Committee recommends that the Accounting Officer should ensure proper records are availed within reasonable time to the Auditor General pursuant to Section 68(2)(b) of the Public Finance Management Act, 2012. Further, disposal through donations should be streamlined through a clear policy.

285. Provision for Doubtful Debts

1126. As disclosed in Note 22 to the financial statements, the Authority made a provision for doubtful debts amounting to Kes.11,148,096 representing 81% of the trade receivables balance of Kes.13,713,210. As previously reported, according to the Authority's policy on provision for bad and doubtful debts, receivables outstanding for more than 100 days qualify to be provided for. However, there was no evidence of the debt collection strategies implemented by the Authority. Under the circumstances, the reasonableness of the policy to provide for all debts outstanding for one hundred (100) days and above could not be confirmed.

Management Response

1127. The Accounting Officer submitted that the majority of the long outstanding debtors were small vessel owners most of whom were no longer in business and not traceable. To ensure the long outstanding debts are collected the Authority instituted multiagency safety awareness campaigns through which collection efforts have improved over the period. Prepaid inspection has been preferred while offering services. The credit policy which stipulates that debts outstanding for one hundred (100) days and above to be provided as a bad and doubtful debts has been amended to make provision for specific cases.

Committee Observation

1128. The Committee noted that the submission by the Accounting Officer was not satisfactory.

Committee Recommendation

1129. The Committee recommends that the Accounting Officer should submit an amended credit policy that provides for specific cases and the progress on the debt recovery within three(3) months of adoption of this report.

286. Capital Work in Progress

1130. As disclosed in Note 27 to the financial statements, the property, plant and equipment balance of Kes.1,670,688,495 includes an amount of Kes.1,375,156,053 in respect of capital work in progress being the cumulative cost of the ongoing works on Kenya Maritime Authority Headquarters Project at a total cost of Kes.1,728,176,418. The consists of main building works, electrical, plumbing and drainage, air conditioning and elevator installation works. The following observations were made:

286.1. Payment of General Preliminaries

1131. As previously reported, the capital work in progress balance of Kes.1,375,156,053 includes an amount of Kes. 539,431,019 being payments for interim certificate numbers 2, 3 and 4. Audit review of the interim certificates indicated that, the payments were made by the Authority for particular preliminaries included in the Bill of Quantities, at a cost of Kes.3,500,000 which was paid in full plus 15% or Kes.525,000 profit for groundbreaking ceremony. The preliminaries, being provisional amounts, are reimbursed on production of evidence of actual costs incurred. However, the Authority paid the contractor the full amount without evidence of actual cost incurred. Consequently, the propriety and validity of ground-breaking ceremony cost of Kes.3,500,000 could not be confirmed.

Management Response

1132. The ground-breaking ceremony cost of Kes.3,500,000 was recovered from Interim Payment Certificate 18.

Committee Observation

1133. The Committee observed the submission by the Accounting Officer was unsatisfactory and hence the expenditure of Kes.3,500,000 was unjustifiable.

Committee recommendation

1134. The Committee recommends that the Accounting Officer of KMA should submit bank transaction documents showing proof of recovery of the cost for the ground-breaking ceremony to the OAG within one (1) month of adoption of this report.

286.2. Payment of Rent

1135. Included in the capital work in progress balance of Kes.1,375,156,053 are payments for rent amounting to Kes.2,070,000, being costs incurred by the 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 is contrary to Paragraph 30 (b) of International Public Sector Accounting Standard No. 17 – Property, Plant and Equipment - which provides that the cost of an item of property, plant, and equipment comprises: 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".

1136. 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, the Appendix to the conditions of contract clearly provided Kes.5,000,000 as the minimum for insurance of other property. Consequently, the validity of Kes.2,070,000 in respect of work in progress could not be confirmed.

Management Response

1137. The Reef Apartment rent amounting to Kes.2,070,000 was recovered from Interim Payment Certificate.

Committee Observation and Recommendation

1138. The Committee observed that the outstanding rent had been recovered hence the matter is resolved.

286.3. Construction of Headquarters Subcontracts

1139. Included in the contract sum of Kes.1,728,176,418 for construction of Kenya Maritime Authority Headquarters, are prime costs and provisional sums amounting to Kes.390,452,000 or 22.6%, contrary to the guidelines provided by the Public Procurement Oversight Authority, which provides 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'. Consequently, the Authority contravened the law and the validity and propriety of prime costs and provisional sums amounting to Kes.390,452,000 could not be confirmed.

Management Response

The Accounting Officer submitted that—

1140. The documents used to procure the works were sourced from standard PPOA issued documentation. Therein participation of specialized contractors is well captured and applied with specialized work also tendered at the same time as the main contractor. Provision of Provisional Cost and Prime Cost sums were allowed for in the main document as captured from the consultants and client. Subsequently, the specialized works were tendered and evaluated as standalone contracts, but with agreements with the main contractor as they share site and site coordination.

1141. The contractor declined to revert to the read-out amounts as all others had done through an addendum dated 26th July, 2018, under that circumstance, the project manager advised the Authority to disengage

from the contract because it was not legally enforceable. The matter saw the Authority seek Legal advisory from the Attorney General twice.

Committee Observation and recommendation

1142. The Committee noted that the subcontract had been tendered and evaluated as stand-alone contracts but with agreements with the main contractor to share the site hence the matter is resolved.

286.4. Electrical Works Sub-Contract

1143. The Authority evaluated sub-contractors to carry out works listed in provisional sums and prime costs under the supervision of the main works contractor. However, review of the procurement of the electrical works contractor revealed that the lowest evaluated bidder had quoted Kes.115,976,976 which was corrected to Kes.224,292,876 at evaluation stage, contrary to Section 82 of the Public Procurement and Asset Disposal Act, 2015 which states that 'the tender sum as submitted and read out during the tender opening shall be absolute and final and shall not be the subject of correction, adjustment or amendment in any way by any person or entity'.

1144. Further, records provided for audit indicated that the Authority disengaged from the subcontract on 5 November, 2019 and the subcontractor acknowledged the disengagement on 19 November, 2019. However, based on the professional advice by the Solicitor-General on 1 November, 2019, the Kenya Maritime Authority has no contractual relationship with the subcontractor, but the main contractor. Consequently, the Management was in breach of the law. Further, the validity and regularity of the electrical contract price of Kes.224,292,876 could not be confirmed.

Management Response

1145. The nature of this contract legally allows for variations which could be either additional or omissions within the Bill of quantities brought about by site instructions given by the Lead consultants through project managers approvals to care of dynamics of works during project implementation. These minimal adjustments ensure smooth running of works and avoids delays which if not managed could easily stall the project which be costly to the project.

Committee Observation

1146. The Committee noted that although this is an old matter, the case is still ongoing in court.

Committee Recommendation

1147. The Committee recommends that pursuant to Standing Order 89(2), this matter is sub-judice and the Committee shall await the ruling of the Court on the same.

287. Employee Costs

1148. As disclosed in Note 13 to the financial statements, the statement of financial performance reflects an expenditure of Kes.384,364,234 relating to employees' costs. The following observations were made:

287.1. Employee Above the Age of Sixty (60) Years

1149. Audit of the payrolls for the year ended 30 June, 2020 indicated that the Authority engaged one (1) employee on a three (3) year contract running from 28 March, 2020. However, the employee was above the mandatory retirement age of sixty (60) years. This is contrary to Paragraph D.21 of the Human Resource Policies and Procedures Manual for the Public Service, 2016 which provides that all officers shall retire from the Service on attaining the mandatory retirement age of 60 years, 65 years for persons with disabilities or as may be prescribed by the government from time to time. Consequently, the Management was in breach of the law.

Management Response

1150. In a letter dated 23rd October 2012 Ref: KMA/ADM/2/1/1 to the PS, Ministry of State for Public Service indicate that among other issues, dire unavailability of the specialized skilled workers in the labour market led the Authority to employee the staff above the age of 60 years. The Authority initiated a mentorship and coaching initiative that replaced one of the contracted employees with a junior employee.

Committee observation and Recommendation

1151. The Committee noted from the submission of the Accounting Officer that there was unavailability of specialized skilled workers that led to the employment of staff above 60 years on contract hence the matter resolved.

287.2. Employees with Net Salaries Less than One Third of Basic Salary

1152. Audit of the payrolls for the year ended 30 June, 2020 revealed that the net pay for three (3) employees totaling to Kes.204,004 was less than a third of their corresponding basic pay of Kes.270,150, contrary to Section 19(3) of the Employment Act, 2007 which states that the total amount of all deductions made by an employer from the wages of his employee at any one time, shall not exceed two-thirds of such wages. Consequently, the Management was in breach of the law.

Management Response

1153. Currently the Authority has upgraded the ERP system that's used for processing the payroll and the module does not allow deductions beyond a third of the basic salary.

Committee Observation

1154. The Committee noted from the submission of the Accounting Officer that the ERP system has been upgraded to disallow the deductions beyond a third of the basic salary.

Committee recommendation

1155. The Committee recommends that the matter is resolved and further recommends the Authority to strictly adhere to section 19 of the Employment Act on a third rule.

288. General Office Expenditure

1156. As disclosed in Note 17 to the financial statements, the statement of financial performance reflects an amount of Kes.306,444,750 under general office expenditure. The following observations were made:

288.1. Irregular Procurement of Motor Vehicles and Boat Insurance

1157. The general office expenditure includes insurance expenses of Kes.5,704,482 out of which an amount of Kes.3,003,788 was in respect of motor vehicles and boat insurance. However, the following anomalies were noted:

i. Requests for quotations provided for audit review did not specify the risks to be covered and limits of cover. Further, review of documents submitted by bidders revealed that each bidder quoted for different cover limits and risks, hence the bid prices were not comparable.

ii. Audit review of tender evaluation minutes revealed that no technical evaluation of the bids was done.

iii. Audit review of the quotations revealed that only two (2) bidders responded out of the six (6) invited. However, the quotations were evaluated, contrary to Section 106 (2)(d) of the Public Procurement and Asset Disposal Act, 2015 which requires the Accounting Officer to ensure that at least three (3) persons shall submit their quotations prior to evaluation.

iv. The Authority used requests for quotations procurement method. However, a list of the insurance providers and details on how the bidders were identified were not provided for audit verification.

In the circumstances, the validity, regularity and propriety of the expenditure on motor vehicles and boat insurance services amounting to Kes.3,003,788 could not be confirmed.

Management Response

1158. The Authority didn't have the requisite expertise to develop the risks to be covered and the cover limits. The procurement section also had manpower challenges. The Authority noted the oversights and subsequently ensured the risks to be covered are specified and limits of cover indicated in the request for quotations. Provisions of Section 106 (2)(a) of the Public Procurement and Asset Disposal Act, 2015 have also been adhered over the ensuing period. The Authority didn't have the requisite expertise to develop the risks to be covered and the cover limits.

1159. The procurement section also had manpower challenges. The Authority noted the oversights and subsequently ensured the risks to be covered are

specified and limits of cover indicated in the request for quotations. Provisions of Section 106 (2)(d) of the Public Procurement and Asset Disposal Act, 2015 have also been adhered over the ensuing period.

Committee Observation

1160. The Committee observed that the submission by the Accounting Officer was unsatisfactory.

Committee Recommendation

1161. The Committee recommends that the Accounting Officer should submit a detailed documentation on the due procurement process in the procurement of Motor Vehicle and Boat insurance within three (3) months of adoption of this report to the OAG for verification.

1162. OAG to keep in view of this query in the subsequent financial year.

288.2. Irregular Procurement of Branded Promotional Items

1163. Included in the general office expenditure of Kes.306,444,750 is an amount of Kes.51,260,930 in respect of publicity and awareness. The latter balance includes an amount of Kes.5,360,500 in respect of branded promotional items including water bottles, umbrellas, notepads, brochures and booklets procured through restricted tendering. The Management sent tender invitations to eight (8) firms from the prequalified list of fifty-three (53) suppliers. This was contrary to Regulation 54(3) of the Public Procurement and Disposals Regulations, 2006 which requires a procuring entity to invite tenders from at least ten persons selected from the prequalified list maintained for restricted tendering method. Further, the tender was not advertised in the Kenya Maritime Authority website as per Regulation 54 (3)(d) of the Public Procurement and Disposal Regulations, 2006.

1164. In addition, the use of the restricted tendering method for the supply of branded promotional items and brochures was not justified as the goods and services procured were readily available and not of a complex nature. This was done contrary to Section 102(1) of the Public Procurement and Asset Disposal Act, 2015 which prescribes conditions for the use of restricted tendering including (a) competition for contract, because of the complex or

specialized nature of the goods, works and (b) If there is evidence to the effect that there are only a few known suppliers of the whole market of the goods, works or services. The Management was in breach of the law.

Management Response

1165. The Accounting Officer submitted that the use of Restricted tendering was informed by Section 102 (1)(b) of the PPADA, 2015 where an accounting officer may use restricted tendering if (b) the time and cost required to examine and evaluate a large number of tenders would be disproportionate to the value. The Authority however notes concerns raised and has endeavored to comply with PPADA, 2015 and PPADR, 2020.

Committee Observation

1166. The Committee noted that the Accounting Officer failed to justify why the Authority opted for restricted tendering of the promotional items.

1167. The Committee noted the submission by the Accounting Officer was not satisfactory.

Committee Recommendation

1168. The Committee reprimands the accounting officer for breaching section 102(1) of the Public Procurement and Asset Disposal Act, 2015 and regulation 54 (3)(d) of the Public Procurement and Disposal Regulations, 2006 and directs PPRA to investigate this matter within three months of adoption of this report

1169. The OAG to keep in view of this query in the subsequent financial year.

1170. The Committee recommends that the matter remains unresolved.

289. Outstanding Imprests

1171. The statement of financial position reflects a balance of Kes.144,081,571 under receivables from non-exchange transactions which, as disclosed in Note 23 to the financial statements, includes an amount of Kes.175,297 in respect of other receivables. The latter balance includes an amount of Kes.56,000 relating to an imprest issued to a former staff of the Authority but has been outstanding since 2015. This is contrary to Regulation 93(5) of the

Public Finance Management (National Government) Regulations, 2015 which provides that a holder of a temporary imprest shall account or surrender the imprest within seven (7) working days after returning to duty station. The Management was, therefore, in breach of the law.

Management Response

1172. The officer surrendered the Imprest through Imprest Surrender No. IMP-SURR21/00216.

Committee Observation

1173. The Committee observed that the outstanding imprest was recovered hence the matter is resolved.

290. Loans to Members of Staff Beyond Approved Limit

1174. During the year under review, two (2) employees of the Authority were provided with car loan benefits through a scheme administered by a bank on behalf of the Authority. However, scrutiny of the loan beneficiaries revealed that car loans were advanced to two (2) employees in excess of the approved Salaries and Remuneration Commission limits as summarized below:

Kenya Maritime Authority Job Group	Civil Service Job Group	Maximum Loan Limit (Kes.)	Principal Loan Amount Advanced (Kes.)	Excess Loan Advanced (Kes.)
8	H	800,000	1,349,634	549,634
3	E	3,000,000	3,576,000	576,000
Total		**3,800,000**	**4,925,634**	**1,125,634**

1175. The excess car loan of Kes.1,125,634 is contrary to Salaries and Remuneration Commission Circular No. SRC/023/12/2014 of 17 December, 2014 which provides the thresholds for car loan and Mortgage Scheme benefits for

various cadres of public officers in the Public Service. In the circumstances, the Management was in breach of the law.

Management Response

1176. In the spirit of the circular by the SRC of Ref. No: SRC/ADM/CIR/1/13 Vol. III (128) dated 17th December, 2014:

> *"It is expected that implementation of the benefits will motivate public officers and immensely contribute towards attraction and retention of requisite skills in the public service with the constitutional principle under Article 230 (5) of the constitution".*

1177. The Authority facilitated its employees to access the car loans for motivation and retention purposes. In the same spirit the Authority ensured that the officer's deduction will not exceed two thirds of their monthly emoluments. Notwithstanding the above, the Authority is aware of the current market rates for vehicles that are authorized entry into the Kenyan market. This has made it difficult for staff in the lower cadre to access the car loan scheme because of the given limits against the market rates.

Committee Observations

1178. The Committee observed that the car loans beyond the approved limit was due to the fact that the market rates of cars was beyond the approved limit.

1179. The committee further noted that the car loans were granted to motivate and retain employees. That notwithstanding, the deductions did not exceed a third of the basic salary of the employees.

Committee Recommendations

1180. The Committee recommend the KMA to align its car loan and mortgage policy in accordance with the latest Salaries and Remuneration Commission Circular No. SRC/023/12/2014 of 17 December, 2014.

1181. The Committee recommends that the matter is resolved.

291. Interest Rate on Un-Utilized Car Loan Guarantee Fund

1182. The statement of financial position reflects a balance of Kes.215,926,050 under mortgage guarantees which, as disclosed in Note 25 to the financial

statements, includes a car loan guarantee of Kes.30,934,067. The latter balance includes an amount of Kes.434,067 being interest earned during the year. However, no records were provided to show that the interest rate had been set during the previous four (4) years that the car loan guarantee Fund had been in operation (from 27 June, 2015 to September, 2019). This is contrary to Paragraph 6(a) of the Service Agreement between the Authority and the bank operating the Scheme requires the parties to set interest rate for unutilized deposits held by the bank. Consequently, the Management was in breach of the law and the Service Agreement.

Management Response

1183. During the period the bank placed the funds in FDR accounts at 0% to enable on lending to staff at an interest rate of 3%. The loans were also lent at NIL processing fees. The Authority later negotiated with the bank and they were able to pay 8% per annum interest on the unutilized funds.

Committee Observation

1184. The Committee observed that the management negotiated for an interest rate of 8% per annum on the unutilized funds.

Committee Recommendation

1185. The Committee reprimands the Accounting Officer for failure to adhere to the service agreement and directs that in future the Accounting Officer should ensure that the service agreement is followed to the later.

1186. The Committee recommends that the matter is resolved.

292. Local Purchase Order Committed After 31 May

1187. During the year under review, the Management committed Local Purchase Orders (LPOs) for supply of goods and services amounting to Kes.7,490,377 after 31 May, 2020. This is contrary to Regulation 51(1) of the Public Finance Management (National Government) Regulations, 2015 which states that all commitments for supply of goods or services shall be done not later than

May 31st each year except with the express approval of the accounting officer in writing.

Management Response

1188. The accounting officer (Direct General) gave express approval.

Committee Observation

1189. The Committee noted that the approval for commitment of LPO after 31st May, 2020 was not provided.

Committee Recommendation

1190. The Committee recommends that the accounting Officer should submit to the OAG the copy of approval of payment within three Months after the adoption of this report.

293. Long Outstanding Creditors

1191. The statement of financial position reflects a balance of Kes.118,740,605 under trade and other payables from exchange transactions which, as disclosed in Note 28 to the financial statements, includes an amount is Kes.3,161,941 in respect of suppliers for various goods and services supplied more than two (2) years ago. The Management has not provided an explanation on why the amounts had not been paid. This is contrary to Section 156(4)(a) of the Public Finance Management Act, 2012 which states that an Accounting Officer engages in improper conduct if the officer fails without reasonable cause to pay eligible and approved bills promptly in circumstances where funds are provided for. It is also contrary to Authority's terms and condition (5) of Local Purchase Orders and Local Service Orders which states that, 'provided the conditions of purchase have been fulfilled, payment will be made within 45 days from date of invoice. The Management was in breach of the law.

Management Response

1192. The following suppliers were paid after providing the necessary supporting documents

i. Glenn Steam Engineering Works Kes 218,128
ii. Kenya Institute of Curriculum Development Kes 1,843,600

Committee observation

1193. The committee observed that the some of the long outstanding creditors were paid.

Committee Recommendations

1194. The Committee directs the Accounting Officer to fast-track clearance of the remaining creditors.

1195. The OAG to keep in view of this query in the subsequent financial year.

FINANCIAL YEAR 2020/2021

The Auditor General gave a qualified Audit Opinion and raising the following concerns.

294. Unbalanced Statement of Financial Position

1196. The statement of financial position reflects total assets balance of Kes. 4,020,528,425 and total net assets and liabilities balance of Kes. 4,020,492,625, resulting to an unexplained variance of Kes. 35,800. In the circumstances, the accuracy and completeness of the statement of financial position could not be confirmed.

Management Response

1197. Summation error of Total Net Assets and Liabilities was corrected to Kes 4,020,528,425 through a restatement of the Statement of Financial Position figure in the FY2021/2022 Annual Report and Financial Statements submitted to the Auditor General.

Committee Observation and Recommendation

1198. The Committee noted that a reconciliation was done and the error was corrected hence the matter is resolved.

295. Unconfirmed Revenue from Non-Exchange Transactions - Levies

1199. The statement of financial performance reflects levies amount of Kes.1,686,396,774 under revenue from non-exchange transactions. As disclosed in Note 6 to the financial statements, the amount comprises merchant shipping levies of Kes.1,647,614,116 and collection cost (KRA commission) of Kes.38,782,658. However, monthly and annual reports on imports, exports and fees collected were not provided for audit, contrary to Appendix 8 to the Kenya Maritime Authority Act, 2006, which requires Kenya Revenue Authority (KRA) to submit to Kenya Maritime Authority (KMA) monthly and annual reports on imports, exports and fees collected.

1200. Further, the agreement between these two agencies provides that, KRA shall give KMA access to their custom system, limited to viewing and direct download of cargo manifests and declaration data for further statistical analysis and to two (2) designated persons only whose identity shall be disclosed to both KMA and KRA. However, KMA did not have access to KRA custom system, contrary to the agreement.

1201. In addition, despite having fully-fledged Commercial Shipping and Finance Departments, KMA still relied on KRA to compute, collect and remit maritime shipping levies. Further, no documentary evidence in form of reconciliation or computation of the expected and actual collections of maritime shipping levies as per manifests received from KRA was provided for audit verification. As a result, the accuracy and completeness of the revenue arising from the levies of Kes.1,686,396,774 could not be confirmed.

Management Response

1202. The framework for reconciling M5 fees collected by KRA using Cargo Manifests data availed through KRA's Simba system and submitted Bank Transactions was in place. Reconciliations using data from cargo manifests received from both KRA and Kentrade was undertaken, copies of which were shared for perusal.

1203. However, KRA's upgrade from Simba system to Integrated Customs Management System in phased approach interrupted transmission of manifest data during the implementation of the system upgrade. The Authority engaged KRA to provide system credentials to facilitate online extraction of reports of entries done on the ICMS system, create a platform for sharing of manifest information from the newly launched ICMS system.

1204. In addition, Kentrade was engaged for direct system to system relay of declaration data. The Authority has enhanced the tool for MS fees calculation and reporting in the ongoing ERP upgrade.

Committee Observation

1205. The Committee observed that the Accounting Officer's submission was not sufficient.

Committee Recommendation

1206. The Committee recommends that within three months of adoption of this report, the Accounting Officer to submit monthly and annual reports on imports, exports and fees collected to the OAG for verification.

1207. Further, the Committee recommends that the Management to strictly comply with the Kenya Maritime Authority Act, 2006, which requires Kenya Revenue Authority (KRA) to submit to Kenya Maritime Authority (KMA) monthly and annual reports on imports, exports and fees collected.

296. Unsupported Duty Travel Allowances – Domestic and Foreign

1208. The statement of financial performance reflects general office expenditure balance of Kes.278,740,526 which, as disclosed in Note 15 to the financial statements, includes an amount of Kes.47,279,831 spent on duty travel allowances - domestic and foreign. However, this latter amount includes Kes.6,898,235 for which, boarding passes, air and bus tickets and approved annual activity plans were not provided for audit verification.

1209. In the circumstances, the validity and propriety of the duty travel allowances - domestic and foreign of Kes.6,898,235 could not be confirmed.

Management Response

1210. Management reconciled all the records and informed the Accounting Officer at the State Department about the officers who had not accounted

for the funds advanced by provided supporting documents.Work tickets were provided in support of allowances totaling Kes.638,570 as shown below:

PV No.	Payee	Particulars	Amount (Kes.)
2021/00114	Nancy Karigithu	Daily Subsistence Allowances	127,400
2021/00115	Elijah Sirar	Daily Subsistence Allowances	44,100
2021/00152	Tobias Odero Omoto	Daily Subsistence Allowances – Inspection of the new KMA building by the CAS	254,800
2021/00152	Tobias Odero Omoto	Daily Subsistence Allowances	50,000
2021/00800	Tobias Odero Omoto	Daily Subsistence Allowances	15,200
2021/01598	Nancy Karigithu	Daily Subsistence Allowances	54,600
2021/01603	Elijah Sirar	Daily Subsistence Allowances	18,900
2021/01690	Nancy Karigithu	Daily Subsistence Allowance	72,800
Sub-Total			**638,000**
		Refund of ticket change charges	**570**
Total			**638,570**

Committee Observations

1211. The Committee noted from the submission of the Accounting Officer that although Kshs 638, 570 was proved, there was an outstanding amount of Kshs 6,259,665 that had not been supported.

1212. Further, the Committee noted that although the Accounting Officer had written to the Principal Secretary seeking intervention in recover of travel document, the Accounting Officer was yet to receive the travel documents.

Committee Recommendations

1213. The Committee recommends that the Principal Secretary, State Department of Transport to fast track the recovery of the travel documents to facilitate recovery of the outstanding imprest.

1214. The Committee reprimands the Accounting Officer and directs that the Accounting Officer should put in place proper imprest recoverability systems.

1215. The matter remains unresolved and the OAG to keep in view of this query in the subsequent financial year.

297. Cash and Cash Equivalents

1216. The statement of financial position reflects cash and cash equivalents balance of Kes. 1,493,516,456. However, the bank reconciliation statement as at 30 June, 2021 reflected an amount of Kes. 4,344,000 in respect of a payment in bank statement not yet recorded in the cash book which, as previously reported, dated back to June 2018. Records maintained by the Authority indicate that the payment was made for legal services without appropriate supporting documents in form of payment voucher, payment authorization, quotations, tender evaluation, award minutes and evidence of services rendered.

1217. In addition, the bank reconciliation statement for the month of June 2021 reflects an amount of Kes. 2,221,034 described as payments to EFT suppliers in respect of payments in bank statements not yet recorded in cash book. The management explained that this amount was in respects of double payments to various suppliers. However, details of the suppliers and purpose of the payments were not provided for audit.In the circumstances, the accuracy and completeness of the cash and cash equivalents balances of Kes. 1,493,516,456 could not be confirmed.

Management Response

1218. The payment was captured through Journal Voucher No. ALBERTJV-01156 to recognize the payment of Kes.4,344,000 legal fees. This was necessitated a restatement of Cash and Cash equivalents as shown in FY2020/2021 audited Financial Statements. Ten Payment Vouchers which had already been paid were inadvertently reprocessed. This was picked out during the month's bank reconciliation. The affected suppliers were notified of the error and recovery/refund efforts were put in place.

Committee Observation and Recommendation

1219. The Committee observed the Prior year column was restated in the financial statements of 2021/2022 hence the matter is resolved.

298. Long Outstanding Debtors

1220. The statement of financial position reflects trade receivables from exchange transactions balances of Kes. 50,905,926. However, the balances included an amount of Kes. 6,876,510 which had been outstanding since 1 July, 2015. Although the Authority's Credit Policy requires that any amount outstanding for over 45 days be recommended to an agency to ensure a follow-up and subsequent settlement, the Management did not refer the long outstanding amount to a debt collection agency. In circumstances, the validity and recoverability of the long outstanding trade receivables of Kes. 6,876,510 could not be confirmed.

Management Response

1221. The Accounting Officer submitted that majority of the long outstanding debtors were small vessel owners most of whom were no longer in business and not traceable. Through enhanced multiagency safety awareness campaigns, collection efforts had improved over the period. Although the credit policy stipulates that the long outstanding debts should be handed over to debt collection agency, the cost of engaging the agency outweighs the debts involved. To address the problem the Authority prepaid inspection had been preferred.

Committee observation

1222. The Committee noted that the submission by the Accounting Officer was unsatisfactory.

Committee recommendation

1223. The Committee recommends that the Accounting Officer should submit an amended credit policy that provides for specific cases and a progress report on the debt recovery within three (3) months of adoption of this report.

299. Budgetary Control and Performance

1224. The statement of comparison of budget and actual amounts reflects final total expenditure budget of Kes.1,299,044,000 and actual total expenditure of Kes.831,204,941 resulting to a net under-expenditure of Kes.467,839,059 or 36% of the budget. The under-expenditure of Kes.467,839,059 might have impacted negatively on implementation of planned activities and service delivery to the stakeholders.

Management Response

1225. The Accounting Officer submitted that the main source of revenue for the Authority is MS fee that rely on the import and export cargo. Any slight change in volumes affect the amount collectible by the Authority. Some of the Macro economic factors that affect the import and exports are beyond the Authority control. Targeted activities were achieved at reduced cost without compromising service delivery to the public.

Committee Observations and Recommendation.

1226. The Committee noted that the submission by the Accounting Officer on budgetary control and performance was satisfactory hence the matter is resolved.

300. Unresolved Prior Year Matters

1227. As disclosed under the progress on following up of auditor's recommendations, section of the financial statements, various prior year audit issues remained unresolved as at 30 June 2021. Management has not provided satisfactory reasons for the delay in resolving the prior year audit issues.

Management Response

1228. Most of the prior year matters had been resolved.

301. Property, Plant and Equipment

1229. The statement of financial position and as disclosed in Note 25 to the financial statements reflects property, plant and equipment balance of Kes.2,045,654,998. The following unsatisfactory matters were noted:

301.1. Unconfirmed Alteration in the Conditions of Leasehold Land

1230. The balance includes an amount of Kes.203,097,950 in respect of leasehold land for a plot in Mbaraki, Mombasa. Review of the certificate of lease indicates that the property is held on a ninety-nine (99) years lease from Kenya Railways starting from 1 January, 1971 with an annual rent of Kes.4,800.

1231. Further, the certificate indicates that the leasehold interest is subject to the agreement and other matters contained in the registered lease. However, among the conditions outlined in the lease is condition 1(g) which requires that the land be used only for the purposes of residence which shall include servant quarters and condition 1(j) which requires that no trade or business of any description should be conducted on the land or buildings.

1232. Audit inspection revealed that the Authority had constructed an office block on the said leasehold land. However, no evidence was provided to show that the Kenya Railways Management had agreed to the alteration of the conditions of the lease quoted above before putting up an office block which may be a source of rental income to the Authority.In the circumstances, the Authority contravened the conditions of the lease certificate in force.

Management Response

1233. The Mbaraki area is zoned commercial and the Physical Planner procured by the Authority has obtained County Government approvals as per the attached evidence. However, the approvals included a portion of extension of Lease which was not necessary, noting that the Lease duration is for a period of 99 years.

1234. Further the transfer effected to the Authority and approved by the Kenya Railways was finalised in 2016; therefore, not even a third of the 99 years has been spent. We have communicated with the Physical Planner to confirm the status of the approvals as to whether they can be used in that format before the project commenced.

Committee observation

1235. The Committee noted that the Accounting Officer had sought an extension of the lease and change of user from the Ministry of Lands and an approval for development from the County Government of Mombasa had been obtained.

1236. However, the Management did not avail evidence of the Gazette Notice.

Committee Recommendation

1237. The Committee recommends that Accounting Officer should liase with the Ministry of Transport to obtain the Gazette Notice and submit it to the OAG within three months of adoption of this report.

301.2. Capital Work in Progress - Irregular Variation of Site Instructions to Builder's Works

1238. The balance also includes capital work in progress amount of Kes.1,764,493,960. being cumulative cost of works on Kenya Maritime Authority Headquarters project being constructed on the plot at Mbaraki.

Mombasa. The contract had been awarded at a total cost of Kes.1,728,176,418 and the works consisted of main building works, electrical, plumbing and drainage, air conditioning and elevator installation works.

1239. A scrutiny of the approved Project Appraisal Report No. 9 revealed introduction of three (3) new project activities under Element No. 7 - Site Instructions to Builders Work of Kes.5,479,147 that were not factored in the contracted Bill of Quantities. However, documentary evidence of approval of the same by Contract Implementation Team as provided for under Section 151(2)(e) of the Public Procurement and Asset Disposal Act, 2015 was not provided for audit verification. In the circumstances, value for money of the expenditure of Kes.1,764,493,960 could not be confirmed.

Management Response

1240. The site instructions were being approved by the Project Manager (Works Secretary). Under financial appraisal: Element no. 7 include items which were factored in the main contract works under provisional sum i.e. existing power line relocation by KPLC, Protection of reef apartments, Employment of clerk of works, soil stabilization to exposed grounds surface, specialized tubular piling and static pile load test.

Committee Observation

1241. The Committee noted that the evidence provided by the Accounting Officer was unsatisfactory.

Committee Recommendation

1242. The Committee recommends that within three (3) months of adoption of this report, the Accounting officer should submit evidence from the Project Implementation Team approving the addition of the three project activities for verification by the OAG.

1243. The OAG to keep in view of this query in the subsequent financial year.

302. Board Members Expenses

302.1. Irregular Payment of Sitting Allowance to Non-Board Members

1244. The statement of financial performance and as disclosed in Note 11 to the financial statements reflects employee costs balance of Kes.403,929,064 which includes an expenditure on recruitment of Kes.5,623,711. However, this latter amount includes Kes.760,000 paid to the parent Ministry's staff, who were not gazetted Board members, as sitting allowances during a recruitment exercise conducted by the Board Members. This was contrary to the State Corporations Advisory Committee Circular Ref No. OP/SCAC.9/1/5/2(3) on the Implementation of Executive Order No. 7 - Mwongozo - Code of Governance for State Corporations, which requires persons or officers nominated to represent other substantive Members/Directors to only attend Board/Committee meetings after being gazetted by name and issued with appointment letters by the appointing authority. In the circumstances, Management was in breach of the Mwongozo - Code of Governance for State Corporations.

Management Response

1245. The ministry staff were offering technical assistance to the Board in the recruitment exercise.

Committee Observation

1246. The Committee noted that the explanation and documents submitted by the Accounting Officer was not satisfactory.

Committee Recommendation

1247. The Committee directs the Inspector General of State Corporation to investigate this matter with a view of recovering the for. Ksh.760,000 irregularly paid to the seconded staff.

1248. Further, the Committee reprimands the Accounting Officer and recommends that the Accounting Officer should adhere to Mwongozo Code of Code of Governance for state corporations.

302.2. Board of Directors' Costs

1249. The statement of financial performance reflects Board of Directors costs of Kes.31,863,186 as disclosed in Note 12 to the financial statements. However, the expenditure exceeded the approved expenditure capping of Kes.30,000,000 by Kes.1,863,186 in contravention of the Circular No. OP/CAB.9/1A of 11 March, 2020 which provides that Board expenses for a financial year shall be capped at Kes.30 million or 5% of the operations and maintenance budget of the State Corporation, whichever is less and that any exceeding budgets shall require approval of the Cabinet Secretary for The National Treasury. Further, the approval of the Cabinet Secretary for The National Treasury was not provided for audit review.

1250. In addition, available records indicated that the Board exceeded the approved number of meetings as analyzed below:

Committee	Approved No. of Meetings	Actual No. of Meetings	Excess No. of Meetings
Full Board	6	33	27
Human Resource Committee	6	26	20
Totals	**12**	**59**	**47**

1251. This was contrary to Paragraph A (2) of Circular No. OP/CAB.9/1A of March 11, 2020 which restricts Board meetings to a minimum of four (4) meetings in a financial year, as provided for in Section 8(1)(a) of the State Corporations Act, and a maximum six (6) meetings. In the circumstances, Management was in breach of the Law.

Management Response

1252. The Authority notes that all the expenditure was approved and overall exceeded the budget by 6.2%, which is within the allowable variation of 10%.

Committee Observation

1253. The Committee observed that the submission by the Accounting Officer was not satisfactory.

Committee recommendation

1254. The Committee directs the Inspector General to investigate this matter with a view of recovery of the excess sitting allowances paid to the Board Members for the excess meetings.

1255. Further, the Committee reprimands the Accounting Officer and directs that the Accounting Officer should henceforth uphold the tenets entrenched in the Mwongozo Code on management and good governance.

303. General Office Expenditure

1256. The statement of financial performance reflects general office expenditure balance of Kes.278, 740,526. The following unsatisfactory matters were observed:

303.1. Irregular Provision of Airtime

1257. The balance includes communication costs of Kes.10,631,107 on officers' airtime, which includes Kes.3,348,000 paid to thirty-three (33) officers in KMA Grades 2,3 and 4 at monthly rates higher than the rates provided in the guidelines given in Circular Ref. OP/CAB/15 dated 15 March, 2010 on economic utilization and efficient delivery of telephone services in the public service. As a result, the officers were overpaid by Kes.1,932,000. In the circumstances, the regularity of the expenditure of Kes.1,932,000 could not be confirmed.

Management Response

1258. The Authority was using its approved airtime structure.

Committee observation and recommendation

1259. The Committee noted that the Authority was relying on its approved airtime structure in issuance of airtime hence the matter is resolved.

303.2. Payment for Undelivered Consultancy Service

1260. The balance includes professional and consultancy fees of Kes.7,793,624. Examination of contract records revealed that the Authority entered into an agreement for consultancy services at a contract price of Kes.2,505,600 and a contract period of twenty-one (21) days with Kenya School of Government on 10 June, 2021. The special conditions of the contract indicated that the Authority was to pay the consultant 20% of the contract sum at the presentation of the inception report and that the contract was to automatically terminate twenty-one days after the commencement of the service.

1261. However, as at the time of audit in the month of January, 2022, the Authority had spent an amount of Kes.851,600 or 33% of the contract sum but the consultant had not delivered the inception report. In the circumstances, the propriety of the expenditure of Kes.851,600 could not be confirmed.

Management Response

1262. The consultancy report was issued to the Authority.

Committee Observation and recommendation

1263. The Committee observed that consultancy inception report had been issued to the Authority hence the matter is resolved.

304. Opening and Operating Bank Accounts without Approval

1264. The Authority opened and operated four (4) bank accounts at three (3) local banks without evidence of approval from the National Treasury. This was contrary to Section 28(1) of the Public Finance Management Act, 2012 which requires the National Treasury to authorize the opening, operating and closing of bank accounts and sub-accounts for all National Government Entities.In the circumstances, Management was in breach of the law.

Management Response

1265. The approval was sought and concurrence given by the National Treasury.

Committee Observation and Recommendation

1266. The Committee observed that the Accounting Officer had obtained the approval of the National Treasury hence the matter is resolved.

305. Staff Establishment

1267. The Authority's staff in post stood at one hundred and eleven (111) against an approved establishment of two hundred and forty-two (242), indicating an under-establishment of one hundred and thirty-two (132). The Authority had not filled critical positions to sustain a high performing public service and ensure uninterrupted delivery of services and programmes. As a result, the Authority may not efficiently and effectively deliver on its mandate.

Management Response

1268. The Government had put a freeze on employment which was lifted in October 2022.The Authority is planning to embark on a recruitment exercise to fill in the vacant positions in phases.

Committee observation

1269. The Committee noted that from the submission by the Accounting Officer, the staff establishment of the Authority was still under-established and hence the audit query was unresolved.

Committee recommendation

1270. The Committee recommends that the Management of KMA should fast track the process of filling the critical vacant positions to ensure high performance and un-interruption in delivery of services.

1271. The Committee recommends that within six (6) months of adoption of this report, the Accounting Officer should submit a report on the staff establishment of KMA to the OAG for verification.

306. Delayed Transition to the New Organization Structure and Grading

1272. Audit review of staff compliment and personal files revealed that the Authority had not vacated from the old organization structure and grading as required under the Implementation Guidelines included in the letter Ref. OP/SCAC.1/197/VOL.II dated 8 June 2020. The guidelines provided that all staff of the Authority should be vacated from the old structure and be transitioned to the new structure horizontally, as guided in the Grading Structure. In the circumstances, the Authority may not realize optimal performance from its Human Resource.

Management Response

1273. Staff had been transited to the new organizational structure.

Committee Observation and Recommendation

1274. The Committee noted at the time of examination that the staff had already transited to the new organizational structure hence the matter is resolved.

3.6. KENYA RAILWAYS CORPORATION (F/Y 2018/2019-2020/2021)

EXAMINATION OF THE AUDITED ACCOUNTS OF KENYA RAILWAYS CORPORATION (KRC) FOR FY 2018/19 TO 2020/21

1275. The management of Kenya Railways Corporation led by its Managing Director, Mr. Philip Mainga appeared before the Committee to adduce evidence on the audited accounts of the corporation for the Financial Years 2018/2019 to 2021/2021.

REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF THE BOARD FOR THE FY 2018/19, 2019/20, AND 2020/21.

FINANCIAL YEAR 2018/2019

307. Non-Disclosure of Material Uncertainty Related to Going Concern

1276. The financial statements on critical accounting estimates and judgements indicates that the financial statements for the year have been prepared on a going concern basis. However, the statement of financial position as at 30 June, 2019 reflects current liabilities balance of Kes 238,801,126,787.00 which exceeds the current assets balance Kes 40,396,237,135 (2018 : Kes55,738,371,368) resulting to a negative working capital of Kes 198,404,889 (2018 negative Kes 126,269,997). Further, the Corporation continue to perform dismally where the statement of comprehensive income for the year ended 30 June, 2019 reflects an operating loss of Kes 8,608,414,719 (2018: loss – Kes 5,562,892,452)

1277. The above conditions are indicative of material uncertainty that may cast significant doubt on the Corporation's ability to continue as a going concern unless satisfactory measures are taken to reverse the trend. The continued survival of the Corporation is therefore dependent on the creditor goodwill and Government support.

Management Response

1278. The management reported that, on the Current Liabilities (CL)being higher than the Current Assets (CA). The current ratio (CA/CL) of approximately 1:3

was attributable to Deferred Income which is Kes 193,456,900,244.00. The deferred income was mainly due to cash received that could not be recognized as revenue in the year it is received but as revenue when earned and in case it is an asset, amortized in the year the benefits accrue.

1279. As per note 33 of the financial statements, the main item was SGR Deferred Income Kes 174.8 Billion. This related to amounts received as government grant towards the SGR project from the Railway Development Levy Fund. (RDLF). Once the asset is recognized, the deferred income will be amortized annually over the life of the asset. The management has since reclassified the deferred income from current liabilities to non-current liabilities owing to the nature of recognition of deferred income arising from the resultant assets that spreads to more than one year.

1280. The working capital was also affected by the increase in creditors. There has been a significant growth in the payables and accrued charges. This was mainly due to the following: -

i. **SGR Contractor Liability** - Kes **6,825,703,312**. This relates to SGR Phase 2A for Interim Payment Certificate no. This is Phase 2A-IPC 3 and 4 local portion certificates which had been raised but payment not made as at 30.06.2019 by RDLF.

ii. **SGR Land Compensation** – Kes **8,307,857,507** of uncleared land compensation liabilities payable to Project Affected Persons (PAPs). This will be cleared through the RDLF once budgetary allocation towards the same.

iii. **SGR Operator Liability** – Kes **45,559,923,550** of operations costs relating to SGR operations and maintenance fees for the period June 2017 to June 2018. However, a liability of Kes 5 Billion had been offset during the period. The Operator will be paid through exchequer and escrow revenue account collections.

1281. As at 31st December 2022, the Corporation had cleared the contractor liability, reduced the operator's liability to Kes 12 billion and reduced overall creditors to Kes 45 billion from Kes 60 billion. These measures had greatly improved the liquidity position that was currently 1.4:1 and was expected to improve further. On deterioration of operating results from an operating loss

of Kes 5,562,892,452 in 2017/18 to an operating loss of Kes 8,608,414,719.00 in 2018/19.

1282. Operationally, the improvement is evidenced by moving from an operational deficit of Kes 9.8 billion to Kes 4.8 billion an improvement of 510%. It is however important to appreciate that rail operations fall in two categories, passenger and freight services. World over, passenger services are a social service to enhance movement of people to create an enabling environment to spur economic growth.

1283. Freight services is the compensating business that can drive the break-even of the rail operations. Based on this fact, the Corporations is 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.MGR freight services have 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; there was deferred maintenance in the Rolling Stock leading to general inefficiency and constraint in capacity. KR is building back broken business relations with suppliers and customers including shipping lines who are core to the container business.

1284. SGR freight had first year of full operations. The major freight component was containerized cargo.KR is putting in place mechanisms to deal with conventional cargo like clinker, grains and fertilizer. This have a higher yields and profit margins once exploited.KR also wants to build partnership relationships with shippers and bulk cargo handlers. Also envisaged is to synchronize operations with other government agencies like KRA and KPA who are an integral cog to the successful movement of cargo .KR also has aligned its human resource establishment to meet its new business model by having a new organizational structure in place. The SGR project is also partially complete with Phase One and 2A complete while 2B and 2C still pending. KR is therefore putting in place mechanisms to increase its freight tonnage by linking the SGR to Meter Gauge Railway line as we await implementation of Phase 2B and 2C, this way we will be able to capture transit cargo to other East African nations.

1285. The Accounting Officer informed the Committee that the position was expected to improve further on full takeover of the SGR. The Corporation appreciated that increased competition and liberalization of transport

sector posed a great challenge to the sustainability of the freight operations. However, KRC's services remained attractive owing to the following factors:

1) Safety of the operations with no major incident reported on the key network of SGR
2) Reliability of the services
3) Stability of the prices that aids in long term planning
4) Last mile connectivity through MGRs expansive network of sidings

1286. In terms of strategy, the Corporation was undertaking the following interventions:

1) Purchasing of trucks to facilitate last mile connectivity
2) Strategic partnership to secure and guarantee volumes with key customers
3) Investment in overhaul and new purchase of MGR rolling stock
4) Revamping of the siding networks
5) Revamping of branch lines
6) Turnaround of the rail assets

Committee Observation

1287. The Committee noted from the submissions by the Accounting Officer that the Corporation had put in place measures to improve the performance and financial position of the Corporation.

Committee Recommendation

1288. The Committee recommends that KRC should explore other ways of increasing revenue and reducing operational losses by leveraging more on the profitable cargo freight as it is not feasible under the current economic circumstances to get government subsidy or change passenger tariffs.

308. Illegal Allocation of Land

1289. It was disclosed that, the statement of financial position reflects property, plant and equipment balance of Kes 24,665,643,871 but as previously reported, various parcels of land were allocated to private persons 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 nine (9) industrial plots measuring approximately three (3) acres, a piece of land within Kikuyu railway station measuring approximately two (2) acres and several parcels of land adjacent to Mombasa railway station measuring between 0.75 to one (1) acre have been irregularly allocated to private persons with some having been developed.

1290. Further, another five hundred and twenty-nine (529) parcels of land had been illegally allocated across the country. However, Management has sought court intervention to repossess twenty-seven (27) parcels.From the foregoing, the accuracy and the fair presentation of property, plant and equipment balance of Kes 24,665,643,871.00 as at 30 June, 2019 could not be confirmed.

Management Response

Limuru

1291. Beyond the initial objective of the Kenya Uganda Railway of connecting the two countries, it became apparent that the provision of warehouse plots, go-down plots and industrial plots served with rail sidings was necessary for further expansion of Commerce and Trade in Kenya. The Government of Kenya availed land to Kenya Railways for development and administration of rail served industrial and warehouse plots across the country. The total land reserved for Railway administration within Limuru Railway Station as per Railway drawing No. 4327/3 of 29th April 1936 amounted to 40 acres approximately.

1292. The Government set aside 1.05 acres of land to Kenya Railways for go-down plots in Limuru. The land was further subdivided into eight industrial plots- No. 7882/2-9 (Plots 7882/9 was consolidated with additional area to form 7882/10 in the year 1975). The Balance of the land has been surveyed and documented as per Survey plan 481/86 with an area of 15.86 ha (39.19 acres). The Corporation is progressing issuance of title deed for the land through the National Land Commission and the Ministry of Lands and Physical Planning.

1293. Kenya Railways issued leasehold grants to interested developers for development of go-downs and warehouses for a term of 99 years with effect from 1st June 1948. The leases were later registered with the

Commissioner of Lands. The grantees pay basic land rent to the Corporation which holds the freehold interest over the properties. (**See Appendix 1 leases on plot 7882/7**).

Acc.No.	Name	LR/Plot No.	Area Acs.	Asset No.	Serial No.	Ownership Status
LC/NRB/LMU/LMU/798	Prabhudas Thakker And Vipool	7882/2	0.1263	LCNRB2286	19426	Under Kenya Railways
LC/NRB/LMU/LMU/797	Limuru Tibiya General Store	7882/3	0.1263	LCNRB2284	19425	Under Kenya Railways
LC/NRB/LMU/LMU/799	Limuru Tibiya.Gen. Store	7882/4	0.1263	LCNRB2287	19427	Under Kenya Railways
LC/NRB/LMU/LMU/800	Hassan Ali & Mohammed A. Awale	7882/5	0.1263	LCNRB2288	19428	Under Kenya Railways
LC/NRB/LMU/LMU/802	Limuru Pyrethrum Growers Co-Op	7882/6	0.1475	LCNRB2290	19430	Under Kenya Railways
LC/NRB/LMU/LMU/801	Limuru Dairy Farmers Co-Op Soc	7882/7 &8	0.2296	LCNRB2289	19429	Under Kenya Railways
LC/NRB/LMU/LMU/796	Vipool Prabudas	7882/10	0.17	LCNRB2285	19424	Under Kenya

	& Rajesh Prabudas					Railway s

1294. The above parcels of land were therefore still under the administration of Kenya Railways as entrusted by the Government of Kenya.

Kikuyu

1295. The total land reserved for Kikuyu Railways Station as per Kikuyu Trading Centre approved Development Plan No.13 of 14th March 1957 is approximately 12.5 Hectares (30.8 Acres).A survey was done in 1961 and a survey plan F/R No 96/21 was produced affirming and documenting the land area of 30.8 Acres. Due to increased demand for rail served industrial and Go-down plots, Kenya Railways further set aside approximately 5 acres of land within Kikuyu Railway Station for industrial and Go-down plots. The balance of 25.8 acres still remains as railway operational land. The land has since been surveyed and submitted to the Director of Surveys for authentication and registration.

1296. The 5 acres' land was subdivided into 23 portions-KYU/TOWN/158-180. Survey plan provided as appendix.The portions of land were later allocated to interested developers on leasehold grants for between 65-70 years from 1982. The leases were registered with the Commissioner of lands. The Corporation holds the freehold interests over the land and receives basic land rent from the grantees. list of Go-down and industrial plots long lease tenants in Kikuyu Station provided as appendix.Among the grantees some had since put up Go-downs and other industrial developments as per the special conditions of the grants. Other portions remain vacant and undeveloped.

Requested Action

1297. The Corporation requested the matter to be closed since the above parcels of Kikuyu Railways Station land were still under the administration of Kenya Railways as entrusted by the Government of Kenya and they have fully accounted for the Land.

Mombasa Railway Station- Mombasa Block XIV/84

1298. Mombasa Railway Station land measures approximately 36.94 acres (14.95 ha). This includes Mombasa Marshalling yard area, the railway station area, residential houses area and the Mombasa region office area. The land has been surveyed and area documented as per the Survey Plan No. 389/44 and 188/60. The subject property - Mombasa Block XIV/84 is within Mombasa Railway Station along Mijikenda Street. It has an uncompleted warehouse development. The piece of land measures approximately 0.2935 ha (0.725 acres.).

1299. The property was initially leased out to M/s Kwale Saw Mills (Ramanbhai Dalabhai Patel and Ghansham Ramanbhai Patel) as a timber stacking yard in 1974. M/s Kwale Saw Mills later applied for a long lease. They were later allegedly issued with a 99 years lease in 1988 at a yearly rent of **Kes 36,200.00**. The lease was registered on or about the 2nd of November, 1988 and a certificate of lease issued on 12th September, 2002. The long lease was however granted contrary to provisions of Sec 13 (2) (h) of the Kenya Railways Act, which stipulates that the Boards approval and Ministerial consent have to be obtained before a long lease is granted and hence the process was irregular.

1300. The Corporation later filed a suit against Kwale Saw Mills for recovery of the land on 27th August 2004. Kenya Railways further sought injunctive orders pending hearing and determination of the suit restraining the defendants from selling or alienating the said piece of land and continuing with the construction works. The matter is still in Court pending determination. The Corporation has been in negotiations with the defendants in order to have the long-standing matter settled amicably and secure the interests of the Corporation.

529 No. parcels of Irregularly Allocated Land

1301. It was further determined that over time, the Commissioner of Lands and Local Authorities went beyond their powers and irregularly allocated over Five Hundred Parcels of land within railway land. List of Irregularly allocated properties provided as appendix. This was mainly attributed to the fact that Kenya Railways Operational Land had not been surveyed and was vested to the Corporation under a vesting Order. From early 1990s some

Government officials took advantage and allocated the Corporation's land without the knowledge of Kenya Railways.

Current Measures taken by KRC to secure the Land

1302. The Corporation has further instituted measures to ensure that Kenya Railways Land is secured across the country. The Corporation is undertaking survey and registration to obtain title deeds for all Operational Land that had never been previously surveyed. To achieve this objective, the Corporation engaged four surveying Consultants to undertake countrywide survey of all operational land. The land consists of all railway station reserves, marshalling yards and any other un-surveyed operational land adding to a total of 150 parcels of land and approximately 2700 acres.

i. Geodev (K) Limited
ii. Geofles Consultants
iii. Precision Instruments Ltd.
iv. Geosurv Systems Limited

1303. The Terms of Reference (TOR) for the above consultancy was to carry out survey and registration of KR landed asset portfolio for purposes of obtaining ownership documents (Title deeds) as guided by the Survey Manual, Survey Act, Land Act 2012, the Physical Planning Act and any other relevant regulation. Surveys of 150 parcels of land have been completed with a total of 144 out of 150 (96 %) Stations and Marshalling yards authenticated at the Director of Surveys. 65 certificates of title have been processed and submitted to the Corporation. 62 title documents are pending registration at the Ministry of Lands and Physical Planning and 17 documents are yet to be processed at the Ministry of Lands.

1304. The Corporation through the office of the Director of Surveys has ensured that overlapping irregular surveys within Railway Operational Land as originally reserved will be cancelled and land documented under Kenya Railways.The Corporation had further engaged various agencies (EACC, Courts, Ministry of Lands and NLC) in the recovery of irregularly allocated land. This has seen some irregularly allocated land in Kisumu, Nairobi and Mombasa revert to the Corporation. Several suits are also pending determination in courts.

1305. The Corporation is also in the process of rehabilitating and revitalizing the Meter Gauge Railway System across the Country.

i. Nairobi-Nanyuki branch line-completed and operational.
ii. Nakuru-Kisumu branch Line-Ongoing
iii. Kisumu-Butere branch Line-Ongoing
iv. Leseru-Kitale branch Line-Ongoing
v. Gilgil-Nyahururu branch Line-Ongoing

1306. To ensure security of operations the Corporation has embarked on reclaiming all encroached land and securing the land through fencing. This has ensured that the Corporation remains in possession of the land and deter unauthorized interference with railway land.

Committee Observation

1307. The Committee noted that the submission by the Accounting Officer was unsatisfactory.

Committee Recommendation

1308. The Committee recommends that the Accounting Officer should submit to the OAG lease agreements or title deeds and a schedule on confirmation of revenue received by KRC from the parcels of land in question for verification within six months of adoption of this report.

1309. The OAG to keep in view of this query in the subsequent financial year as the matter is unresolved.

309. Classification and Fair Statement of Short-Term Investments

1310. The statement of financial position reflected short term investments balance of Kes 770,000,000 (2018 Kes 2,172,135,077). As previously reported, included in the balance is Kes 204,643,995 (original amount Kes 818,575,979) under fixed deposit with Chase Bank Limited (in Receivership) that was subsequently taken over by State Bank of Mauritius Bank (SBM) in an arrangement where 75% of the value of deposits was taken over by SBM Bank to be made available over a 3-year period. The balance representing

25% of the deposit remained under moratorium and whose accessibility remains uncertain.

1311. Consequently, the continued classification of the deposit as short-term investments and the fair statement of the investments of Kes 770,000,000 as at 30 June, 2019 is therefore not accurate.

Management Response

The Accounting Officer submitted as follows—

1312. The amount refered above related to amounts in SBM bank. However, the audit observations were incorrect as the amount of Kes.770,000,000 did not include the Kes 204,643,995. An excerpt of note 21 where Short-Term Investment is disclosed as below—

21	**SHORT TERM INVESTMENTS**			
i	FDR with consolidated bank @ 12.25%		0	55,000,000.00
ii	FDR with KCB @ 11.25%		700,000,000	506,209,881.75
iii	RTI money with KCB on call @ 10%		70,000,000	15,000,000.00
iv	BANK OF AFRICA @ 10.75%			-
v	Treasury bills @ 8.3%		0	294,800,550.00
vi	CFC BANK @ 10%		0	-
vii	FDR WITH CHASE BANK			818,575,978.73
	TOTAL		**770,000,000.00**	**1,689,586,410.48**

1313. In KRC's Financial Statements and Annual Report for 2018/19, the amount had been categorized correctly as cash deposits and guarantees, a position KR has shared with the OAG team. The main reason for this classification and accounting was that it was not interest earning and its

recoverability was in doubt so it does not fall under the description of a Short-Term Investment as per IFRS 9

1314. According to IFRS, short-term investments are classified as either "held for trading" or "available for sale." Held for trading investments are those that are actively traded in a market and are held with the intention of making a profit on short-term fluctuations in price. Available for sale investments are those that are not held for trading but are held with the intention of selling them in the short term if needed. The Accounting Officer noted it important to bring to the attention of the committee events preceding the current situation:

1315. The Corporation had invested Kes 300,000,000 with Chase Bank in November 2015 for a period of 6 months and Kes 500,000,000 in March 2016 for a period of 3 months. The bank was placed under receivership on 7th April 2016 before the maturity of these two deposits. The funds had earned interest of Kes 18,575,978.65 as at this date. Kenya Deposit Insurance Corporation (KDIC) was then appointed to assume management and control of the bank with effect from 16th April 2016.

The details of Kes 818,575,979 reported in the Financial Statement are as follows:

	AMOUNT (Kes)	**INTEREST RATE**	**EFFECTIVE DATE**	**TENOR PERIOD**
Fixed Deposit	500,000,000.00	13%	19.03.16	3 months
Fixed Deposit	300,000,000.00	18%	12.11.15	6 months
Interest accrued	18,575,978.65			Holdover Account
Total	**818,575,978.65**			

1316. Subsequently, on 17th April 2018, the Central Bank of Kenya (CBK) and Kenya Deposit Insurance Corporation (KDIC) announced the signing of an agreement between SBM Bank (Kenya) Limited 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 that there will be a transfer of 75 percent of the value of deposits currently under moratorium at CBLR, and the transfer of the majority of staff and branches of the existing CBLR operations. 25 percent of the value of moratorium deposits will remain in CBLR.

1317. The funds transferred to SBM Bank of Kes.621,333,723.75 have been released and accessed - Bank Statements provided as appendix. The figure in the Audit Report of Kes.204,643,995 was erroneously arrived at after subjecting the whole balance of Kes.818,575,978.65 to the 75% and 25%, without considering funds transferred to the non-moratorium of Kes 20,569,378.75. Therefore, the correct amounts under moratorium in Chase Bank (Kenya) Limited (In Receivership) is Kes 200,254,780.00 not Kes 204,643,995. The moratorium funds of Kes 200,254,780 still remains in Chase Bank in Receivership. As per the latest update by KDIC which was issued to the public on 10th May 2021, the liquidation process has commenced and the insured deposit balances will be paid equitably as and when the liquidator accumulates sufficient funds from the liquidation process.

1318. The Corporation is following up the liquidation process status with KDIC as we await the conclusion of the liquidation process upon which the accessibility of the funds will be known.

Committee Observations

1319. The Committee noted that there was lack of prudence in the management and noted an inconsistency on the motive of the decision to deposit funds in Chase Bank since the bank was put under receivership shortly after.

1320. The committee also noted that the submission on the recoverability of the Kes 200, 254, 780 under Chase Bank was not sufficient.

1321. The committee observed that there was need for KRC to furnish the OAG with the Financial Statements of the company for the period prior to the investment deposit in Chase Bank.

Committee Recommendations

1322. The Committee reprimands the Accounting Officer for failing to undertake due diligence before investing the funds of the corporation hence exposing the corporation to a risk of losses.

1323. The Committee recommends that the Accounting Officer should submit a report on the current status of recovery of the invested funds within three months of adoption of this report to the OAG for verification.

310. Unsupported Inventories

1324. The statement of financial position reflects stores inventories balance of Kes 3,609,982,659 (2018-Kes 3,616,531,816) However, the balance was not supported by stock take sheets and reports. In the circumstances it has not been possible to confirm the validity and accuracy of inventories valued at Kes3,609,982,659 as at 30 June, 2019.

Management Response

1325. The Accounting Officer acknowledged the observations made by the Office of the Auditor General and responded as follows—

1326. In the year under review, the Corporation initiated a stock take process, however, the stock counting process was not completed by the closure of the financial year under consideration.

1327. The following are reasons why the stock take process took long and it was not completed within the financial year under review—

i. **Post concession transition challenges** – initially the stores were manned by twenty (24) staff, but during the concession transition process, the staff number were reduced to two (2) staff who could not adequately handle the stores function appropriately, thus delay in the stock take process.
ii. **Preparatory works** – this being the inaugural comprehensive stock take (not sample stock taking), a lot of preparatory works needed to be done in readiness of stock take. This entailed bush clearing to access some inventories like permanent way materials which are stored outdoors. Because the stores were not properly arranged, there was a lot of sorting, categorization and classification of store items for ease of counting.

iii. **Complexity and uniqueness of KR Store items** – because of the specialized nature of Kenya railways operations, most the store items are locomotives spare parts which required mechanical technicians to identify and sort. Most of these mechanical technicians who had institution operation memory had been laid-off/ retrenched. The Corporation required approximately 20No mechanical technicians but only four (4) were available to be engaged on temporary contractual arrangement, thus requiring more time for identification and sorting exercise.

iv. **Taking over of MGR stores after concession termination** – upon termination of Concession agreement and the concessionaire, RVR had to exit, and the Corporation was preparing to take over MGR stores which were in the custody of RVR for purpose of securing stock items from theft, thus time and manpower constraints.

1328. The Management has now aligned the management of stores. Adequate staff have now been posted to the various stock areas. Additionally, the Corporation was in the process of implementing a new robust ERP that is capable of effectively handling stock unlike the current ERP that had not envisaged the stock complexities arising from running of MGR and SGR. The new system, SAP, is expected to be commissioned in quarter 4 of the Financial Year 2022-2023. As part of the migration of data, the Corporation will be undertaking a zero-based stock count. This will provide a platform to resolve all stock issues including obsolescence, non-identification and costing.

Committee Observation

1329. The committee noted at the time of examination that the Accounting Officer had put in place a new robust ERP system(SAP) capable of handling complex stock.

Committee Recommendation

1330. The Committee recommends that the matter is resolved and further directs the Accounting Officer to submit a comprehensive report on the inventories within three (3) months of adoption of this report to the OAG for verification.

311. Trade and other Receivables

1331. As disclosed under Note 20 to the financial statements, the statement of financial position reflects trade and other receivables balance of Kes.16,115,602,420. Examination of available records revealed the following unsatisfactory matters:

311.1. Unreconciled Trade and Other Receivables

1332. The trade debtors balance of Kes 4,816,657,949 includes an amount of Kes 3,055,838,896 owed by the Kenya Ports Authority (KPA) compared to a balance of Kes 1,881,239,000 reflected in Kenya Ports Authority books thereby resulting to unreconciled variance of Kes 1,174,599,896.

Management Response

The Accounting Officer submitted as follows—

1333. KRC figure of receivable from KPA is based on the outstanding balance arising from freight charges on actual tonnage of freight hauled less payments received from KPA as per the Take or Pay Agreement framework. Currently, a joint reconciliation is carried out every quarter between the two organizations. The above difference was resolved in the subsequent quarterly reconciliations. The teams report was current as at 30.06.2021 and a copy of the joint report submitted. This notwithstanding, the management has sought the make-up of Kes 1,174,599,896 so as to reconcile the numbers with little success.

1334. KRC has an elaborate revenue billing and Accounts Receivable management process. The billing is done per container loaded and moved. At the end of the month, the schedule of containers backed by respective train manifest is billed to KPA by the 5th of the succeeding month.

1335. KPA remits funds to KRC monthly based on the billing awaiting the quarterly reconciliation. The amount is applied and the unpaid balance is carried as a receivable. KRC has billed for all containers railed and that is what is reported in the KRC Financial statements. Therefore, for purposes of debtors' circularization, KRC expected KPA to confirm the balance with a reconciliation. The details of the KPA balance were not shared but KRC provided the account receivable basis to the OAG team.

Committee Observation

1336. The Committee noted that there was a variance in KRC book of Accounts that requires reconciliation.

Committee Recommendations

1337. The Committee directs KRC, KPA and OAG to have a joint engagement with a view of reconciling the variance in the KRC books of accounts within six months of adoption of this report.

1338. The Committee directs the Accounting Officer to submit a report on the correct position of the trade receivables in the books of account within six (6) months of adoption of this report to the OAG for verification.

311.2. Unsupported debtors and other receivables

1339. Further, trade and other receivables balance of Kes 5,898,805,053 constitutes an amount of Kes 10,000,000 and Kes 194,845,459 owed by National Land Commission and Rift Valley Transition Revenue respectively, which had not been supported. Similarly, trade and other receivables balance includes an amount of Kes 8,196,769,846 which has not been supported with a schedule to explain how the balances have been computed as shown below:

Item	Amount Kes
Prepayment	2,329,551 ,044
Tax Receivable	5,546,536,660
Staff debtors	55,960,84
Other receivables	264,721,296
Total	8,196,769,846

Management Response

1340. The Accounting Officer submitted that the make-up of Other Receivable balance of Kes 8,196,769,846 was submitted to the Office of the Auditor General for reconciliation.

Committee Observation

1341. The Committee observed that the management's had submitted to OAG that the make-up of the Kshs. 8,196,769,846 for reconciliation, However, no documentary evidence or breakdown was availed to the Committee during its sittings to confirm that the underlying balances have been verified and reconciled

Committee Recommendations

1342. The Committee recommends that the OAG should verify the documents submitted by the Authority in support of Kshs. 8,196,769,846 receivables within thirty (30) days of adoption of the report.

1343. The Committee further recommends that confirmation letters and statements from the National Land Commission and Rift Valley Transition Revenue be forwarded to OAG for verification, in order to support the Kshs. 10 million and Kshs. 194.8 million balances respectively. OAG to report in the next audit cycle.

1344. The Committee directs the Accounting Officer to undertake a comprehensive review of the receivables management framework, including strengthening internal controls, periodic reconciliations, and the maintenance of up-to-date and verifiable schedules.

1345. The Committee recommends that where negligence or poor recordkeeping is found to have contributed to the unsupported balances, the Committee recommends that appropriate administrative action be taken against responsible officers.

National Land Commission

1346. Included also in the trade receivable balance is Kes 10,000,000 owed by National Land Commission for which there are no supporting documents.

Management Response

The Accounting Officer submitted as follows—

1347. On the 19th January 2018 vide a letter ref: VAL 1451/Phase2A to KRC, NLC requested for Kes 10 Million administrative charge for site inspection and sensitization programs. A letter from NLC was availed to the OAG team requesting for funds and proof of funds transfer. Accountability was

expected from NLC as the amount was an advance. The amount is yet to be accounted for by the Commission. KRC has however written reminders to NLC to account for the same. The receivable is therefore rightly recognized as a Debtor until NLC accounts for the money advanced. Copies of correspondences were submitted as annexures. KRC intends to recover the same from future remittances to NLC if the same remains unaccounted for.

Committee Observation

1348. The Committee noted from the submission by the Accounting Officer that the Kes ten (10) million had not been fully accounted for.

Committee Recommendation

1349. The Committee recommends that the NLC should provide a reconciliated report of the amounts advanced by KRC within three (3) month of adoption of this report to the OAG.

1350. The Committee recommends that the OAG should keep in view of this query henceforth until the Kes ten million is accounted for.

Rift Valley Railways

1351. Included also in the trade debtors balance is Kes 194,845,459 described as

"Rift Valley Railway Transition Revenue" for which is unsupported.

Management Response

The Accounting Officer submitted as follows—

1352. The RVR transition account relates 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 the Navision ERP for debtors' management to control billing and receipt payments. However, the individual debtor accounts have since been created in the Navision ERP System for better receivables management. A schedule to account for the list of the 16 trade debtors forming the Kes 194,845,459.00 was provided.

1353. Furthermore, some of the customers were still active customers with KRC including Maisha Mabati, Vivo Energy, ASP, Grain Bulk Handlers Ltd (GBHL), Darros, SPIF while the rest are shipping line railing through the TOPA

arrangement. All the outstanding debts for active clients have been cleared. The current statements of GBHL and Maisha Mabati showing only current invoices as outstanding was provided.

Committee Observation

1354. The Committee noted that although this is a matter of 2017, the Arbitration case is still ongoing in court.

Committee Recommendation

1355. The Committee recommends that pursuant to Standing Order 89(2), the matter is sub-judice and the Committee shall await the ruling of the Court on the same.

311.3. Long Outstanding Debtors

1356. The trade and other receivables balance includes amounts totaling to Kes 3,899,118,725 which have been outstanding for periods exceeding one year, and whose recovery is doubtful. The provisions for doubtful debts amounting to Kes 1,082,946,451 was not supported and the adequacy of the provision could not be confirmed.

Management Response

The Accounting Officer submitted that—

1357. The policy of the organization is to provide a general provision 5% of debtors as doubtful. However, the Corporation additionaly provided a first time full and specific provision of Kes 1,025,483,761.95 for all closed accounts. In the opinion of the Management, the provision is sufficient.Closure of accounts occurs when there is vacation, desertion, eviction or any other mechanism of termination of leases. The Corporation has now instituted a debt collection committee to pursue all outstanding debts. The Corporation is also pursuing legal remedies including suits for recovery of debt and exercise of lien on properties. In the year 2020-2021, the Corporation made a specific provision for the debt owing from the concessionaire Rift Valley Railways of Kes 3.5 billion being rent and concession fee unpaid as at the time of termination of the concession.

Committee Observation

1358. The Committee noted that KRC had constituted a debt collection committee to pursue the outstanding debts. It had also instituted other measures including legal remedies and exercise of lien on properties to recover the debts.

Committee Recommendation

1359. The Committee recommends that KRC submits a report on the status of debt collection within six months of adoption of this report.

1360. The OAG to keep in view of this query in the subsequent financial year.

311.4. Receivable with Negative Balances

1361. The reported trade debtors and other receivables balance of Kes16,115,602,420 is net of debtors with negative balances of Kes56,299,642. This is contrary to the provisions of International Financial Reporting Standard (IFRS) 1 which states that assets and liabilities; and income and expenditure shall not be offset unless required or permitted by International Financial Reporting Standards.In the circumstances, the accuracy and fair statement of the reported trade and other receivables balance of Kes 16,115,602,420 as at 30 June, 2019 could not be confirmed.

Management Response

The Accounting Officer submitted as follows—

1362. The debtors with negative balance are the customers who have paid amounts in respect to land or property allocated but have not taken custody as the land is pending a pegging exercise.All the accounts are also being reconciled to ensure all billings were done. None billing of accounts will occur on matters court orders have been served. In the meantime, the Corporation was reporting negative debtors as pre-payments under current liabilities.

Committee Observation

1363. The Committee observed that the National Land Commission debt was still pending in the financial year 2019/20 and tasked KRC management to update the Committee on the steps they were taking to recover the money.

1364. The Committee further observed that the Auditor General report for the FY 2020/21 did not capture the NLC outstanding debt. However the Committee noted that the amount was in the ledger books which was captured and not explained.

Committee Recommendation

1365. The Committee directs the Office of the Auditor General to capture the NLC debt in the subsequent financial years as it was omitted in the OAG report for FY 2020/21.

1366. The Committee directs the Accounting Officer to submit a report to the OAG on the steps employed to recover the debt within three (3) months of adoption of this report.

312. Irregular Land Compensation

1367. The Capital Works-in-Progress balance of Kes 673,287,818,576 includes a balance of Ksh. 12,000,000,000 being land compensation under SGR Phase I. The supporting documents for compensations amounting to a1,043,439,897 to Project Affected Persons (PAPS), by way of beneficiary copies of National Identity Cards, Kenya Revenue Authority (KRA) Personal Identification Number (PIN) certificates and title deed surrenders from the National Land Commission were not provided.

1368. Further, overpayments of Kes14,669,748 were made to Project Affected Persons (PAPS) who were paid Kes15,752,406 instead of the entitlement Kes 1,082,658. Although recovery of Kes 5,698,770 has been subsequently made, a balance of Kes 8,970,978 was outstanding as at 30 June, 2019.In the circumstances, the legality of the unsupported payments of Kes 1,043,439,897 and full recovery of Kes 8,970,978 on land compensation could not be ascertained.

Management Response

The Accounting Officer submitted as follows—

Response on Unsupported Payments - Kes 1,043,439,897.

1369. 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 provided 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.

1370. The disbursement process to the Project Affected Persons (PAPS) began in December 2014. Kenya Railways (KR) received correspondence from the National Land Commission (NLC) which had compensations schedules. The schedule had a list of PAPs, location and amount to be compensated for land and or developments. 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."

1371. 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.

1372. The controls deployed by KR in the disbursement process were to ensure that the PAPs names and amounts compensated for land and or developments acquired matched compensation schedules provided by NLC. KR also ensured that the wire transfers was to bank details provided by PAPs as per the filled forms. KR also worked closely with its main bankers KCB and other banks to ensure that compensation monies went to the rightful beneficiaries by confirming bank details name and account numbers in advance.

1373. KRC also followed a documented Standard Operating Procedure (SOP) which required NLC to approve all payments before KR released the same

to PAPs bank accounts. This ensured that NLC had direct supervision over the disbursement in the land acquisition process.

1374. The Kes 1,043,439, 897.00 payments related to the 1st payment processed in the compensation exercise on behalf of NLC. KRC roles were mainly disbursement upon confirmation that the names of the PAPs appear in the NLC compensation schedules. Notable is that despite the documents i.e. ID copy and KRA PIN certificates not being attached in the first payment, KR applied compensatory control measures to ensure that the details filled on the form were authenticated by use of the relevant/ authentic government ICT platforms. For the PAPs National ID card numbers given on the payment schedules, they were cross-checked on the e-citizen platform to confirm that they were matching. The cross-checking was also done on the PAPs KRA PINs on the i-tax pin-checker platform to confirm that the details are also matching with the NLC payment schedules.

Committee Observation and recommendation.

1375. The Committee noted that the Accounting Officer submitted details of the Project Affected Persons as required, including the award letters, identification cards, KRA pin certificates and bank account details.

1376. The Committee further noted that the submission by the Accounting Officer on compensation of the Project Affected persons was satisfactory hence the matter is resolved.

313. Unsupported Railway Operational Expenses

1377. As disclosed under Note 10 to the financial statements, the statement of profit or loss and other comprehensive income reflects rail operational expenses amounting to Kes 19,245,624,853. The expenditure constitutes rail operational expenses amounting to Kes 1,886,006,401 which had not been supported with schedules for audit review. The above balance constitutes SGR Insurance, Channel occupancy and Opex Indexation of Kes 482,875,835, Kes 9,692,170 and Kes 1,393,438,396 respectively. Consequently, it has not been possible to confirm the accuracy, completeness and legality of the reported railway operational expenditure of Kes 1,886,006,401 included as rail operational expenses during the year under review.

Management Response

1378. The Accounting Officer informed the Committee that the schedules had been shared with OAG for review. Some of the items were accrued based on management assessment, the existing contracts and operational data for the period.

Committee observation and Recomendation

1379. The Committee observed that the query was not in the subsequent financial year 2019/2020, as the schedule of the expenses had been provided to the Office of the Auditor General and the matter was closed.

314. Unreconciled Standard Gauge Railway (SGR)- Freight Revenue

1380. As disclosed under Note 5(a) to the financial statements, the statement of profit or loss and other comprehensive income reflects main income of Kes11,934,389,382.However, the balance constitutes an amount of Kes 10,214,491,874 in respect of SGR freight revenue out of which a balance of Kes 8,391,554,200 differs with Kenya Ports Authority (KPA) figure of Kes 8,883,724,017 resulting into an unexplained variance of Kes 492,169,817.Although the Corporation generates invoices to KPA using the Freight Management System (FMS), the debtor's statement showing the level of indebtedness was not provided for audit review. In the circumstances, the accuracy and completeness of the main income of Kes 10,214,491, 874 for the year ended 30 June 2019 could not be confirmed.

Management Response

The submission by the Accounting Officer was as follows—

1381. The figure of Kes 8,391,554,200 in the KRC records is the total of all Freight revenue from SGR for both conventional and Container business. KPA only handles container business and thus the comparison may not have been correct. KRC further requested the team to share the make-up of the KPA balance of Kes 8,883,724,017 which was not availed thus could not be reconciled. The freight management system used for invoicing is not used for management of accounts receivables. It thus cannot give a statement of receivables. Currently a joint reconciliation is carried out every quarter

between the two organizations. The above difference was resolved in the subsequent quarterly reconciliations.

Committee Observation

1382. The Committee noted that there was a variance in KRC book of Accounts that requires reconciliation.

Committee Recommendation

1383. The Committee directs KRC, KPA and OAG to have a joint engagement with a view of reconciling variance in the books of accounts within six months of adoption of this report.

1384. The Committee directs the Accounting Officer to submit a report on the correct position of the trade receivables in the books of account within six (6) months of adoption of this report to the OAG for verification.

315. Irregular Use of MGR Revenue Collection for Rail Operations

1385. During the year under review, it was observed that cash collections from Kikuyu and Kahawa routes amounting to Kes24,301,990 were not banked. Although Management stated that the unbanked cash was used on payment for locomotive fuel and repair and maintenance of the locomotives and the railway track, the Corporation had contracted service providers on the same operational expenses. In the circumstances, it has not been possible to determine propriety in the utilization of Kes24,301 ,990 allegedly spent directly to finance operations.

Management Response

The Accounting Officer submitted that—

1386. In the year under review, Kenya Railways and Rift Valley Railways (RVR) Kenya terminated a 25-year Concessionaire Agreement in August 2017. However, due to the abrupt termination and essence to continue full operations with minimum disruptions of both freight and passenger operations, KR took over the operations with immediate effect. KR was to operate through Meter Gauge Railway (MGR) division in a seamless way as operations transitions. Operational challenges were to be envisaged due to the nature of transition that took place which required KR to continue with

RVR business processes until the full transition was in place. Abrupt changes would have affected haulage of pre -existing customers freight and also commuters train movement that is key to traffic decongestion. Key to rail business performance which is operationally heavy is cash for operational expenditure support.

1387. One of challenges was set up of petty cash and ordinary staff imprest systems to support critical services and emergencies in form of incidences and accidents. During the transition period as the RVR business processes applied where the use of station earnings was authorized by the General Manager (MGR), which was a carry over as per RVR policy (and indeed a policy pre-concession) where station earnings were utilized to support operations. Never the less, in realization that no procurement procedure was in place for all supplies including critical supplies, the use of station earnings was inevitable to sustain operations.

1388. This however was meant to facilitate critical operational needs as regional imprests were to be set up. The revenue from the operations at the stations was correctly recognized on realization. All the expenses were accrued as they were incurred and all schedules, authorizations and accounting documents provided to the external audit team for review. However, this was regularized on full transition and the cash collections from all stations, including the above mentioned are being banked. The various stations have also been facilitated with imprest to ensure that their operational requirements in cash are being fulfilled.

Committee Observation and Recommendation

1389. The committee observed that the abrupt termination of the 25-year Concessionaire Agreement necessitated the use of the MGR revenue collections for rail operations to avoid disruptions.

1390. Further the Committee noted at the time of examination that KRC has set up petty cash and ordinary staff imprest to support critical services and emergencies hence the matter is resolved.

316. Adjustments in the Statement of Changes in Equity

1391. A review of the Statement of Changes in Equity revealed the following unsatisfactory matters:

316.1. Unexplained Prior Year Adjustments

1392. The statement of changes in equity for the year ended 30 June,2019 reflects an opening balance of accumulated losses of Kes 22,754,966,484 which was adjusted to Kes 23,478,194,293 by a further loss of Kes 723,227,809 without any disclosure or explanations. It was not ascertained whether the error(s) relate(s) or was noted during the year under review as the comparative accumulated loss is still maintained at Kes 22,754,966,484. This is contrary to International Accounting Standard 8 which requires restating the comparative amounts for the prior period(s) 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.

1393. Consequently, the accuracy and the validity of the amount adjustment made cannot be confirmed and is contrary to the standard adjusted and accuracy of the accumulated losses in the statement of changes in equity for the year ended 30 June 2019.

Management Response

The Accounting officer submitted as follows—

1394. The adjustments relate to SGR operational cost of indexation and loading and unloading costs. The computation of indexation is based on the estimate percentage of dollar denominated SGR operational and maintenance cost. However, this is subject to movement in exchange rates and other variables.

1395. Similarly, a commensurate accrual is made for loading and unloading cost. However, there was a change in the basis that led to revision of previous numbers. This is what was provided as prior year adjustment in line with IAS 8.42 but specifically 8.49 on treatment of prior year adjustments.

Committee Observation and Recommendation

1396. The Committee noted that the submissions by the Accounting Officer on the treatment of the prior year adjustments was satisfactory hence the matter is resolved.

316.2. Unexplained Adjustment in Restructuring

1397. Further, the statement reflects current adjustment reducing the restructuring balance from Kes 20,255,346,086 to Kes 20,239,260,616 by Kes 16,085,470 on account of receipts in cash. However, the nature of the adjustment was not explained or disclosed in the financial statements. Further Note 26 in support of the restructuring balance reflects a varying opening balance of Kes 20,251,469,298 and an adjustment of Kes 12,208,682, which still totals to Kes 20,239,260,616.

1398. Consequently, the validity and correctness of the amount adjusted and accuracy of the restructuring balance of Kes 16,085,470 in the statement of changes in equity for the year ended 30 June, 2019 could be confirmed.

Management Response

The Accounting Officer submitted that—

1399. The restructuring account is purposed to record all legacy issues of KRC specificaly stock and staff legacy obligations prior to November 2006. KRC had stock of unique rolling stock parts that were purchased by the concessionaire and Tata Chemicals Magadi Ltd. All stock issues are therefore mapped to this particular account. The adjustment was inadvertently indicated as cash adjustment whereas it related to legacy stock. It was an issue of incorrect description. The two variances/adjustments relates to the legacy stocks.

1400. The same has been corrected in the subsequent financial statements.

Committee Observation and Recommendation

1401. The committee observed that there was an incorrect description relating to the legacy stock which has since been corrected hence the matter is resolved.

1402. The Committee recommends that the Accounting Officer should ensure that items are correctly captured in the financial statements in line with section 68 (2) (b) of the Public Finance Management Act, 2012.

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317. Non-Disclosure of Material Uncertainty Related to Going Concern

1403. Note 18.4 to the financial statements on critical accounting estimates and judgements indicates that the financial statements for the year have been prepared on a going concern basis. However, the statement of financial position as at 30 June, 2020 reflects current liabilities balance of Kes. 69,267,485,237;(2019-Kes. 49,599,495,879) which exceeds the current assets balance of Kes. 59,978,834,794;(2019-Kes. 40,396,237,135) resulting to negative working capital of Kes. 9,288,650,443;(2019-Kes. 9,203,258,744). Further, the Corporation continue to perform dismally with the statement of comprehensive income for the year ended 30 June, 2020 reflecting an operating loss of Kes. 24,178,678,236 compared to a loss of Kes. 8,470,368,054 for the year ended 30 June, 2019.

1404. The above conditions are indicative of material uncertainty exists that may cast significant doubt on the Corporation's ability to continue as a going concern unless satisfactory measures are taken to reverse the trend. The continued survival of the Corporation is therefore, dependent on the creditors goodwill and Government support.

1405. The management reported that, on the Current Liabilities (CL)being higher than the Current Assets (CA). The current ratio (CA/CL) of approximately 1:3 is attributable to Deferred Income which is Kes 193,456,900,244.00. The deferred income was mainly due to cash received that could not be recognized as revenue in the year it is received but as revenue when earned and in case it is an asset, amortized in the year the benefits accrue.

1406. As per note 33 of the financial statements, the main item was SGR Deferred Income Kes 174.8 Billion. This related to amounts received as government grant towards the SGR project from the Railway Development Levy Fund.

(RDLF). Once the asset is recognized, the deferred income will be amortized annually over the life of the asset.The management has since reclassified the deferred income from current liabilities to non-current liabilities owing to the nature of recognition of deferred income arising from the resultant assets that spreads to more than one year.

1407. The working capital was also affected by the increase in creditors. There has been a significant growth in the payables and accrued charges. This was mainly due to the following: -

i. **SGR Contractor Liability** - Kes **6,825,703,312**. This relates to SGR Phase 2A for Interim Payment Certificate no. This is Phase 2A-IPC 3 and 4 local portion certificates which had been raised but payment not made as at 30.06.2019 by RDLF.

ii. **SGR Land Compensation** – Kes **8,307,857,507** of uncleared land compensation liabilities payable to Project Affected Persons (PAPs). This will be cleared through the RDLF once budgetary allocation towards the same.

iii. **SGR Operator Liability** – Kes **45,559,923,550** of operations costs relating to SGR operations and maintenance fees for the period June 2017 to June 2018. However, a liability of Kes 5 Billion had been offset during the period. The Operator will be paid through exchequer and escrow revenue account collections.

1408. As at 31st December 2022, the Corporation had cleared the contractor liability, reduced the operator's liability to Kes 12 billion and reduced overall creditors to Kes 45 billion from Kes 60 billion. These measures have greatly improved the liquidity position that is currently 1.4:1 and is expected to improve further.

1409. On deterioration of operating results from an operating loss of Kes 5,562,892,452 in 2017/18 to an operating loss of Kes 8,608,414,719.00 in 2018/19, the management responded as follows:

The figure above are net financial results. This figure includes amounts received as operational grants from the National Government, the interest charged and SGR depreciation which are not directly linked to operational performance. In the year 2017-2018, the Corporation received Kes 5.1 billion whereas only Kes 33 million was received in 2018-2019.

1410. Operationally, the improvement is evidenced by the position below moving from an operational deficit of Kes 9.8 billion to Kes 4.8 billion an improvement of 510%. It is however important to appreciate that rail operations fall in two categories, passenger and freight services. World over, passenger services are a social service to enhance movement of people to create an enabling environment to spur economic growth.

1411. Freight services is the compensating business that can drive the break-even of the rail operations. Based on this fact, the Corporations is 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.

1412. MGR freight services have 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; there was deferred maintenance in the Rolling Stock leading to general inefficiency and constraint in capacity. KR is building back broken business relations with suppliers and customers including shipping lines who are core to the container business.

1413. SGR freight had first year of full operations. The major freight component was containerized cargo.KR is putting in place mechanisms to deal with conventional cargo like clinker, grains and fertilizer. This have a higher yields and profit margins once exploited.KR also wants to build partnership relationships with shippers and bulk cargo handlers. Also envisaged is to synchronize operations with other government agencies like KRA and KPA who are an integral cog to the successful movement of cargo .KR also has aligned its human resource establishment to meet its new business model by having a new organizational structure in place.

1414. The SGR project is also partially complete with Phase One and 2A complete while 2B and 2C still pending. KR is therefore putting in place mechanisms to increase its freight tonnage by linking the SGR to Meter Gauge Railway line as we await implementation of Phase 2B and 2C, this way we will be able to capture transit cargo to other East African nations.

1415. This position is expected to improve further on full takeover of the SGR and that increased competition and liberalization of transport sector poses a great challenge to the sustainability of the freight operations. However, the services remain attractive owing to the following factors-

(1) Safety of the operations with no major incident reported on the key network of SGR;
(2) Reliability of the services;
(3) Stability of the prices that aids in long term planning; and
(4) Last mile connectivity through MGRs expansive network of sidings.

1416. In terms of strategy, the Corporation was undertaking the following interventions:

(1) Purchasing of trucks to facilitate last mile connectivity;
(2) Strategic partnership to secure and guarantee volumes with key customers;
(3) Investment in overhaul and new purchase of MGR rolling stock;
(4) Revamping of the siding networks;
(5) Revamping of branch lines; and
(6) Turnaround of the rail assets.

Committee Observations

1417. The Committee noted from the submissions by the Accounting Officer that the Corporation had put in place measures to improve the performance and financial position of the Corporation.

Committee Recommendations

1418. The Committee recommends that KRC should explore other ways of increasing revenue and reducing operational losses by leveraging more on the profitable cargo freight as it is not feasible under the current economic circumstances to get government subsidy or change passenger tariffs.

318. Property Plant and Equipment

1419. As disclosed in Note 15 to the financial statements, the statement of financial position reflects property, plant and equipment balance of Kes. 424,585,767,239 as at 30 June, 2020. The following unsatisfactory observations were made:

318.1. Illegal Allocation of Land

1420. It was disclosed that, the statement of financial position reflects property, plant and equipment balance of Kes 24,665,643,871 but as previously reported, various parcels of land were allocated to private persons 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 nine (9) industrial plots measuring approximately three (3) acres, a piece of land within Kikuyu railway station measuring approximately two (2) acres and several parcels of land adjacent to Mombasa railway station measuring between 0.75 to one (1) acre have been irregularly allocated to private persons with some having been developed.

1421. Further, another five hundred and twenty-nine (529) parcels of land had been illegally allocated across the country. However, Management has sought court intervention to repossess twenty-seven (27) parcels.From the foregoing, the accuracy and the fair presentation of property, plant and equipment balance of Kes 24,665,643,871.00 as at 30 June, 2019 could not be confirmed.

Management Response

The Accounting Officer made the following submission to the Committee—

Limuru

1422. Beyond the initial objective of the Kenya Uganda Railway of connecting the two countries, it became apparent that the provision of warehouse plots, go-down plots and industrial plots served with rail sidings was necessary for further expansion of Commerce and Trade in Kenya. The Government of Kenya availed land to Kenya Railways for development and administration of rail served industrial and warehouse plots across the country. The total

land reserved for Railway administration within Limuru Railway Station as per Railway drawing No. 4327/3 of 29th April 1936 amounted to 40 acres approximately.

1423. The Government set aside 1.05 acres of land to Kenya Railways for go-down plots in Limuru. The land was further subdivided into eight industrial plots- No. 7882/2-9 (Plots 7882/9 was consolidated with additional area to form 7882/10 in the year 1975). The Balance of the land has been surveyed and documented as per Survey plan 481/86 with an area of 15.86 ha (39.19 acres). The Corporation is progressing issuance of title deed for the land through the National Land Commission and the Ministry of Lands and Physical Planning.

1424. Kenya Railways issued leasehold grants to interested developers for development of go-downs and warehouses for a term of 99 years with effect from 1st June 1948. The leases were later registered with the Commissioner of Lands. The grantees pay basic land rent to the Corporation which holds the freehold interest over the properties.

Acc.No.	Name	LR/Plot No.	Area Acs.	Asset No.	Serial No.	Owner...l Status
LC/NRB/LMU/LMU/798	Prabhudas Thakker And Vipool	7882/2	0.1263	LCNRB286	19426	Under Kenya Railways
LC/NRB/LMU/LMU/797	Limuru Tibiya General Store	7882/3	0.1263	LCNRB284	19425	Under Kenya Railways
LC/NRB/LMU/LMU/799	Limuru Tibiya Gen. Store	7882/4	0.1263	LCNRB287	19427	Under Kenya Railways
LC/NRB/LMU/LMU/800	Hassan Ali & Mohammed A. Awale	7882/5	0.1263	LCNRB288	19428	Under Kenya Railways
LC/NRB/LMU/LMU/802	Limuru Pyrethrum Growers Co-Op	7882/6	0.1475	LCNRB290	19430	Under Kenya Railways
LC/NRB/LMU/LMU/801	Limuru Dairy	7882/7&8	0.229s	LCNRB289	19429	Under

	Farmers Co-Op Soc					Kenya Railways
LC/NRB/LMU/LMU/796	Vipool Prabudas & Rajesh Prabudas	7882/10	0.17	LCNRB285	19424	Under Kenya Railways

The above parcels of land are therefore still under the administration of Kenya Railways as entrusted by the Government of Kenya.

Kikuyu

1425. The total land reserved for Kikuyu Railways Station as per Kikuyu Trading Centre approved Development Plan No.13 of 14th March 1957 is approximately 12.5 Hectares (30.8 Acres).

1426. A survey was done in 1961 and a survey plan F/R No 96/21 was produced affirming and documenting the land area of 30.8 Acres. Due to increased demand for rail served industrial and Go-down plots, Kenya Railways further set aside approximately 5 acres of land within Kikuyu Railway Station for industrial and Go-down plots. The balance of 25.8 acres still remains as railway operational land. The land has since been surveyed and submitted to the Director of Surveys for authentication and registration.

1427. The 5 acres' land was subdivided into 23 portions-KYU/TOWN/158-180. The portions of land were later allocated to interested developers on leasehold grants for between 65-70 years from 1982. The leases were registered with the Commissioner of lands. The Corporation holds the freehold interests over the land and receives basic land rent from the grantees. Among the grantees some have since put up Go-downs and other industrial developments as per the special conditions of the grants. Other portions remain vacant and undeveloped.

1428. The Corporation requested the matter to be closed since the above parcels of Kikuyu Railways Station land were still under the administration of Kenya Railways as entrusted by the Government of Kenya and they have fully accounted for the Land.

Mombasa Railway Station- Mombasa Block XIV/84

1429. Mombasa Railway Station land measures approximately 36.94 acres (14.95 ha). This includes Mombasa Marshalling yard area, the railway station area, residential houses area and the Mombasa region office area. The land has been surveyed and area documented as per the Survey Plan No. 389/44 and 188/60.

1430. The subject property - Mombasa Block XIV/84 is within Mombasa Railway Station along Mijikenda Street. It has an uncompleted warehouse development. The piece of land measures approximately 0.2935 ha (0.725 acs.).The property was initially leased out to M/s Kwale Saw Mills (Ramanbhai Dalabhai Patel and Ghansham Ramanbhai Patel) as a timber stacking yard in 1974. M/s Kwale Saw Mills later applied for a long lease. They were later allegedly issued with a 99 years lease in 1988 at a yearly rent of **Kes 36,200.00**. The lease was registered on or about the 2nd of November, 1988 and a certificate of lease issued on 12th September, 2002.

1431. The long lease was however granted contrary to provisions of Sec 13 (2) (h) of the Kenya Railways Act, which stipulates that the Boards approval and Ministerial consent have to be obtained before a long lease is granted and hence the process was irregular.

1432. The Corporation later filed a suit against Kwale Saw Mills for recovery of the land on 27th August 2004. Kenya Railways further sought injunctive orders pending hearing and determination of the suit restraining the defendants from selling or alienating the said piece of land and continuing with the construction works. The matter is still in Court pending determination. The Corporation has been in negotiations with the defendants in order to have the long-standing matter settled amicably and secure the interests of the Corporation.

529 No parcels of Irregularly Allocated Land

1433. It was further determined that over time, the Commissioner of Lands and Local Authorities went beyond their powers and irregularly allocated over Five Hundred Parcels of land within railway land. This was mainly attributed to the fact that Kenya Railways Operational Land had not been surveyed and was vested to the Corporation under a vesting Order. From early 1990s

some Government officials took advantage and allocated the Corporation's land without the knowledge of Kenya Railways.

1434. The Corporation has further instituted measures to ensure that Kenya Railways Land is secured across the country. The Corporation is undertaking survey and registration to obtain title deeds for all Operational Land that had never been previously surveyed. To achieve this objective, the Corporation engaged four surveying Consultants to undertake countrywide survey of all operational land. The land consists of all railway station reserves, marshalling yards and any other un-surveyed operational land adding to a total of 150 parcels of land and approximately 2700 acres.

i. Geodev (K) Limited
ii. Geoflex Consultants
iii. Precision Instruments Ltd.
iv. Geosurv Systems Limited

1435. The Terms of Reference (TOR) for the above consultancy was to carry out survey and registration of KR landed asset portfolio for purposes of obtaining ownership documents (Title deeds) as guided by the Survey Manual, Survey Act, Land Act 2012, the Physical Planning Act and any other relevant regulation.

1436. Surveys of 150 parcels of land have been completed with a total of 144 out of 150 (96 %) Stations and Marshalling yards authenticated at the Director of Surveys. 65 certificates of title have been processed and submitted to the Corporation. 62 title documents are pending registration at the Ministry of Lands and Physical Planning and 17 documents are yet to be processed at the Ministry of Lands.

1437. The Corporation through the office of the Director of Surveys has ensured that overlapping irregular surveys within Railway Operational Land as originally reserved will be cancelled and land documented under Kenya Railways.

1438. The Corporation has further engaged various agencies (EACC, Courts, Ministry of Lands and NLC) in the recovery of irregularly allocated land. This has seen some irregularly allocated land in Kisumu, Nairobi and Mombasa

revert to the Corporation. Several suits are also pending determination in courts.

1439. The Corporation is also in the process of rehabilitating and revitalizing the Meter Gauge Railway System across the Country.

i. Nairobi-Nanyuki branch line-completed and operational.
ii. Nakuru-Kisumu branch Line-Ongoing
iii. Kisumu-Butere branch Line-Ongoing
iv. Leseru-Kitale branch Line-Ongoing
v. Gilgil-Nyahururu branch Line-Ongoing

1440. To ensure security of operations the Corporation has embarked on reclaiming all encroached land and securing the land through fencing. This has ensured that the Corporation remains in possession of the land and deter unauthorized interference with railway land. The Accounting Officer submitted that the Corporation had contacted EACC vide a letter dated 2nd March ,2023.

Committee Observations

1441. The Committee noted that the submission by the Accounting Officer was unsatisfactory.

Committee Recommendations

1442. The Committee recommends that the Accounting Officer should submit to the OAG lease agreements or title deeds and a schedule on confirmation of revenue received by KRC from the parcels of land in question for verification within six months of adoption of this report.

1443. The OAG to keep in view of this query in the subsequent financial year as the matter is unresolved.

318.2. Land with Disputes and Unbilled Leases

1444. Audit inspection revealed that leases with accumulated charges of Kes. 151,069,253 in Mombasa have been in dispute since 2013. The tenants have not been paying their lease dues. Further, customers who were given lease accounts in 2018 were not invoiced for 2019 and the Corporation lost about Kes. 10,049,600 annually from non-billing.

Management Response

1445. The Accounting Officer submitted that the tenants in the subject properties rejected the reviewed rates and filed a suit in court. A case in point is case number: *CASE NO. CMCC NO E11771 OF 2021-NAIROBI - CASSMAN BROWN T/A FALLBROOK INVESTMENTS LTD VS KENYA RAILWAYS CORPORATION & ANOTHER.*

1446. However, the Corporation is constantly engaging them with a view of negotiating towards settling for an acceptable rate for all parties. A negotiation exercise was conducted in 2019 however, some tenants rejected to engage. The Corporation continues to engage them constantly to open up for negotiations. The Corporation also takes advantage of the requests for renewal, consents and any other requests done by the tenants to negotiate and settle for a rate that is acceptable to all parties.

1447. On the issue of unbilled leases, these were lease allocations that had been granted but the tenants had not taken possession because of the pending administrative activity pegging. Most have now been regularized and billing is up to date save for one account that was closed as shown below:

LC/CST/MSA/SHZ/10	FAIR OAKS LTD	LCMSA323	34872	10-01-18	2,100,000	Account was a duplicate of LC/CST/MSA/SHZ/11. It was closed.
LC/CST/MSA/SHZ/11	FAIR OAKS LTD	LCMSA323	34873	10-01-18	2,100,000	The billing is up to date
LC/CST/CGW/CGW/43	ISIR DEVELOPERS LIMITED	LCCGW80	35273	11-01-18	1,200,000	The billing is up to date
LC/CST/MSA/MRK/4	MBARAKI BULK TERMINAL LTD	LCMSA325	34882	10-01-18	1,200,000	The billing is up to date
LC/CST/M	CLINGTON	LCM	34887	10-01-18	1,200,000	Account

SA/SHZ/14	MWANYAMBO MWAWUGHA NGA	SA3 28				Closed
LC/CST/M SA/GJN/5	CASTLEPORT LTD	LCM SA3 27	34884	10-01-18	408,000	The billing is up to date
LC/CST/M SA/MRK/3	KENCONT LOGISTICS SERVICES LTD	LCM SA3 22	34741	10-01-18	480,000	The billing is up to date
LC/CST/M SA/MKV2	MOHAMMED HURI IBRAHIM	LCM SA3 19	34703	11-01-18	123,600	The billing is up to date
LC/CST/M SA/MKP/9	GOODNEWS EVANGELISTIC CHURCH	LCM SA3 17	33784	04-01-18	102,000	The billing is up to date
LC/CST/M SA/GJN/4	UGANDA PROPERTIES HOLDINGS	LCM SA3 18	34677	10-01-18	320,000	The billing is up to date
LC/CST/M SA/STN/4	DABEL CONSTRUCTIO N LIMITED	LCM SA3 20	34716	11-01-18	816,000	The billing is up to date
Total					**10,049,60 0**	

Committee Observations

1448. The Committee noted at the time of examination that some accounts had been regularized. However, KRC was yet to settle with some tenants who had sort recourse from court and the matter is pending before court.

Committee Recommendations

1449. The Committee recommends that the matter is not resolved.

1450. Further, the Committee recommends that the Accounting Officer to submit a status report on the matter to the OAG within six months of adoption of this Report for verification.

318.3. Encroachment of Land (Ziwani Nakuru)

1451. Land measuring approximately seven (7) acres in Nakuru Ziwani estate belonging to the Corporation has been encroached on by the County Government of Nakuru and currently used as bus park. The land had been allocated to customers on a long-term lease of 25 years with Kes. 37,500,000 having been paid as premium attracting an annual rent of Kes. 13,300,002. Management has not explained the steps being taken to revert the land to the tenants. Further, the Corporation continues to lose the opportunity to collect the annual rent of Kes. 13,300,002.

Management Response

The Accounting Officer submitted the following—

1452. The County Government of Nakuru in an effort to decongest the town as a measure to control the spread of the deadly and highly infectious Corona Virus Pandemic without notice relocated the bus stage to Ziwani estate. Nonetheless, the Corporation and the County Government of Nakuru entered into Memorandum of Understanding with the Corporation in which it was agreed that the County vacates the land once the pandemic is controlled under the following clause as per attached MOU which is awaiting by the County

> "CGN undertakes to indemnify KRC from claims by tenants whose tenancies have been discontinued because of the actions by the County Government, the CGN further voluntarily commits to deposit Kes. 17,300,000/=being a deposit equivalent to annual rent payable in the three parcels as follows; Ziwani Estate Kes. 9,000,000/= per annum, Kisulisuli Kes. 1,500,000/= per annum, and Station area Kes. 6,800,000 per annum"

The Corporation also wrote to the Ministry of Interior, MoTI-HUD and Treasury to resolve the matter.

Committee Observation

1453. The Committee noted that the submission on encroachment of the land by the Accounting Officer was unsatisfactory.

Committee Recommendation

1454. The Committee recommends that the Accounting Officer should submit a report on the current status of Nakuru station area land and the status of encroachment of KRC land by Nakuru County government to the OAG within three(3) months of adoption of this report.

318.4. Malaba Apartments

1455. The Corporation renovated 24 units of two (2) bedroom apartments at Malaba but the apartments have remained unoccupied. Other than loss of revenue annually, the units are deteriorating due to non-occupancy. Further, four (4) buildings in Malaba have been encroached by private occupants.

Management Response

The Accounting Officer submitted as follows—

1456. The apartments were renovated and completed however there were outstanding to do with lack of water supply and electricity in the houses. Water being a basic requirement did not make the houses attractive coupled with the Covid pandemic therefore the houses remained unoccupied. Management has now been able to resolve the water problem by overhauling the water reticulation system which was completed in November 2020. Management has also undertaken repair of the faulty wiring and installed the missing power meters this exercise was completed on the second week of March 2021. 21 units have been leased out, the remaining 3 units KRC 17314, KRC 17315 and KRC 17316 are occupied by Kenya Railways operational staff working in Meter Gauge Railway awaiting completion of Malaba Running room considering the staff are posted to handle operations which run 24 hours. Internal review of the project has been done and lessons learned from the project to avert a repeat of the same issues that affected the delivery of the project objective at the earliest.

Committee Observation and Recommendation

1457. At the time of examination, the Committee observed from the submission of the Accounting Officer that the Malaba apartments was fully occupied after the challenge of water was solved hence the matter is resolved.

318.5. Residential Buildings in Kisumu

1458. The 247 residential units in Kisumu have been forcefully occupied by organizations with no lease agreements and therefore not paying rent. The Corporation is losing rent to the tune of Kes.27,435,600 annually.From the foregoing, the accuracy and the fair presentation of property, plant and equipment balance of Kes. 424,585,767,239 as at 30 June, 2020 could not be confirmed.

Management Response

1459. The houses in Kisumu had been vacated to facilitate revitalization of the port. During the revitalization, there were various government agencies facilitating the exercise to ensure its success. They were subsequently allocated to security personnel and other personnel who were part of the Kisumu Port revitalization exercise. Kisumu Port has been operationalized. This is because the port is a high security area which cannot allow for leasing by people other than those with port passes. KRC is in the process of regularizing tenancy agreements with the occupants in an arm's length transaction.

Committee Observations

1460. The Committee observed that the management was yet to regularize the tenancy agreements on the occupied houses.

Committee Recommendation

1461. The Committee recommends that the Accounting Officer should submit a progress report on the status of the tenancy agreement for verification to the OAG within three months of adoption of this report.

319. Prior Adjustments

1462. The statement of changes in equity reflects net prior adjustments of Kes. 14,320,775,114 to the accumulated losses as opposed to through the statement of profit or loss and other comprehensive. This is contrary to International Accounting Standard 8 which requires restating the comparative amounts for the prior period(s) 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.

Management Response

The Accounting Officer submitted as follows: -

1463. On the issue of prior year adjustment, the Corporation undertook prior year adjustments relating to depreciation of SGR Assets. The costing of SGR would not have been accurately determined due to material costs elements not being fully accounted for by the end FY 2018/19.

1464. However, the cost was accurately determined in FY 2019/20 and the Work in Progress capitalized and hence resulting to a charge in depreciation for two years in FY 2019/20 since the assets were in use and required to be depreciated as per IAS 16.The treatment for the depreciation of FY 2018/19 which is a prior period adjustment due to omission in FY 2018/19 Financial Statements as explained above required to be treated in accordance to IAS 8.42 which is to restate the prior year financial statements.

1465. However, there are exceptions to rule as per IAS 8.49 which states that if the retrospective is impracticable, an explanation and description of how the error has been corrected can be provided. In this case, the Corporation finds the error impracticable to restate due to the following factors;

1. The information to capitalize the assets in FY 2018/19 was not fully available to enable the Corporation charge depreciation during the year.
2. The financial statements for the FY 2018/19 have already been relied upon by various government agencies.
3. The change is material in nature resulting to a significant change in the Income Statement. The amount exceeds the loss made in FY 2018/19.

1466. Based on the above, the Corporation has provided an explanation and made a disclosure on the treatment of the prior year adjustment. The Statement of Changes in Equity (Note 15) has been amended under Retained Earnings to ensure that there is decrease in Retained Earnings reported in FY 2019/20.

Committee observation and Recommendation.

1467. The Committee noted from the submission of the Accounting Officer that a reconciliation had been done and disclosure on the treatment of the prior year adjustment was made which included amendment of the statement of changes in Equity hence the matter is resolved.

320. Current Assets (Short Term Investments)

1468. As disclosed in Note 21 to the financial statements, the statement of financial position reflects short term investments balance of Kes. 45,000,000 (2019-Kes. 770,000,000). Excluded from the balance is an amount of Kes. 204,643,995 (original amount Kes. 818,575,979) under fixed deposit with the Chase Bank Limited (in Receivership) that was subsequently taken over by SBM Bank in an arrangement where 75% of the value of deposits was taken over by SBM Bank to be made available over a 3-year period. The balance representing 25% of the deposit remained under moratorium and whose accessibility remains uncertain. This is an indication that Management has written off the fixed investment in chase bank without approvals from the Board and The National Treasury. Consequently, the completeness and accuracy of the Short-Term Investment of Kes. 45,000,000 as at 30 June, 2020 could not be confirmed.

Management Response

The Accounting officer submitted the following: -

1469. The amount was disclosed under cash guarantees and deposits. The main reason for this classification and accounting is that it is not interest earning and its recoverability is in doubt so it does not fall under the description of a short-term investment as per IFRS 9.

1470. According to IFRS, short-term investments are classified as either "held for trading" or "available for sale." Held for trading investments are those that are actively traded in a market and are held with the intention of making a profit on short-term fluctuations in price. Available for sale investments are those that are not held for trading, but are held with the intention of selling them in the short term if needed.

1471. The Corporation had invested Kes. 300,000,000.00 with Chase Bank in November 2015 for a period of 6 months and Kes. 500,000,000.00 in March 2016 for a period of 3 months. The bank was placed under receivership on 7th April 2016 before the maturity of these two deposits. The funds had earned interest of Kes. 18,575,978.65 as at this date. Kenya Deposit Insurance Corporation (KDIC) was then appointed to assume management and control of the bank with effect from 16th April 2016.

The details of Kes. 818,575,979.00 reported in the Financial Statement are as follows;

	AMOUNT (Kes)	INTEREST RATE	EFFECTIVE DATE	TENOR PERIOD
Fixed Deposit	500,000,000.00	13%	19.03.16	3 months
Fixed Deposit	300,000,000.00	18%	12.11.15	6 months
Interest accrued	18,575,978.65			Holdover Account
Total	**818,575,978.65**			

1472. Subsequently on 17th April 2018, the Central Bank of Kenya (CBK) and Kenya Deposit Insurance Corporation (KDIC) announced the signing of an agreement between SBM Bank (Kenya) Limited 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 that there will be a transfer of 75 percent of the value of deposits currently under moratorium at CBLR, and the transfer of the

majority of staff and branches of the existing CBLR operations. 25 percent of the value of moratorium deposits will remain in CBLR.

1473. As per the table below Kes. 200,254,780.00 was the amount retained in Chase Bank in Receivership and (Kes. 20,569,378.75 and Kes. 600,764,345.00) totaling to Kes. 621,333,723.75 was the amount transferred to SBM Bank.

A/C No.s	**Balance as at 30.06.18** Kes	**Transfer to Non Moratorium** Kes	**Amount under Moratorium Kes**	**KDIC (Chase bank IR) 25% of Moratorium funds** Kes	**Transfer to SBM Bank (75% of Moratorium funds)** Kes
8301 9078 060	300,000,000.00	1,000,000.00	**299,000,000.00**	74,750,000.00	224,250,000.00
8301 9078 062	500,000,000.00	1,000,000.00	**499,000,000.00**	124,750,000.00	374,250,000.00
Liquidation a/c	18,575,978.65	18,569,378.75	**3,019,125.00**	754,780.00	2,264,345.00
	818,575,978.65	**20,569,378.75**	**801,019,125.00**	**200,254,780.00**	**600,764,345.00**

The funds transferred to SBM Bank of Kes. 621,333,723.75 have been accessed.

1474. The figure in the Audit Report of Kes. 204,643,995.00 was erroneously arrived at after subjecting the whole balance of Kes. 818,575,978.65 to the 75% and 25%, without considering funds transferred to the non-moratorium of Kes. 20,569,378.75. Therefore, the correct amounts under moratorium in Chase Bank (Kenya) Limited (In Receivership) is Kes. 200,254,780.00 not Kes. 204,643,995.00.

1475. The moratorium funds of Kes. 200,254,780.00 still remains in Chase Bank in Receivership. As per the latest update by KDIC which was issued to the

public on 10th May 2021, the liquidation process has commenced and the insured deposit balances will be paid equitably as and when the liquidator accumulates sufficient funds from the liquidation process. The Corporation is following up the liquidation process status with KDIC as we await the conclusion of the liquidation process upon which the accessibility of the funds will be known.

Committee Observations

1476. The Committee noted that there was lack of prudence in the management and noted an inconsistency on the motive of the decision to deposit funds in Chase Bank since the bank was put under receivership shortly after.

1477. The committee also noted that the submission on the recoverability of the Kes 200, 254, 780 under Chase Bank was not sufficient.

1478. The committee observed that there was need for KRC to furnish the OAG with the Financial Statements of the company for the period prior to the investment deposit in Chase Bank.

Committee Recommendations

1479. The Committee reprimands the Accounting Officer for failing to undertake due diligence before investing the funds of the corporation hence exposing the corporation to a risk of losses.

1480. The Committee recommends that the Accounting Officer should submit a report on the current status of recovery of the invested funds within three months of adoption of this report to the OAG for verification.

321. Inventories

1481. The statement of financial position reflects stores inventories balance of Kes. 3,616,604,353 (2019-Kes. 3,609,982,659) However, the balance was not supported by stock take sheets and reports. Under the circumstances, the accuracy and fair statement of inventories valued at Kes.3,616,604,353 as at 30 June, 2020 could not be confirmed.

Management Response

1482. The Accounting Officer acknowledged the auditor's observation and responded as follows:

1483. In the year under review, the Corporation initiated a stock take process, however, the stock counting process was not completed by the closure of the financial year under consideration. The following are reasons why the stock take process took long and it was not completed within the financial year under review—

(1) Post concession transition challenges – initially the stores were manned by twenty four (24) staff, but during the concession transition process, the staff number were reduced to two (2) who could not adequately handle the stores function appropriately, thus delay in the stock take process.

(2) Preparatory works – this being the inaugural comprehensive stock take (not sample stock taking), a lot of preparatory works needed to be done in readiness of stock take. This entailed bush clearing to access some inventories like permanent way materials which are stored outdoors. Because the stores were not properly arranged, there was a lot of sorting, categorization and classification of store items for ease of counting.

(3) Complexity and uniqueness of KR Store items – because of the specialized nature of Kenya railways operations, most the store items are locomotives spare parts which required mechanical technicians to identify and sort. Most of these mechanical technicians who had institution operation memory had been laid-off/ retrenched. The Corporation required approximately twenty (20)mechanical technicians but only four (4) were available to be engaged on temporary contractual arrangement, thus requiring more time for identification and sorting exercise.

(4) Taking over of MGR stores after concession termination – upon termination of Concession agreement and the concessionaire, RVR had to exit, and the Corporation was preparing to take over MGR stores which were in the custody of RVR for purpose of securing stock items from theft, thus time and manpower constraints.

1484. The Management has now aligned the management of stores. Adequate staff have now been posted to the various stock areas. Additionally, the Corporation is in the process of implementing a new robust ERP that is capable of effectively handling stock unlike the current ERP that had not envisaged the stock complexities arising from running of MGR and SGR

Operations. The new system, SAP, is expected to be commissioned in Quarter 4 of the Financial year 2022-2023. As part of the migration of data, the Corporation will be undertaking a zero-based stock count. This will provide a platform to resolve all stock issues including obsolescence, non-identification and costing.

Committee Observation

1485. The committee noted at the time of examination that the Accounting Officer had put in place a new robust ERP system (SAP) capable of handling complex stock.

Committee Recommendation

1486. The Committee recommends that the matter is resolved and further directs the Accounting Officer to submit a comprehensive report on the inventories within three (3) months of adoption of this report to the OAG for verification.

322. Trade and other Receivables

1487. As disclosed under Note 20 to the financial statements, the statement of financial position reflects trade and other receivables balance of Kes. 18,158,981,726. Examination of available records revealed the following unsatisfactory matters:

322.1. Unreconciled Trade and Other Receivables

1488. Included in the trade debtors balance is an amount of Kes. 1,311,068,951 owed by the Kenya Ports Authority (KPA). However, confirmation from KPA reflected a balance of Kes. 1,881,239,000 resulting to an unexplained and unreconciled variance of Kes. 570,170,049

Management Response

1489. KR figure of receivables from KPA is based on the outstanding balance arising from freight charges on actual tonnage of freight hauled less payments received from KPA as per the Take or Pay Agreement (ToPA) framework. A KR & KPA team joint reconciliation is carried out every quarter

between the two Corporations. KR presents its data on all containers moved as per data captured by its freight management system. KPA on the other hand provides its loading lists to identify all cargo. Through Bill of Lading (TBL) and Non TBL) and once there is data match, the same is deemed payable. Any differences thereof are resolved in the reconciliations process. This notwithstanding, we have sought the make-up of Kes. 1,881,239,000 so as to reconcile the numbers.

Committee Observation

1490. The Committee noted that there was a variance in KRC book of Accounts that requires reconciliation.

Committee Recommendation

1491. The Committee directs KRC, KPA and OAG to have a joint engagement with a view of reconciling the variance in the KRC books of accounts within six months of adoption of this report.

1492. The Committee directs the Accounting Officer to submit a report on the correct position of the trade receivables in the books of account within six (6) months of adoption of this report to the OAG for verification.

322.2. Unsupported Debtors -Other Receivables

1493. Included in the trade and other receivables balance are amounts of Kes. 10,000,000 and Kes.3,272,448,723 owed by the National Land Commission and Rift Valley Transition Revenue respectively, for which supporting documents were not provided for audit review.

National Land Commission

1494. Included also in the trade receivable balance is Kes. 10,000,000 owed by National Land Commission for which there are no supporting documents.

Management Response

The Accounting Officer submitted as follows—

1495. On the 19th January 2018 vide a letter ref: VAL 1451/Phase2A to KR, NLC requested for Kes 10 Million administrative charge for site inspection and sensitization programs. A letter from NLC was availed to the OAG team and proof of transfer of funds. Accountability was expected from NLC since the amount was an advance. The amount is yet to be accounted for by the Commission. KR has however written reminders to NLC to account for the same. The receivable is therefore rightly recognized until NLC accounts for the money advanced. KR will recover the same from future remittances to NLC if the same remains unaccounted for.

Committee Observation

1496. The Committee noted from the submission by the Accounting Officer that the Kes ten million had not been fully accounted for.

Committee Recommendation

1497. The Committee recommends that the NLC should provide a reconciliated report of the amounts advanced by KRC within three (3) month of adoption of this report to the OAG.

1498. The Committee recommends that the OAG should keep in view of this query henceforth until the Kes ten million is accounted for.

Rift Valley Railways

1499. Included also in the trade debtors balance is Kes. 3,272,448,723. described as "Rift Valley Railway Transition Revenue" for which is unsupported.

Management Response

1500. Of the trade debtors is an amount of Kes 3.2 Billion due from RVR which is a legacy debt after termination of the concession agreement in June 2017. Management is in the process of reviewing all the existing debtors and the likelihood of being realized with a timeline of Quarter III in FY 2020/2021. This will inform the write off request procedure after all recoverability options have been exhausted. However, the Corporations Financial Statements for FY 2020/21 will provide for the debt 100% and make a disclosure of the

same. The debt has now been fully provided and it is part of the ongoing Arbitration case between IEVR and the Government of Kenya.

Committee Observation

1501. The Committee noted that although this is a matter of 2017, the Arbitration case is still ongoing in court.

Committee Recommendation

1502. The Committee recommends that pursuant to Standing Order 89(2), this matter is sub-judice and the Committee shall await the ruling of the Court on the same.

322.3. Long Outstanding Debtors

1503. The trade and other receivables balance includes amounts totaling to Kes. 3,315,738,630 which have been outstanding for periods exceeding one year, and whose recovery is doubtful. The provisions for doubtful debts amounting to Kes. 1,042,505,695 was not supported and the adequacy of the provision could not be confirmed. In the circumstances, the accuracy and fair statement of the reported trade and other receivables balance of Kes.18,158,981,728 as at 30 June, 2020 could not be confirmed.

Management Response

The Accounting Officer submitted as follows—

1504. The Corporation makes a specific full provision for receivable in respect to closed accounts. Closed accounts relate to tenants who have vacated. The schedule for this was shared with the OAG. Additionally, of the remaining active accounts, a 5% general doubtful debts provision is made. The summation of the closed accounts specific provision and the general provision makes up the of Kes. 1,042,505,695 which is deemed sufficient, factoring the nature of lease contracting that requires quarterly billing. Therefore, for KR all receivables above 90 days being uncollectible may not be realistic in the context of the billing cycle.

Committee Observation

1505. The Committee noted that KRC had constituted a debt collection committee to pursue the outstanding debts. It had also instituted other measures including legal remedies and exercise of lien on properties to recover the debts.

Committee Recommendation

1506. The Committee recommends that KRC submits a report on the status of debt collection within six months of adoption of this report. The OAG to keep in view of this query in the subsequent financial year.

323. Unsupported Railway Operational Expenses

1507. As disclosed under Note 10 to the financial statements, the statement of profit or loss and other comprehensive income reflects rail operational expenses amounting to Kes. 19,508,883,584. The expenditure includes SGR Insurance, channel occupancy, Excess freight and Opex Indexation of Kes.1,768,315,Kes.28,373,560,Kes.6,618,418,975 and Kes. 1,392,677,882 respectively all totaling to Kes. 8,041,238,732However, documents in support of the expenditure were not provided for audit review.Consequently, the accuracy and validity of the reported railway operational expenditure of Kes. 19,508,883,584 for the year ended 30 June, 2020 could not be confirmed.

Management Response

The Accounting Officer submitted as follows—

1508. The amount of Kes 8,041,238,732 relates to accruals in relation to SGR variable costs and the support documents have been shared with the OAG team. These costs are accrued based on the SGR O & M Contract agreement which is prudent accounting treatment. This is to ensure that expenses that are incurred in an accounting period should be matching with the revenue earned during that period even if invoices are not provided. The operator incurs certain amounts to ensure smooth running of

operations on a reimbursable basis. There is also a variable charge for all freight as per the revised agreement.

1509. The explanation provided below explains the basis to accrue the costs as they directly relate to the SGR Operations, as follows—

(i) SGR Insurance - These relates to the cost of all property all risk insurance & Machinery breakdown insurance

(ii) SGR Channel Occupancy- Relates to cost incurred to provide independent radio frequency channel by the Communication Authority of Kenya (CAK) for the train radio calls.

(iii) SGR Opex Indexation cost - This relates to the cost escalation of the fixed cost element as a consequence of inflation based on the KNBS and China Producer Price Index (PPI).

(iv) SGR Excess Freight Relates to variable component of freight. This is charged per TEUS for containers and per ton for conventional cargo.

1510. The cost accrued above are captured accurately based on the contract terms and awaiting an invoice from the Operator. The invoices have subsequently been provided by the Operator and the accruals reversed in the KR books.

Committee observation

1511. The Committee observed that the query was not in the subsequent financial year 2019/2020, as the schedule of the expenses had been provided to the Office of the Auditor General and the matter was closed.

324. Unreconciled Standard Gauge Railway (SGR)- Freight Revenue

1512. As disclosed in Note 5(i) to the financial statements, the statement of profit or loss and other comprehensive income reflects main income of Kes. 14,585,953,594. The balance includes SGR freight revenue of Kes. 11,984,160,317 which differs with the Kenya Ports Authority (KPA) revenue amount of Kes. 8,883,724,017 resulting to an unreconciled variance of Kes.

3,100,436,300. Further, although the Corporation generates invoices to KPA using the Freight Management System (FMS), the debtor's statement indicating the level of indebtedness was not provided for audit review. In the circumstances, the accuracy and completeness of the reported main income of Kes. 4,585,953,594 for the year ended 30 June, 2020 could not be confirmed.

Management Response

1513. KRC is a common carrier. It transports goods for any customer who meets the threshold, general terms and conditions. Besides KPA which is a major customer, Kenya Railways also engages other customers especially for non-containerized goods that do not go through KPA. The difference is in respect to conventional cargo volumes where KRC has directly contracted customers E.g. Grain Bulk Handling Ltd and Auto-Port Ltd. It may then not appropriate to compare Total Freight sales for KRC with a single customer (KPA) as conventional cargo handlers are not under the KPA billing and revenue collection process. Notwithstanding the above, In the Financial Statements SGR revenue as disclosed in Note 5(a) was Kes 13,324,696,981.

1514. KRC was therefore unable to establish the makeup of Kes 8,391,554,200 stated above. Additionally, KRC had no make-up of the Kes 8,883,724,017 reported by KPA to facilitate a reconciliation of the billings. The Accounting Officer submitted that the SGR revenue as reported in the Financial Statements is fully supported with schedules that were shared with the Office Auditor General.

Committee Observation

1515. The Committee noted that there was a variance in KRC book of Accounts that requires reconciliation.

Committee Recommendation

1516. The Committee directs KRC, KPA and OAG to have a joint engagement with a view of reconciling variance in the books of accounts within six months of adoption of this report.

1517. The Committee directs the Accounting Officer to submit a report on the correct position of the SGR Revenues in the books of account within six (6) months of adoption of this report to the OAG for verification.

325. Standard Gauge Railway (SGR) Sales

1518. As disclosed in Note 5(i) to the financial statements, the Standard Gauge Railway (SGR) sales of Kes. 13,324,696,981 includes an amount of Kes. 1,245,524,892 being passenger income. However, the passenger sales record indicated total daily sales of Kes. 1,248,607,062 resulting to an unexplained difference of Kes. 3,082,170.

Management Response

The Accounting Officer submitted as follows—

1519. The corporation had provided to the OAG team the explanation to the difference of Kes 3,082,170. The schedule provided indicates gross bookings, cancellations and net bookings. For purposes of revenue recognition for passenger sales, the Corporation reports revenue on actual travels based on passenger manifest. Owing to advance booking of up to 3 months, there are provisions for cancellation of tickets. These refunds are excluded from reported revenue. The Kes. 3,082,170 /- relates to refunds excluded from revenue. The passenger revenue reported is accurate and fully supported.

Committee observation and Recommendations

1520. The Committee noted that the actual revenue reported by KRC excluded the advance bookings that were liable to cancellations hence the matter is resolved.

Other Matter

326. Land Compensation

1521. The Standard Gauge Railway (SGR) land compensations effected by the Commission between December, 2014 and October, 2016 had the following inconsistencies:

326.1. Unsupported Payments

1522. Included in the Capital Works-in-Progress balance of Kes. 255,684,157,875 (2019-Kes. 673,287,818,576) is an amount of Kes. 12,000,000,000 being land compensation under SGR Phase 1. However, the supporting documents for compensations amounting to Kes. 1,043,439,897 to Project Affected Persons (PAPS) including list of the beneficiaries; copies of National Identity Cards, Personal Identification Number (PIN) certificates and title deed surrenders from the National Land Commission were not provided for audit review.

326.2. Overpayments

1523. Overpayments of Kes. 14,669,748 were made to PAPS who were paid Kes. 15,752,406 instead of the entitlement Kes. 1,082,658. Although recovery of Kes. 5,698,770 has been subsequently made, a balance of Kes. 8,970,978 was outstanding as at 30 June, 2020.In the circumstances, the accuracy and propriety of the unsupported payments and overpayments of Kes. 1,043,439,897 and Kes. 8,970,978 respectively on land compensation could not be confirmed.

Management Response on Unsupported Payments - Kes 1,043,439,897

The Accounting Officer submitted that—

1524. 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 provided 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.

1525. The disbursement process to the Project Affected Persons (PAPS) began in December 2014. Kenya Railways (KR) received correspondence from the National Land Commission (NLC) which had compensations schedules. The schedule had a list of PAPs, location and amount to be compensated for land and or developments. 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."

1526. 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.

1527. The controls deployed by KR in the disbursement process were to ensure that the PAPs names and amounts compensated for land and or developments acquired matched compensation schedules provided by NLC. KR also ensured that the wire transfers was to bank details provided by PAPs as per the filled forms.KR also worked closely with its main bankers KCB and other banks to ensure that compensation monies went to the rightful beneficiaries by confirming bank details name and account numbers in advance.

1528. KR also followed a documented Standard Operating Procedure (SOP) which required NLC to approve all payments before KR released the same to PAPs bank accounts. This ensured that NLC had direct supervision over the disbursement in the land acquisition process.

1529. The Kes. 1,043,439, 897.00 payments related to the 1st payment processed in the compensation exercise on behalf of NLC. KR roles were mainly disbursement upon confirmation that the names of the PAPs appear in the NLC compensation schedules. Notable is that despite the documents i.e. ID copy and KRA PIN certificates not being attached in the first payment, KR applied compensatory control measures to ensure that the details filled on the form were authenticated by use of the relevant/ authentic government ICT platforms. For the PAPs National ID card numbers given on the payment schedules, they were cross-checked on the e-citizen platform to confirm that they were matching. The cross-checking was also done on the PAPs

KRA PINs on the i-tax pin-checker platform to confirm that the details are also matching with the NLC payment schedules.

Response on Overpayments of Kes. 8,970,978.00

1530. The breakdown of the **Kes. 8,970,978.00** overpayments are as tabulated below:

No.		Amount(Kes.)	Explanation
1	Refunned Amounts	4,456,770	KR made reasonable efforts to recover the funds from Esukuta Springs after NLC made the request after disbursements. The amounts can only be recovered by NLC under the existing provisions of the Act.
2	Repeated in Audit Report	556,370	Out of the overpayment figure quoted of Kes 8.9 million, an amount of Kes. 556,370.00 was duplicated in the audit report. The Kes 8.9M should thus be adjusted with this.
3	Resolved Amounts	3,867,858	These amounts were listed in the payment schedule. However, NLC is to recover as per the Land Act.
	Total	**8,970,978**	

1531. During hand over of the disbursement process on 10th November 2016 KR handed over to NLC to further action on the unresolved areas of disbursements. NLC is by law mandated to recover such overpayments whenever they occur.

Committee Observation and recommendation.

1532. The Committee noted that the Accounting Officer submitted details of the Project Affected Persons as required, including the award letters, identification cards, KRA pin certificates and bank account details.

1533. The Committee further noted that the submission by the Accounting Officer on compensation of the Project Affected persons was satisfactory hence the matter is resolved.

FINANCIAL YEAR 2020/2021

327. Unsupported Prior Period Adjustment

1534. The statement of changes in equity for the year ended 30 June, 2021 reflects a prior period adjustment of Kes.1,812,334,744. However, Management did not provide journal vouchers to support this prior period adjustment. This is contrary to International Accounting Standard (IAS) 8 which requires restating the comparative amounts for the prior period 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. In the circumstances, the accuracy and completeness of the prior period adjustment of Kes.1,812,334,744 could not be confirmed.

Management Response

The Accounting Officer submitted the following:-

1535. The Corporation makes prior year adjustment on material items that relate to material item of the income statement relating to a period other than the current. The adjusting journal is detailed on note 18 of the financial statement, the adjustments related to the following items;

Prior year adjustments

Depreciation on SGR assets	(3,572,460,745)
Deferred Income for 2019-2020	1,483,283,338
Deferred Income 2018-2019	276,842,663

Total Prior year adjustments	(1,812,334,744)

1536. There was a re-computation of the SOR annual depreciation arising from granular de-clustering of the heterogeneous sub asset categories. The assets have now been depreciated using the engineering design life for each asset as opposed to the whole subsets. That resulted to understatement of depreciation for the previous years. Consequently, the deferred income was equally understated in the previous FY 2019-2020 and FY2018-2019 as shown above.

1537. The treatment for the above in FY 2020-2021 Financial Statements as explained above is in accordance to IAS 8.42. However, there are exceptions to rule as per IAS 8.49 which states that if the retrospective is impracticable, an explanation and description of how the error has been corrected can be provided.

1538. In this case, the Corporation finds the error impracticable to restate due to the following factors:

i. The information on individual assets design life of the assets was not fully available to the Corporation
ii. The financial statements for the FY 2020-2021 have already been relied upon by various government agencies.
iii. The change is material in nature resulting to a significant change in the Income Statement.

1539. Based on the above, the Corporation has provided an explanation and made a disclosure on the treatment of the prior year adjustment. The Statement of Changes in Equity (Note 15) and separately on note 18 of FY 2020/21 Financial Statements.

Committee Observation and Recommendation

1540. The Committee noted that the submissions by the Accounting Officer on the treatment of the prior year adjustments was satisfactory hence the matter is resolved.

328. Standard Gauge Railway (SGR) Revenues

1541. The statement of profit or loss and other comprehensive income reflects main income amount of Kes.17,495,923,566 as disclosed in Note 5 to the financial statements which includes SGR revenues amounting to Kes.14,507,825,953. However, the following anomalies were noted.

328.1. Unsupported SGR Parking Revenue

1542. Included in the Standard Gauge Railway (SGR) revenues is an amount of Kes.1,712,310 described as unidentified parking fees. However, Management did not provide the system generated SGR daily collection summaries and banking slips to support these parking fees. In the circumstances, the accuracy and completeness of the unidentified parking fees amount of Kes.1,712,310 could not be confirmed.

Management Response

The Accounting Officer submitted as follows—

1543. The Corporation was manually collecting parking fees from the station using parking clerks. These clerks were expected to bank directly and on a daily basis all cash collections clearly indicating parking collections as a narration in the bank. Periodically, the Corporation did a reconciliation of the manual parking records and the banking. The outcome of the reconciliation was an excess banking of Kes 1.7 million above the manual records over a period. This was treated as revenue that could not be tied to any particular parking point thus the description of unidentified parking revenue.

1544. It was noted that the description may not have been appropriate but the revenue was valid. The parking process is now robust with controls including serialized parking tickets, daily parking revenue and banking report and improved supervision by the regional accountants.

Committee Observation and Recommendation

1545. The Committee observed from the submission of the Accounting Officer at the time of the examination that the manual collection of parking fees had been replaced with robust serialized parking tickets, daily parking revenue and banking report and improved supervision by the regional accountants hence the matter is resolved.

328.2. Unsupported SGR Passenger Income

1546. Included in the SGR revenues amount of Kes.14,507,825,953 is an SGR passenger income of Kes.1,369,714,160, out of which income amounting to Kes.1,321,041,380 was not supported with system or manually generated SGR daily passenger records and extracts or passenger travel manifests and as such, it was not possible to confirm the of the amounts posted and as indicated in the ledgers provided for audit.In the circumstances, the completeness and accuracy of the SGR passenger income amounting to Kes.1,321,041,380 could not be confirmed.

Management Response:

1547. KR took over passenger services ticketing in March 2021 from the SGR Operator. The system passenger classification records from March 2021 to June 2021 were thus in custody of KR and were availed to the auditors. However, the prior period records could not be accessed as the SGR Operator had not consented at the time of completion of the audit. The records sought supports passenger bookings in general whereas the KR passenger revenues are reported based on passenger travels. The booking support daily collection whereas revenue is supported by a daily train manifest report. A schedule of all daily travel revenues was availed to support the reported figures.

Committee observation and Recommendation

1548. The Committee noted that the actual revenue reported by KRC excluded the advance bookings that were liable to cancellations hence the matter is resolved.

328.3. Unreconciled Kenya Ports Authority Revenue

1549. Included in the amount of SGR revenues of Kes.14,507,825,953 is an amount of SGR freight revenue of Kes.12,081,743,595 received from the Kenya Ports Authority (KPA). However, records maintained at KPA revealed that the reported SGR freight paid to the Corporation amounted to Kes.14,308,854,700 thus resulting to an unreconciled variance of Kes.2,227,111,105.In the circumstances, the completeness and accuracy

and of SGR freight revenue of Kes.12,081,743,595 from the Kenya Ports Authority could not be confirmed.

Management Response

The Accounting Officer submitted as follows—

1550. Kenya Railways is a common carrier. It transports goods for any customer who meets the threshold, general terms and conditions. Besides KPA which is a major customer, Kenya Railways also engages other customers especially for non-containerized goods that do not go through KPA. The difference is in respect to conventional cargo volumes where KRC has directly contracted customers E.g. GBHL and Auto port. It may then not appropriate to compare Total Freight sales for KRC with a single customer (KPA).

1551. Additionally, the revenue recognition basis is fundamentally different between KPA and KRC. KRC recognizes revenue on train transportation. KPA on the other hand recognizes revenue on ICD / port exits. There are other factors including custom procedures, import/export returns and none clearance that would make the figures different.

1552. Additionally, KPA did not share the make-up of the Kes 14,308,854,700. KPA is therefore unable to establish the makeup of Kes. 2,227,111,105 stated above by way of reconciliation SGR revenue is fully supported by granular per wagon per day schedules. The issue is that the figures being compared is collections which is an account receivable issue and revenue. Ordinarily in a none cash based sales transaction where there is a receivable, a difference is expected between revenues recognized and payments received. The teams of KPA and KRC continue to have a quarterly reconciliation of both revenues and receivables

Committee Observation

1553. The Committee noted that there was a variance in KRC book of Accounts that requires reconciliation.

Committee Recommendation

1554. The Committee directs KRC, KPA and OAG to have a joint engagement with a view of reconciling variance in the books of accounts within six months of adoption of this report.

1555. The Committee directs the Accounting Officer to submit a report on the correct position of the KPA Revenues in the books of account within six (6) months of adoption of this report to the OAG for verification.

329. Property Plant and Equipment

329.1. Unsupported Adjustment

1556. The statement of financial position reflects property, plant and equipment balance of Kes.582,737,040,996 as disclosed in Note 19 to the financial statements. However, the movement schedule at Note 19a to the financial statements reflects an unsupported adjustment of Kes.267,109,382.In the circumstances, the accuracy of the adjustment of Kes.267,109,382 could not be confirmed.

Management Response

1557. The Accounting Officer submitted that this was a reclassification of GOK grant erroneously posted under PPE to Deferred Income.

329.2. Illegal Allocation of Land

1558. Included in property, plant and equipment balance of Kes.582,737,040,996 as disclosed in Note 19 to the financial statements, is a balance of Kes.15,175,501 ,812 in respect of freehold land. However as previously reported, various parcels of land were allocated to third parties 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 nine (9) industrial plots measuring approximately three (3) acres; a piece of land within Kikuyu railway station measuring approximately two (2) acres; and parcels of land adjacent to Mombasa railway station measuring approximately 0.75 to one (1) acre were irregularly allocated to third parties with some having been developed.

1559. Further, another five hundred and twenty-nine (529) parcels of land were illegally allocated across the country. Management has sought court intervention to repossess twenty-seven (27) of the illegally allocated parcels as well as intervention of various Government agencies such as the Ethics and Anti-Corruption Commission, Ministry of Lands and Physical Planning,

National Land Commission and the Director of Survey to assist in the recovery of irregularly allocated land.

1560. Despite various measures put in place by Management to recover the irregularly allocated land, many parcels of land belonging to the Corporation are yet to be recovered.

Management Response

The Accounting Officer acknowledged the observations made by the Auditor and responded as follows:

Limuru

1561. Beyond the initial objective of the Kenya Uganda Railway of connecting the two countries, it became apparent that the provision of warehouse plots, go-down plots and industrial plots served with rail sidings was necessary for further expansion of Commerce and Trade in Kenya. The Government of Kenya availed land to Kenya Railways for development and administration of rail served industrial and warehouse plots across the country. The total land reserved for Railway administration within Limuru Railway Station as per Railway drawing No. 4327/3 of 29th April 1936 amounted to 40 acres approximately.

1562. The Government set aside 1.05 acres of land to Kenya Railways for Go-down plots in Limuru. The land was further subdivided into eight industrial plots- No. 7882/2-9 (Plots 7882/9 was consolidated with additional area to form 7882/10 in the year 1975). The balance of the land has been surveyed and documented as per Survey plan 481/86 with an area of 15.86 ha (39.19 acres). The Corporation is progressing issuance of title deed for the land through the National Land Commission and the Ministry of Lands and Physical Planning.

1563. Kenya Railways issued leasehold grants to interested developers for development of Go-downs and warehouses for a term of 99 years with effect from 1st June 1948. The leases were later registered with the Commissioner of Lands. The grantees pay basic land rent to the Corporation which holds the freehold interest over the properties. **(See Appendix 4 leases on plot 7882/7).**

Acc.No.	Name	LR/Plot	Are	Asset	Seri	Owners

		No.	a Acs.	No.	al No.	hip Status
LC/NRB/LMU/LMU/798	Prabhudas Thakker And Vipool	7882/2	0.12 63	LCNRB 286	194 26	Under Kenya Railways
LC/NRB/LMU/LMU/797	Umuru Tibiya General Store	7882/3	0.12 63	LCNRB 284	194 25	Under Kenya Railways
LC/NRB/LMU/LMU/799	Umuru Tibiya Gen.Store	7882/4	0.12 63	LCNRB 287	194 27	Under Kenya Railways
LC/NRB/LMU/LMU/800	Hassan Ali & Mohammed A. Awale	7882/5	0.12 63	LCNRB 288	194 28	Under Kenya Railways
LC/NRB/LMU/LMU/802	Umuru Pyrethrum Growers Co-Op	7882/6	0.14 75	LCNRB 290	194 30	Under Kenya Railways
LC/NRB/LMU/LMU/801	Umuru Dairy Farmers Co-Op Soc	7882/7 &8	0.22 96	LCNRB 289	194 29	Under Kenya Railways
LC/NRB/LMU/LMU/796	Vipool Prabudas & Rajesh Prabudas	7882/10	0.17	LCNRB 285	194 24	Under Kenya Railways

The above parcels of land are therefore still under the administration of Kenya Railways as entrusted by the Government of Kenya.

Kikuyu

1564. The total land reserved for Kikuyu Railways Station as per Kikuyu Trading Centre approved Development Plan No.13 of 14th March 1957 is

approximately 12.5 Hectares (30.9 Acres) A survey was done in 1961 and a survey plan F/R No 96/21 was produced affirming and documenting the land area of 30.9 Acres. Due to increased demand for rail served industrial and Godown plots, Kenya Railways further set aside approximately 5 acres of land within Kikuyu Railway Station for industrial and Godown plots. The balance of 25.8 acres still remains as railway operational land. The land has since been surveyed and submitted to the Director of Surveys for authentication and registration.

1565. The 5 acres' land was subdivided into 23 portions-KYU/TOWN/158-180.The portions of land were later allocated to interested developers on leasehold grants for between 65-70 years from 1982. The leases were registered with the Commissioner of lands. The Corporation holds the freehold interests over the land and receives basic land rent from the grantees. Among the grantees some have since put up Godowns and other industrial developments as per the special conditions of the grants. Other portions remain vacant and undeveloped.

1566. The parcels of Kikuyu Railways Station land are still under the administration of Kenya Railways as entrusted by the Government of Kenya and have fully been accounted for.

Mombasa Railway Station- Mombasa Block XIV/84

1567. Mombasa Railway Station land measures approximately 36.94 acres (14.95 ha). This includes Mombasa Marshalling yard area, the railway station area, residential houses area and the Mombasa region office area. The land has been surveyed and area documented as per the Survey plan No. 389/44 and 188/60. The subject property - Mombasa Block XIV/84 is within Mombasa Railway Station along Mijikenda Street. It has an uncompleted warehouse development. The piece of land measures approximately 0.2935 ha (0.725 acs.).

1568. The property was initially leased out to M/s Kwale Saw Mills (Ramanbhai Dalabhai Patel and Ghanshyam Ramanbhai Patel) as a timber stacking yard in 1974. M/s Kwale Saw Mills later applied for a long lease. They were later allegedly issued with a 99 years lease in 1988 at a yearly rent of **Kes.**

36,200.00. The lease was registered on or about the 2nd of November, 1988 and a certificate of lease issued on 12th September, 2002.

1569. The long lease was however granted contrary to provisions of Sec 13 (2) (h) of the Kenya Railways Act, which stipulates that the Boards approval and Ministerial consent have to be obtained before a long lease is granted and hence the process was irregular. The Corporation later filed a suit against Kwale Saw Mills for recovery of the land on 27th August 2004. Kenya Railways further sought injunctive orders pending hearing and determination of the suit restraining the defendants from selling or alienating the said piece of land and continuing with the construction works. The matter is still in Court pending determination. The Corporation has been in negotiations with the defendants in order to have the long-standing matter settled amicably and secure the interests of the Corporation

529 No parcels of Irregularly Allocated Land

1570. It was further determined that over time, the Commissioner of Lands and Local Authorities went beyond their powers and irregularly allocated over Five Hundred Parcels of land within railway land. This was mainly attributed to the fact that Kenya Railways Operational Land had not been surveyed and was vested to the Corporation under a vesting Order. From early 90s unscrupulous Government officials took advantage and allocated the Corporation's land without the knowledge of Kenya Railways.

Current Measures taken by KR to secure the Land

1571. The Corporation has further instituted measures to ensure that Kenya Railways Land is secured across the country. The Corporation is undertaking Survey and registration to obtain title deeds for all Operational Land that had never been previously surveyed. To achieve this objective, the Corporation engaged four surveying Consultants to undertake countrywide survey of all operational land. The land consists of all railway station reserves, marshalling yards and any other un-surveyed operational land adding to a total of 150 parcels of land and approximately 2700 acres.

1. Geodev (K) Limited

2. Geoflex Consultants
3. Precision Instruments Ltd.
4. Geosurv Systems Limited

1572. The Terms of Reference for the above consultancy was to carry out survey and registration of KR landed asset portfolio for purposes of obtaining ownership documents (Title deeds) as guided by the Survey Manual, Survey Act, Land Act 2012, the Physical Planning Act and any other relevant regulation.

1573. Surveys of 150 parcels of land have been completed with a total of 144 out of 150 (96 %) Stations and Marshalling yards authenticated at the Director of Surveys. 65 certificates of title have been processed and submitted to the Corporation. 62 title documents are pending registration at the Ministry of Lands and Physical Planning and 17 documents are yet to be processed at the Ministry of Lands. The Corporation through the office of the Director of Surveys has ensured that overlapping irregular surveys within Railway Operational Land as originally reserved will be cancelled and land documented under Kenya Railways.

1574. The Corporation has further engaged various agencies (EACC, Courts, Ministry of Lands and NLC) in the recovery of irregularly allocated land. This has seen some irregularly allocated land in Kisumu, Nairobi and Mombasa revert to the Corporation. Several suits are also pending determination in courts.The Corporation is also in the process of rehabilitating and revitalizing the Meter Gauge Railway System across the Country.

1. Nairobi-Nanyuki branch line-completed and operational.
2. Nakuru-Kisumu branch Line-Ongoing
3. Kisumu-Butere branch Line-Ongoing
4. Leseru-Kitale branch Line-Ongoing
5. Gilgil-Nyahururu branch Line-Ongoing

1575. To ensure security of operations the Corporation has embarked on reclaiming all encroached land and securing the land through fencing. This has ensured that the Corporation remains in possession of the land and deter unauthorized interference with railway land.

Committee Observations

1576. The Committee noted that the submission by the Accounting Officer was unsatisfactory.

Committee Recommendations

1577. The Committee recommends that the Accounting Officer should submit to the OAG lease agreements or title deeds and a schedule on confirmation of revenue received by KRC from the parcels of land in question for verification within six months of adoption of this report.

1578. The OAG to keep in view of this query in the subsequent financial year as the matter is unresolved.

329.3. Land in Dispute and Unbilled Leases

1579. As previously reported, leases with accumulated charges of Kes.151,089,253 in Mombasa have been in dispute since 2013. The tenants have not been paying their lease dues thereby denying the Corporation the much-needed revenue. Further, tenants who were given lease accounts in 2018 were not fully invoiced and the Corporation lost about Kes.10,049,600 annually from non-billing. Management had not demonstrated the action being taken to correct the anomaly.

Management Response

1580. The Accounting Officer submitted that the tenants in the subject properties rejected the reviewed rates and filed a suit in court. A case in point is case number: *CASE NO.CMCC NO E11771 OF 2021-NAIROBI - CASSMAN BROWN T/A FALLBROOK INVESTMENTS LTD VS KENYA RAILWAYS CORPORATION & ANOTHER*

1581. However, the Corporation is constantly engaging them with a view of negotiating towards settling for an acceptable rate for all parties. A negotiation exercise was conducted in 2019 however, some tenants rejected to engage. The Corporation continues to engage them constantly

to open up for negotiations. The Corporation also takes advantage of the requests for renewal, consents and any other requests done by the tenants to negotiate and settle for a rate that is acceptable to all parties.

1582. On the issue of unbilled leases, these were lease allocations that had been granted but the tenants had not taken possession because of the pending administrative activity pegging. Most have now been regularized and billing is up to date save for one account that was closed as shown below:

LC/CST /MSA/SHZ/10	FAIR OAKS LTD	LCM SA3 23	34872	10-01-18	2,100,000	Account was a duplicate of LC/CST/MSA/SHZ/11. It was closed.
LC/CST /MSA/SHZ/11	FAIR OAKS LTD	LCM SA3 23	34873	10-01-18	2,100,000	The billing is up to date
LC/CST /CGW/CGW/43	ISIR DEVELOPERS LIMITED	LCC GW 80	35273	11-01-18	1,200,000	The billing is up to date
LC/CST /MSA/MRK/4	MBARAKI BULK TERMINAL LTD	LCM SA3 25	34882	10-01-18	1,200,000	The billing is up to date
LC/CST /MSA/SHZ/14	CLINGTON MWANYAMBO MWAWUGHANGA	LCM SA3 28	34887	10-01-18	1,200,000	Account Closed
LC/CST /MSA/GJN/5	CASTLEPORT LTD	LCM SA3 27	34884	10-01-18	408,000	The billing is up to date

LC/CST /MSA/ MRK/3	KENCONT LOGISTICS SERVICES LTD	LCM SA3 22	34741	10-01-18	460,000	The billing is up to date
LC/CST /MSA/ MKI/2	MOHAMMED HURI IBRAHIM	LCM SA3 19	34703	11-01-18	123,600	The billing is up to date
LC/CST /MSA/ MKP/9	GOODNEWS EVANGELISTIC CHURCH	LCM SA3 17	33784	04-01-18	102,000	The billing is up to date
LC/CST /MSA/ GJN/4	UGANDA PROPERTIES HOLDINGS	LCM SA3 18	34677	10-01-18	320,000	The billing is up to date
LC/CST /MSA/S TN/4	DABEL CONSTRUCTIO N LIMITED	LCM SA3 20	34716	11-01-18	816,000	The billing is up to date
Total					**10,049,600**	

Committee Observations

1583. The Committee noted at the time of examination that some accounts had been regularized. However, KRC was yet to settle with some tenants who had sort recourse from court and the matter is pending before court.

Committee Recommendations

1584. The Committee recommends that the matter is not resolved.

1585. Further, the Committee recommends that the Accounting Officer to submit a status report on the matter to the OAG within six months of adoption of this Report for verification.

329.4. Encroachment of Land (Ziwani Nakuru)

1586. As previously reported, land measuring approximately seven (7) acres in Nakuru Ziwani estate belonging to the Corporation has been encroached

on by the County Government of Nakuru and currently used as Bus Park. The land had been allocated to tenants on a long-term lease of 25 years with a Kes.37,500,000 having been paid as premium and an annual rent of Kes.13,300,002. Management has not explained the steps being taken to revert the land to the tenants. Further, the Corporation continues to lose the opportunity to collect the annual rent of Kes.13,300,002.

Management Response

1587. The County Government of Nakuru in an effort to decongest the town as a measure to control the spread of the deadly and highly infectious Corona Virus Pandemic without notice relocated the bus stage to Ziwani estate. Nonetheless, the Corporation and the County Government of Nakuru entered into Memorandum of Understanding with the Corporation in which it was agreed that the County vacates the land once the pandemic is controlled under the following clause as per attached MOU which is awaiting by the County.

1588. "CGN undertakes to indemnify KR from claims by tenants whose tenancies have been discontinued because of the actions by the County Government, the CGN further voluntarily commits to deposit Kes. 17,300,000/=being a deposit equivalent to annual rent payable in the three parcels as follows; Ziwani Estate Kes.9,000,000/= per annum, Kisulisuli Kes. 1,500,000/= per annum, and Station area Kes. 6,800,000 per annum""The Corporation also wrote to the Ministry of Interior, MoTI-HUD and Treasury to resolve the matter.

Committee Observation

1589. The Committee noted that the submission on encroachment of the land by the Accounting Officer was unsatisfactory.

Committee Recommendation

1590. The Committee recommends that the Accounting Officer should submit a report on the current status of Ziwani Nakuru area land to the OAG within three(3) months of adoption of this report.

329.5. Encroachment of Land at Nakuru Station Area

1591. Similarly, as previously reported, land measuring eighty (80) acres at Nakuru Railway Station had been leased on Temporary Occupation Lease (TOL) basis. However, the County Government of Nakuru has encroached on ten (10) acres from the parcel of land. The Corporation has demolished the buildings on the remaining portion with a projected annual rental income of Kes.5,655,688. However, Management did not explain the actions being taken to remedy this encroachment.

Management Response

1592. The County Government of Nakuru in an effort to decongest the town as a measure to control the spread of the deadly and highly infectious Corona Virus Pandemic without notice relocated the bus stage to Nakuru station area(part).The TOLS were cleared in on the ongoing countrywide demolition exercise which is expected to clear the railway corridor.

1593. The Corporation gave the County an offer for lease of 3.5 acres of land which they partially honoured by paying annual rent only. Nonetheless, the Corporation and the County Government of Nakuru entered into Memorandum of understanding with the Corporation in which it was agreed that the County vacates the land once the pandemic is controlled and contained but they should pay the Corporation. The Corporation also wrote to the Ministry of Interior, MoTI-HUD and Treasury to resolve the matter.

Committee Observation

1594. The Committee noted that the submission on encroachment of the land by the Accounting Officer was unsatisfactory.

Committee Recommendations

1595. The Committee recommends that the Accounting Officer should submit a report on the current status of Nakuru station area land and the status of encroachment of ERC land by Nakuru County government to the OAG within three(3) months of adoption of this report.

329.6. Encroachment of Malaba Apartments

1596. As previously reported, the Corporation renovated 24 units of two (2) bedroom apartments at Malaba but the apartments have remained

unoccupied. Other than loss of revenue annually, the units are deteriorating due to non-occupancy. Further, four (4) buildings in Malaba have been encroached by private occupants. Management did not explain the actions being taken to remedy this encroachment.

Management Response

1597. The apartments were renovated and completed however there were outstanding to do with lack of water supply and electricity in the houses. Water being a basic requirement did not make the houses attractive coupled with the Covid pandemic therefore the houses remained unoccupied. Management has now been able to resolve the water problem by overhauling the water reticulation system which was completed in November 2020. Management has also undertaken repair of the faulty wiring and installed the missing power meters this exercise was completed on the second week of March 2021.

1598. 21 units had been leased out, the remaining 3 units KRC 17314, KRC 17315 and KRC 17316 are occupied by Kenya Railways operational staff working in Meter Gauge Railway awaiting completion of Malaba Running room considering the staff are posted to handle operations which run 24 hours.Internal review of the project has been done and lessons learned from the project to avert a repeat of the same issues that affected the delivery of the project objective at the earliest.

Committee Observation and Recommendation

1599. At the time of examination, the Committee observed from the submission of the Accounting Officer that the Malaba apartments was fully occupied after the challenge of water was solved hence the matter is resolved.

329.7. Forceful Occupation of Residential Buildings in Kisumu

1600. Further, as previously reported, some two hundred and forty-seven (247) residential units in Kisumu have been forcefully occupied by organizations with no lease agreements and therefore not paying rent thereby exposing the Corporation to loss of rent to the tune of Kes. 27,435,600 annually.In the circumstances, the accuracy and completeness of the property, plant and equipment balance of Kes. 15,175,501,812 could not be confirmed.

Management Response

1601. The houses in Kisumu had been vacated to facilitate revitalization of the port. During the revitalization, there were various government agencies facilitating the exercise to ensure its success. They were subsequently allocated to security personnel and other personnel who were part of the Kisumu Port revitalization exercise. Kisumu Port has been operationalized. This is because the port is a high security area which cannot allow for leasing by people other than those with port passes.

1602. KR was in the process of regularizing tenancy agreements with the occupants in an arm's length transaction.

Committee Observations

1603. The Committee observed that the management was yet to regularize the tenancy agreements on the occupied houses.

Committee Recommendation

1604. The Committee recommends that the Accounting Officer should submit a progress report on the status of the tenancy agreement for verification to the OAG within three months of adoption of this report.

330. Unsupported Short-Term Investments

1605. The statement of financial position reflects short-term investments balance of Ksh. 3,000,000,000, as disclosed in Note 25 to the financial statements. As previously reported, this balance excludes a balance of Kes.204,643,995 under fixed deposit with Chase Bank Limited (in Receivership). This amount

was subsequently transferred to SBM Bank in an arrangement where 75% of the value of deposits was taken over by the bank to be made available over a 3-year period, while the balance representing 25% of the deposit remained under moratorium and whose accessibility remains uncertain. The Management treated the balance of Kes.204,643,995 in Chase Bank as a bad debt on account that its recoverability is doubtful as disclosed in paragraph 8.4 on the major risks facing the Corporation on the Management discussion section of the financial statements.

1606. However, Management did not provide the necessary approvals from the Board for audit to support this decisionIn the circumstances, the completeness and accuracy of the short-term investment balance of Kes. 3,000,000,000 could not be confirmed.

Management Response

The Accounting Officer acknowledged the observations made by the Office of the Auditor General and responded as follows.

1607. The amount due from Chase Bank has been classified under guarantees. The main reason for this classification and accounting is that it is not interest earning and its recoverability is in doubt so it does not fall under the description of a Short-Term Investment as per IFRS 9

1608. According to IFRS, Short-Term Investments are classified as either "held for trading" or "available for sale." Held for trading investments are those that are actively traded in a market and are held with the intention of making a profit on short-term fluctuations in price. Available for sale investments are those that are not held for trading, but are held with the intention of selling them in the short term if needed.

Background

1609. The Corporation had invested Kes 300,000,000 with Chase Bank in November 2015 for a period of 6 months and Kes 500,000,000 in March 2016 for a period of 3 months. The bank was placed under receivership on 7th April 2016 before the maturity of these two deposits. The funds had earned interest of Kes 18,575,978.65 as at this date. Kenya Deposit Insurance Corporation (KDIC) was then appointed to assume management and control of the bank with effect from 18th April 2016.

1610. The details of Kes 818,575,979 reported in the Financial Statement are as follows:

	AMOUNT (Kes)	INTEREST RATE	EFFECTIVE DATE	TENOR PERIOD
Fixed Deposit	500,000,000.00	13%	19.03.16	3 months
Fixed Deposit	300,000,000.00	18%	12.11.15	6 months
Interest accrued	18,575,978.65			Holdover Account
Total	**818,575,978.65**			

1611. Subsequently on 17th April 2018, the Central Bank of Kenya (CBK) and Kenya Deposit Insurance Corporation (KDIC) announced the signing of an agreement between SBM Bank (Kenya) Limited 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 that there will be a transfer of 75 percent of the value of deposits currently under moratorium at CBLR, and the transfer of the majority of staff and branches of the existing CBLR operations. 25 percent of the value of moratorium deposits will remain in CBLR.

1612. As per the table below Kes 200,254,780.00 was the amount retained in Chase Bank in Receivership and (Kes 20,569,378.75 and Kes 600,764,345.00) totalling to Kes 621,333,723.75 was the amount transferred to SBM Bank.

A/C Nos	**Balance as at 30.06.18** Kes	**Transfer to Non Moratorium** Kes	**Amount under Moratorium Kes**	**KDIC (Chase bank IR) 25% of Moratorium funds** Kes	**Transfer to SBM Bank (75% of Moratorium funds)** Kes
83019 07806 0	300,000,000.00	1,000,000.00	**299,000,000.00**	74,750,000.00	224,250,000.00

83019 07806 2	500,000,000. 00	1,000,000.00	**499,000,000.0 0**	124,750,000. 00	374,250,000. 00
Liquid ation a/c	18,575,978.6 5	18,569,378.75	**3,019,125.00**	754,780.00	2,264,345.00
	818,575,978 .65	**20,569,378.75**	**801,019,125.0 0**	**200,254,780 .00**	**600,764,345 .00**

The funds transferred to SBM Bank of Kes 621,333,723.75 have been accessed.

1613. The figure in the Audit Report of Kes. 204,643,995 was erroneously arrived at after subjecting the whole balance of Kes 818,575,978.65 to the 75% and 25%, without considering funds transferred to the Non – moratorium of Kes 20,569,378.75. Therefore, the correct amounts under moratorium in Chase Bank (Kenya) Limited (In Receivership) is Kes 200,254,780.00 not Kes 204,643,995. The moratorium funds of Kes 200,254,780 still remains in Chase Bank In Receivership. As per the latest update by KDIC which was issued to the public on 10th May 2021, the liquidation process has commenced and the insured deposit balances will be paid equitably as and when the liquidator accumulates sufficient funds from the liquidation process.

1614. The Corporation is following up the liquidation process status with KDIC as it awaits the conclusion of the liquidation process upon which the accessibility of the funds will be known.

Committee Observations

1615. The Committee noted that there was lack of prudence in the management exemplified by an inconsistency on the motive of the decision to deposit funds in Chase Bank since the bank was put under receivership shortly after.

1616. Further, the committee noted that the submission on the recoverability of the Kes 200, 254, 780 under Chase Bank was not sufficient.

1617. The committee observed that there was need for KRC to furnish the OAG with the Financial Statements of the company for the period prior to the investment deposit in Chase Bank.

Committee Recommendations

1618. The Committee reprimands the Accounting Officer for failing to undertake due diligence before investing the funds of the corporation hence exposing the corporation to a risk of losses.

1619. The Committee recommends that the Accounting Officer should submit a report on the current status of recovery of the invested funds within three months of adoption of this report to the OAG for verification.

331. Unsupported Store Inventories

1620. The statement of financial position reflects stores inventories balance of Kes.3,736,864,574 as disclosed in Note 23 to the financial statements. However, review of the stock taking report revealed that the physical stores inventories were valued at Kes.2,464,970,723, resulting to un-explained and unreconciled variance of Kes. 1,271,893,851. Further, included in the stores' inventories balance of Kes.3,736,864,574 is capital stores balance of Kes.3,358,444,946 which further includes goods in transit balance of Kes.482,494,860. However, Management did not provide any support documents for the goods in transit balance for audit. Under the circumstances, the accuracy and fair statement of inventories balance of Kes.3,736,864,574 could not be confirmed.

Management Response

The Accounting Officer acknowledged the auditor's observation and responded as follows;

1621. In the year under review, the Corporation initiated a stock take process, however, the stock counting process was not completed by the closure of the financial year under consideration

The following are reasons why the stock take process took long and it was not completed within the financial year under review:

i. **Post concession transition challenges** – initially the stores were manned by 24No staff, but during the concession transition process, the staff number were reduced to 2No staff who could not adequately handle the stores function appropriately, thus delay in the stock take process.

ii. **Preparatory works** – this being the inaugural comprehensive stock take (not sample stock taking), a lot of preparatory works needed to be done in readiness of stock take. This entailed bush clearing to access some inventories like permanent way materials which are stored outdoors. Because the stores were not properly arranged, there was a lot of sorting, categorization and classification of store items for ease of counting.

iii. **Complexity and uniqueness of KR Store items** – because of the specialized nature of Kenya railways operations, most the store items are locomotives spare parts which required mechanical technicians to identify and sort. Most of these mechanical technicians who had institution operation memory had been laid-off/ retrenched. The Corporation required approximately 20No mechanical technicians but only 4No were available to be engaged on temporary contractual arrangement, thus requiring more time for identification and sorting exercise.

iv. **Taking over of MGR stores after concession termination** – upon termination of Concession agreement and the concessionaire, RVR had to exit, and the Corporation was preparing to take over MGR stores which were in the custody of RVR for purpose of securing stock items from theft, thus time and manpower constraints.

1622. The Management had then aligned the management of stores. Adequate staff have now been posted to the various stock areas. Additionally the Corporation was in the process of implementing a new robust ERP that is capable of effectively handling stock unlike the current ERP that had not envisaged the stock complexities arising from running of MGR and SGR. The new system, SAP, was expected to be commissioned in quarter 4 of the Financial Year 2022-2023. As part of the migration of data, the Corporation would be undertaking a zero-based stock count. This will provide a platform to resolve all stock issues including obsolescence, non-identification and costing.

Committee Observation

1623. The committee noted at the time of examination that the Accounting Officer had put in place a new robust ERP system (SAP) capable of handling complex stock.

Committee Recommendation

1624. The Committee recommends that the matter is resolved and further directs the Accounting Officer to submit a comprehensive report on the inventories within three (3) months of adoption of this report to the OAG for verification.

332. Trade and Other Receivables

332.1. *Long Outstanding Trade and Other Receivables*

1625. The statement of financial position reflects trade and other receivables balance of Kes. 19,506,911,911 as disclosed in Note 24 to the financial statements which includes prepayments balance of Kes. 4,791,941,787.The balance includes an advance lumpsum balance of Kes. 11,813,898 included as a single entry in the general ledger and which occurred on 30 June, 2010 and remained outstanding thus casting doubt on its collectability.

1626. Further, included in the trade and other receivables balance is staff receivables balance of Kes.61,897,227 for which the following unsatisfactory observations were made:

i. Included in the staff receivables balance of Kes.61,897,227 is staff debtors balance of Kes.10,266,952. However, review of the staff debtors balance ledger revealed that staff debtors of Kes. 10,196,183.6 relate to transactions that occurred between 30 June, 2010 and 30 April, 2020 thus casting doubt on its recoverability.

ii. Included in the staff receivables balance of Kes.61,897,227 is an amount due from pensioners of Kes. 42,163,069. Out of this balance, Kes.24,163,068 relates to transactions that occurred between 30 June, 2010 and 30 June, 2020 thus casting doubt on its recoverability.

iii. Included in the staff receivables balance of Kes.61,897,227 is salary advance amount of Kes.1,613,707. Review of the salary advance ledger revealed that advances totaling to Kes. 1,767,540 related to the

period between 30 June, 2010 to 30 June, 2020 casting doubt on recoverability of this balance.

Management Response

1627. The Accounting Officer agreed with the auditors observation . The amounts have now been fully provided for as doubtful debts in the Financial Statements for year 2021-2022 that is still under audit.

Committee Observations

1628. The Committee noted that the Accounting Officer did not refute the fact that the debt has been outstanding for a long time.

1629. The Committee noted that the Accounting Officer failed to submit the identity of the debtors and the status of the court cases between KRC and the debtors, which was to reflect the current debt position of the Corporation

1630. The Committee also noted that in the subsequent year the debt is captured as doubtful debts.

Committee Recommendation

1631. The Committee recommends that the Accounting Officer submits a report on the identity of the debtors and the status of the court cases on the debt within three (3) months of adoption of this report for verification by the OAG.

332.2. Other Receivables

1632. Other receivables balance of Kes.530,399,334 disclosed in Note 24 to the financial statements includes World Bank receivable balance of Kes.131,899,050 which relates to Kenya Railways Corporation staff pending bills from the Ministry of Transport, Infrastructure, Housing and Urban Development and Public Works. This balance arose during the pre-concession period and has been outstanding in the Corporation's books for a long time. It is however not clear how the Management intends to recover

the outstanding balance from the World Bank and thus casting doubts on the recoverability of this amount. In the circumstances, the accuracy and recoverability of the trade and other receivables balance of Kes.19,506,911,911 could not be confirmed.

Management Response

The Accounting Officer submitted as follows—

1633. The amount relates to KR staff pending bills from the then Parent Ministry, MOTIHUD pre-concession. These are amounts released by World Bank to support the staff payments which required a reconciliation for amounts to be remitted to KR for release to staff. KR paid the amounts and is seeking reimbursement of the amounts.

Committee Observations

1634. The committee noted from the submission of the Accounting Officer at the time of examination that KRC was yet to receive the reimbursement of the pending amounts from World Bank.

Committee Recommendation

1635. The Committee recommends that Accounting Officer to fast track the requisition of the pending amounts from the World bank and submit a status report on the same to the OAG within three (3) months of adoption of this Report .

333. Default in Repayment of Exim Bank Loan (On- Lent)

1636. The statement of financial position reflects Exim Bank loan (on-lent) balance of Kes.569,023,145,606 as disclosed in Note 33 to the financial statements. However, the Management did not make any repayments during the year under review towards this loan. Further, as disclosed in Note 35 to the financial statements, the payables and accrued charges reflects a balance of Kes.50,920,344,125 which includes a default penalty payable balance of Kes.644,343,297. Loan records revealed that the Corporation incurred the penalties and interests on the on-lent loan due to non-settlement of the maturing obligations as and when they fell due.In the circumstances, the Corporation continues to be exposed financially due to none settlement of the loan obligation.

Management Response

1637. The Accounting Officer submitted that the Corporation did not make any repayments during the year under review towards Exim bank loan (on lent). The reason for delayed payment is that KR has been engaging National Treasury on the restructuring of the SGR On lent Loan and the modalities on the repayments. The Management wrote to The National Treasury and Planning on review the On-Lent loan vide letter dated 16th July 2021 and in response a committee was formed to review the On-Lent loan arrangement.

1638. Also, the SGR Escrow Accounts that collect the SGR Revenues are ring fenced under the Escrow Payment Agreement between the relevant entities therefore requiring approval to utilize the funds. The Management therefore is waiting for conclusion of the review.

Committee observation

1639. The committee observed that the EXIM loan was a government loan by National Treasury on-lent to KRC.

Committee recommendation

1640. The Committee recommends the Accounting Officer to seek an advisory on the status of the loan from the National Treasury and submit a report within three (3) months of adoption of this report for verification to the OAG.

334. Unsupported Capital Works-in-Progress

1641. The statement of financial position reflects capital works-in-progress balance of Kes.103,794,877,552 as disclosed at Note 22 to the financial statements balance. As previously reported, included is a balance of Kes.12,000,000,000 being land compensation under SGR Phase 1. However, supporting documents for compensation amounting to Kes.1,043,439,897 to Project Affected Persons (PAPS) including list of the beneficiaries; copies of national identity cards, personal identification number (PIN) certificates and title deed surrenders from the National Land Commission were not provided for audit. In addition, overpayments of Kes.14,669,748 were made to some PAPS who were paid Kes.15,752,406 instead of the entitlement of Kes.1,082,658.

1642. Although recovery of Kes.5,698,770 has been subsequently made, a balance of Kes.8,970,978 was still outstanding. In the circumstances, the

accuracy and completeness of compensation to affected persons amount of Kes. 1,043,439,897 could not be confirmed.

Management Response on Unsupported Payments - Kes 1,043,439,897

1643. 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 provided 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.

1644. The disbursement process to the Project Affected Persons (PAPS) began in December 2014. Kenya Railways (KR) received correspondence from the National Land Commission (NLC) which had compensations. The schedule had a list of PAPs, location and amount to be compensated for land and or developments. 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."

1645. 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.

1646. The controls deployed by KR in the disbursement process were to ensure that the PAPs names and amounts compensated for land and or developments acquired matched compensation schedules provided by NLC. KR also ensured that the wire transfers was to bank details provided by PAPs as per the filled forms.KR also worked closely with its main bankers KCB and other banks to ensure that compensation monies went to the rightful beneficiaries by confirming bank details name and account numbers in advance.

1647. KR also followed a documented Standard Operating Procedure (SOP) which required NLC to approve all payments before KR released the same to PAPs bank accounts. This ensured that NLC had direct supervision over

the disbursement in the land acquisition process. The Kes. 1,043,439, 897.00 payments related to the 1st payment processed in the compensation exercise on behalf of NLC. KR roles were mainly disbursement upon confirmation that the names of the PAPs appear in the NLC compensation schedules. Notable is that despite the documents i.e. ID copy and KRA PIN certificates not being attached in the first payment, KR applied compensatory control measures to ensure that the details filled on the form were authenticated by use of the relevant/ authentic government ICT platforms. For the PAPs National ID card numbers given on the payment schedules, they were cross-checked on the e-citizen platform to confirm that they were matching. The cross-checking was also done on the PAPs KRA PINs on the i-tax pin-checker platform to confirm that the details are also matching with the NLC payment schedules.

1648. A sample of the process undertaken by KR will be illustrated by a payment to Jackton Mwanasi Wamada of Bata Area plot No 22 amount paid Kes. 1,311,000.00.

Response on Overpayments of Kes. 8,970,978.00

1649. *The breakdown of the* ***Kes. 8,970,978.00*** *overpayment is as tabulated below:*

No.		Amount (Kes.)	Explanation
1	Returned Amounts	4,456,770	KR made reasonable efforts to recover the funds from Esukuta Springs after NLC made the request after disbursements. The amounts can only be recovered by NLC under the existing provisions of the Act.
2	Repeated in Audit Report	556,370	Out of the overpayment figure quoted of Kes 8.9 Million, an amount of Kes. 556,370.00 was duplicated in the audit report. The Kes 8.9M should thus be adjusted with this.
3	Resolved Amounts	3,867,858	These amounts were listed in the payment schedule. However,

			NLC is to recover as per the Land Act.
	Total	**8,970,978**	

1650. During hand over of the disbursement process on 10th November 2016 KR handed over to NLC to further action on the unresolved areas of disbursements. NLC is by law mandated to recover such overpayments whenever they occur.

Committee Observation and recommendation.

1651. The Committee noted that the Accounting Officer submitted details of the Project Affected Persons as required, including the award letters, identification cards, KRA pin certificates and bank account details.

1652. The Committee further noted that the submission by the Accounting Officer on compensation of the Project Affected persons was satisfactory hence the matter is resolved.

3.7. INFORMATION AND COMMUNICATION TECHNOLOGY AUTHORITY (F/Y2018/19-2020/21)

EXAMINATION OF THE AUDITED ACCOUNTS ICTA FOR FYs 2018/2019 TO 2020/2021

1653. The management of Information Communication and Technology Authority, led by the Chief Executive Officer Mr. Stanley Kamanguya appeared before the Committee to adduce evidence on the audit queries that had been raised by the Auditor General for the FY 2018/19 to FY 2020/21.

REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF THE AUTHORITY FOR THE FY 2018/19, 2019/20, AND 2020/21.

FINANCIAL YEAR 2018/2019

The Auditor General gave a **qualified opinion audit** and raised the following concerns:

335. Unsupported Prior Year Adjustments

1654. The statement of changes in net assets reflects prior year adjustments balance of Kshs.966,237,911. However, Note29(b) to the financial statements reflects prior year adjustments of Kshs.992,899,745 resulting to an unreconciled variance of Kshs.26,661,834. Further, the balance has not been accounted for in line with IPSAS 3- Accounting policies, changes in accounting estimates and errors, where prior year adjustments are allowed only in cases where there is a change in accounting policy or changes in accounting estimates arising from new information or new development and that restatement be done in the year it first occurred and the comparatives in the current year be restated. Consequently, the accuracy of prior year adjustments of Kshs.996,237,911 reflected in the statement of changes in net assets as at 30 June, 2019 could not be confirmed.

Management Responses

1655. The Accounting Officer agreed that the financial statements had an unreconciled variance of Kshs.26,661,834. However appropriate adjustments were done and the financial statements adjusted as shown in the table below:

Description	Amount-KShs	Remarks
Motor Vehicles	21,972,001	The changes were to reclassify from expenditure to Fixed Assets as these are two vehicles that were purchased but erroneously expensed
Computers & IT Accessories	352,737	The computers were committed as they were to be supplied within the year, but the supplier failed to deliver the computers, thus the reversal.
Computers & IT Accessories	4,337,095	The computers were committed as they were to be supplied within the year, but the supplier failed to deliver the computers, thus the reversal
Total Adjustments	**26,661,834**	

The Financial Statements have been updated with the changes.

Committee observation and Recommendations

1656. The Committee noted that at the time of examination, the management had submitted the journals supporting the adjustments, and the financial statements restated to confirm the accuracy of prior year adjustment of Kshs.996,237,911 hence the matter is resolved.

1657. The Committee further recommends that the Accounting Officer should henceforth submit documents to the OAG on time in line with section 68 (2)(k) of the Public Finance and Management Act, 2012.

336. Unauthorized Project Expenditure.

1658. The East Africa Regional Transport, Trade and Development Facilitation Project (EARTTDF IDA Project) is funded by the World Bank. As disclosed under Note 19 to the financial statements, the statement of financial performance reflects a balance of Kshs.124,499,336 in respect of the EARTTDF project. However, Management did not provide a 'no objection' letter for the annual work plan and budget by the donor, as required under section II F (1) of the financing agreement, for audit verification. Further, the statement of comparison of budget and actual amounts reflects a balance of Kshs.3,406,797,318 as payments during the year which includes payments of Kshs.1,384,583,478 for Letters of Credit (LCs) and an advance payment of Kshs.192,691,381 all totalling to Kshs.1,577,274,859 that were made to various suppliers though not included in the budget for the year 2018/2019. In the circumstances, the validity of the expenditure could not be ascertained.

Management Response

1659. The Accounting Officer submitted that they did not provide a 'no objection' letter for the annual work plan and budget by the donor.

> This was because the Financing agreement for the Project provided that *the Authority shall prepare and furnish to the Association (Bank) not later that 1st May of each fiscal year during the implementation of the Project.*

1660. The World bank therefore as per the financing agreement did not require no objection for the work plan but to specific procurement activity such as consultancy services. This is further borne by the engagements the Authority had with the Bank vide the attached Aide Memoires (May and Nov 2019) covering the World bank's mission to the projects indicating no issue with the project.

1661. The payments of Kshs.1,384,583,478 for Letters of Credit (LCS) and an advance payment of Kshs.192,691,381 all totaling to Kshs.1,577,274,859 were included in the approved budget. During this period, the Letters of Credit had matured and thus had to be included in the financial statements.

Committee Observation and Recommendation

1662. The Committee noted at the time of examination that World bank did not require a 'no objection' letter for the work plan.

1663. The Committee noted at the time of examination that the payments of Kshs.1,384,583,478 for Letters of Credit (LCS) and an advance payment of Kshs.192,691,381 all totaling to Kshs.1,577,274,859 were included in the approved budget hence the matter is resolved.

337. Unsupported Depreciation Expense

1664. As disclosed under Note 11 to the financial statements, the statement of financial performance reflects depreciation expense of Kshs.26,957,200. However, the recomputed balance amounts of Kshs.31,827,796.20 resulted in an unreconciled variance of Kshs.4,870,596. The brought forward balance of property, plant and equipment of Kshs.116,145,692 could not be confirmed since there was no comprehensive fixed asset register.

Consequently, the accuracy and completeness of depreciation charge at Kshs.26,957,200 reflected in the statement of financial performance for the year ended 30 June, 2019 could not be confirmed.

Management Response

1665. The Accounting Officer submitted that the statement of financial performance reflected an unreconciled variance of Kshs.4,870,596. However, the recomputed balance of Kshs.31,827,796.20 included depreciation for assets that had been fully depreciated. The reconciled depreciation was posted and the financial statement adjusted to the reconciled amounts.

1666. The management also reported that there was no comprehensive fixed asset register. A consultant was procured in 2022 to conduct asset tagging exercise for all the Authority's assets. The process is ongoing and so far, assets at the Headquarters have been tagged. A committee has been formed to assess the assets within the organization and update the asset register. The exercise is expected to be completed this financial year.

Committee Observation

1667. The Committee noted at the time of examination that the tagging exercise of all Authority's assets was ongoing and therefore there was no comprehensive fixed asset register.

Committee Recommendation

1668. The Committee recommends that the management expedites the tagging exercise in order to ensure the Authority has a comprehensive fixed asset register in place and submit the same to the OAG within three (3) months of adoption of this report.

338. Unsupported Rent and Parking

1669. As disclosed under Note 13 to the financial statements, the statement of financial performance reflects general expenses of Kshs.62,527,743, which includes rent and parking of Kshs.36,131,158, out of which expenses amounting to Kshs.1,116,712 was not supported by a signed lease agreement. Consequently, the accuracy and validity of rent and parking expenses balance of Kshs.1,116,712 for the year ended 30 June, 2019 could not be confirmed.

Management Response

1670. The Accounting Officer submitted that the Authority had vacated office premises on 5th Floor Telposta Towers Building and was cleared of any further obligations to the landlord. A Copy of the discharge letter, reference no KM/TELPOSTA/EN dated 13th June 2023 issued by the Landlord to the Authority was submitted.

Committee observation and Recommendation

1671. The Committee noted at the time of examination that the Accounting Officer submitted a discharge letter indicating that the Authority had vacated the office premises on 5th floor Telposta Towers Building, and was cleared from any obligation to the Landlord on the subject premises hence the matter is resolved.

339. Inaccuracy of Presidential Digital Talent Program

1672. As disclosed under Note 16 to the financial statements, the statement of financial performance reflects Presidential Digital Talent Program balance of Kshs.117,814,011. However, the approved project progress report, availed for

audit review, reflected actual expenditure of Kshs.133,673,844 resulting to an unreconciled and unexplained variance of Kshs.15,859,833.

Under the circumstances, the accuracy and validity of the Presidential Digital Talent expenditure of Kshs.117,814,011 reflected in the statement of financial performance for the year ended 30 June, 2019 could not be confirmed.

Management Responses

The Accounting Officer submitted as follows—

1673. The approved project progress report availed for audit review reflected Kshs.133,673,844. However, the statement of financial performance reflected the actual expenditure for the year of Kshs.17,814,011.

1674. The reason for the variance was because not all activities in the workplan were fully undertaken. Some activities spilled over to the next financial year i.e., graduation and its related activities of the cohorts.

Committee Observation and Recommendation

1675. The Committee noted at the time of examination that the reason for the variance was because not all activities in the workplan were fully undertaken. Some activities spilled over to the subsequent financial year, that is, graduation and its related activities of the cohorts hence the matter is resolved.

340. Unsupported Special Grants Expenses

1676. As disclosed under Note 17 to the financial statements, the statement of financial performance reflects special grant expenses of Kshs.1,162,405,194. The following observations were noted:

340.1. Shared Services

1677. The balance includes payments totaling Kshs.18,534,541 in respect of maintenance of government data center equipment contract. Review of records revealed that the maintenance contract commenced on 28 September, 2015 and expired on 27 September, 2016. However, the contract was extended on two occasions up to 31 March, 2018.

Subsequently, the contract was again renewed on 18 June, 2018 for a further period of one year. Documentation in support of the procurement process for the contract extension and renewal were not provided for audit verification.

1678. Further, the balance includes National Optic Fiber Backbone Infrastructure Project, NOFBI project of Kshs.40,638,599 out of which a balance of Kshs.21,029,390 was in relation to travel expenses through imprests issued to staff from the Authority as well as the State Department for ICT and Innovation although the project was being implemented by the State Department. Further, no documentation such as approved workplan/activities for the project, an agreement with the State Department to undertake the monitoring and evaluation activities was provided for audit review. There was no operational framework, annual monitoring and evaluation plan between the State Department detailing when and where the activities were to be undertaken.

1679. In addition, the balance includes County Connectivity Project, CCP costs amounting to Kshs.115,936,321 for undertaking monitoring and evaluation of the project. Expenses amounting to Kshs.2,499,100 related to NOFBI project without an approval for reallocation. Examination of records revealed that imprests were issued to officers of the Authority as well as officers from the State Department for ICT and Innovation even though the project is implemented by the State Department. Further, no supporting documents such as engagement agreement between the State Department and the Authority to undertake the monitoring and evaluation activities, operating framework, annual monitoring and evaluation workplan.

1680. Under the circumstances, the accuracy, completeness and validity of expenditure amounting to Kshs.42,063,031 included under special grant expenses balance of Kshs. 1,162,405,194 for the year ended 30 June, 2019 could not be confirmed.

Management Response

1681. The Accounting Officer responded as follows—

i. Documentation in support of the procurement process for the contract extension and renewal were not provided for audit verification.

ii. An agreement with the State Department to undertake the monitoring and evaluation activities under NOFBI and CCP was not provided for audit review. However, the Escrow Agreement defines the roles of ICTA and MOICT, where ICTA is operator and the MOICT is the End User. Supporting documents such as engagement agreement between the State Department and the Authority to undertake the monitoring and evaluation activities, operating framework, annual monitoring and evaluation workplan was not provided for audit review for both NOFBI and CCP. Even though the projects are implemented by the State Department, the Authority supports the Ministry of ICT through Monitoring & Evaluation and joint committees that are appointed by the Accounting Officer.

Committee Observation and Recommendations

1682. The Committee noted at the time of examination, that the management had submitted for review documentation in support of the procurement process for the contract extension and renewal.

1683. Further, the Committee noted at the time of examination that, the management submitted an escrow agreement defining the roles of ICTA and MOICT, where ICTA is the operator and MOICT is the end user.

1684. The Committee also noted at the time of examination that, the management submitted that even though the projects are implemented by the State Department, the Authority supports the Ministry of ICT through Monitoring & Evaluation and joint committees that are appointed by the Accounting Officer hence the matter is resolved.

341. Unsupported Connected Summit Expenses

1685. As disclosed under Note 20 to the financial statements, the statement of financial performance reflects connected summit expenses amounting to Kshs.46,032,526. However, the Management did not provide supporting documents such as approved budget and workplan and the procurement

process for audit verification. Further, two (2) suppliers were not in the prequalified list of suppliers, three (3) suppliers were paid approximately 82% of total expenditure with one getting Kshs.29,417,330 or 64%, yet this was not a specialized service.

Under the circumstances, the validity of connected summit expense of Kshs.46,032,525 for the year ended 30 June, 2019 could not be confirmed.

Management Response

1686. The Accounting Officer did not provide supporting documents such as approved budget and workplan and the procurement process for audit verification. However, the there were Board minutes approving the connected budget and the procurement process. The two suppliers were in the prequalified list of suppliers. Three suppliers were paid approximately 82% of total expenditure with one getting Kshs.29,417,330 or 64%, yet this was not a specialized service. However, the two suppliers were awarded to supply the goods and services because they competitively quoted the lowest prices for those categories.

Committee observation and Recommendation

1687. The Committee noted at the time of examination that the management submitted the supporting documents including the approved budget, the workplan and the procurement process documentation indicating that the two suppliers were in the prequalified list of suppliers and, that the two suppliers were awarded to supply the goods and services because they competitively quoted the lowest prices for those categories hence the matter is resolved.

342. Inaccuracy of Presidential Digital Talent Program

1688. As disclosed under Note 22 (a) to the financial statements, the statement of financial position reflects cash and cash equivalents of Kshs.4,868,186,440. The balance includes Presidential Digital Talent Program balance of Kshs.46,947,693. However, progress report on the program reflects a balance of Kshs.3,007,197 resulting to an unreconciled variance of Kshs.43,940,506. Consequently, the accuracy of Presidential Digital Talent Program, cash and cash equivalents balance of Kshs.46,947,693 reflected in the statement of financial position as at 30 June, 2019 could not be confirmed.

Management Response

1689. The Accounting Officer stated that the progress report on the program reflected Kshs.3,007,197. However, the figure of Kshs.46,947,693 under Note 22 (a) relates to the actual bank balance as at June 30,2019.

1690. The variance was because the progress report did not indicate the opening cash balances for the PDTP programme. The cash balance includes the opening balance as of July 2018.

Committee observation

1691. The Committee noted at the time of examination that the variance was because the progress report did not indicate the opening cash balances for the PDTP programme.

Committee Recommendation

1692. The OAG to keep in view of the matter and this should be restated in the financial statements of the subsequent years until the variance is reconciled.

Other Matter

343. Budgetary Control and Performance

1693. The statement of comparative budget and actual amounts reflects final budget and actual receipts on comparable basis of Kshs.7,119,116,766 and Kshs.6,641,257,212 respectively, resulting to an under-funding of Kshs.477,859,554 or 6.7% of the budget. The under-funding mainly occured under the donor funded programmes. Similarly, the Project expended Kshs.3,406,797,318 against an approved budget of 7.1 resulting to an under-expenditure of Kshs.3,712,319,448 or 52% of the budget. The under-expenditure occurred under the programs and purchase of fixed assets. The underfunding and underperformance affected the planned activities and may have impacted negatively on service delivery to the public.

Management Response

The Accounting Officer submitted as follows—

1694. The statement of comparative budget and actual amounts reflected final receipts budget and actual on comparable basis of Kshs.7,119,116,766 and Kshs.6,641,257,212 respectively, resulting to an under-funding of Kshs.477,859,554 or 6.7% of the budget. The Authority's Budget was not funded in full hence the risk of under-performance and under-expenditure. However, management has continuously held discussions with National Treasury on Exchequer issues to ensure full funding. On under-expenditure, a contract for the purchase of devises was not signed in the year. Ksh 2.5 billion was surrendered back to the National Treasury.

Committee observation

1695. The Committee noted at the time of examination that the Authority's Budget was not funded in full hence the risk of under-performance.

Committee Recommendations

1696. The Committee recommends that the National Treasury should ensure remittance of funds as per the budget or revise the budgets through supplementary budgets.

1697. Further, ICTA should realign its approved budget to the available funding.

344. Unresolved Prior Year Matters

1698. In the previous years' audit reports, several issues were raised. However, although the Management has indicated that the issues have been responded to, the matters have remained unresolved as the Public Investments Committee finalized hearings on the same.

Management Response

1699. The Authority was in the process of preparing the report to address the issues for FY 2015/2016, 2016/2017 and 2017/2018.

Committee observation

1700. The Committee noted that at the time of examination the management had not submitted the report addressing the unresolved prior issue.

Committee Recommendation

1701. The Committee directs that the Accounting Officer to submit the report to address the unresolved prior year matters for the FY2015/2016,2016/2017 and 2017/2018 to the to the OAG for review and verification, within three (3) months of tabling this report.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

345. Unsupported Transparency and Communication Infrastructure Project, TCIP Expenses

1702. As disclosed under Note 18 to the financial statements, the statement of financial performance reflects Transparency and Communication Infrastructure Project, TCIP expenses amount of Kshs.55,962,008. It was noted that the Authority used part of the proceeds of TCIP Project funds financed by the World Bank for the supply, installation, configuration and commissioning of a Resource Management System (RMS). The budgetary allocation as per TCIP procurement plan was Kshs.71,400,000. The supplier was awarded the contract at a contract price of Kshs.62,954,452.60 and the contract was signed on 15 April, 2016. The implementation period was agreed to be three (3) months upon submission of an agreed project plan. However, during the audit review, three (3) years after the contract was signed, the operational usage of the system was at only 9.7 % with human resource module not signed-off completely. Total amount of Kshs.50,363,562.04 had already been paid to the supplier with an outstanding balance of Kshs.12,590,890.96 as at 16 February, 2018. The Management has explained that the system had not been handed over and the issues noted had not been resolved at the time of audit.

1703. Further, the amount includes payment to seven (7) consultants working on Integrated Financial Management Information System (IFMIS) and information security system. However, the Management did not provide, for audit review the consultants' contract and pre-agreed performance indicators. Further, documents availed for audit indicate that TCIP project

came to an end on 31 December, 2016 with a grace period of four (4) months to ensure closure and continuity. Under the circumstances, it was not possible to confirm the value for money in respect of TCIP expenses totaling Kshs.55,962,008 for the year ended 30 June, 2019.

Management Response

The Accounting Officer informed the Committee as follows—

1704. The Ministry of ICT had appeared before the National Assembly Committee to respond to the Auditor General on the Financial Statements for the year ended 30th June 2017. The query on the Enterprise Resource Planning Software (ERP) was responded to.

1705. In addition:

i. Hardware were delivered on 13th September 2016 and received by ICTA on 14th September 2016.

ii. Software installations were completed on 21st March 2019.

iii. Trainings were conducted in August 2016.

iv. The Authority has documents forming part of the milestones that were to be paid as per the contract payment schedule .

v. The system has not been handed over, however, ICTA is in communication with the vendor on closure and handover the system and integrate it with other existing systems.

Committee observation

1706. The Committee noted from the submission of the Accounting Officer at the time of examination that the ICTA had no clear timelines on the handover date of the system.

Committee recommendation

1707. The Committee recommends that the matter remains unresolved and the OAG to keep in view of the matter in subsequent audit cycle.

346. National Optic Fiber Backbone Infrastructure Project, NOFBI Loan

1708. The NOFBI project is implemented by the State Department for ICT and Innovation and funded by Export Import Bank of China at approximately Ksh.16,500,000,000. Although the Authority has started repayment of the loan, the loan has not been recorded in the Authority's financial statements. Further, although the NOFBI Project network is being used by most of the data service providers in the country, the Project Manager did not also avail for audit review, the billings done in the last four (4) years of which the proceeds should fund the loan repayments. Management did not also provide the service provision framework in place between NOFBI Project Managers and the user for audit review. The Government has therefore, been funding the operation of private commercial entities without recovering the cost. This amounts to imprudent use of public resources. No explanation has been provided for the exclusion of the loan in the accounting records.

Under the circumstances, the Management has not effectively managed public resources and value for money on the investment could not be ascertained.

Management Response

1709. The Accounting Officer reported that the loan was not recorded in the Authority's financial statements. The exclusion of the loan in the accounting records is because the repayment schedule was an obligation of the National Treasury. The Escrow Agreement defines ICTA's role as the operator while the borrower is the Ministry of ICT through the National Treasury.

1710. The management did not avail for audit review, the billings done in the last four years. During that time, the Authority had not been granted a License by Communication Authority (CA) until 11th September 2020. The billing started after the license date as per the CA's regulations. The private commercial entities have paid for the leasing services

1711. The Management did not provide the service provision framework in place with the users for audit review. There were Lease agreements with Safaricom, Jamii Telkom, Telkom Kenya and KENET.

Committee observation and Recommendation

1712. The Committee noted at the time of examination that, the management submitted that the exclusion of the loan in the accounting records is because the repayment schedule is an obligation of the National Treasury.

1713. The Committee noted at the time of examination that the management did not avail for audit review, the billings done in the last four years because during that time, the Authority had not been granted a License by Communication Authority (CA). The billing started after the license date as per the CA's regulations hence the matter is resolved.

347. Slow Project Funds Absorption

1714. The East Africa Regional Transport, Trade and Development Facilitation Project (EARTTDF IDA Project) which started in November, 2015 with an estimated completion date of December, 2021 had notably consumed 60% of its lifecycle to completion. However, the estimated budget/funding for the project amounts to approximately Kshs.2,979,795,000 while accumulated expenditure as at 30 June, 2019 amounts to Kshs.182,905,071 (6.13% of the estimated budget of the entire project). At the current project funds absorption level, the project life will lapse without full absorption of the project financing.

In the circumstances, it has not been possible to determine whether the Project's objectives will be met and whether value for money has been achieved.

Management Response

1715. The Accounting Officer submitted that during the audit review, current project funds absorption level was low, with the risk of the project life lapse without full absorption of the project financing. However, the project is currently on course at 95% completion level and an expected completion date of December 2023.

Committee observation

1716. The Committee noted at the time of examination that the commencement date of the project was July 1st 2020 with an expected completion date of

29th December, 2023. Further, as at 19th April, 2023 the project was at week 146 with 95% of the work completed.

Committee Recommendation

1717. The The Committee recommends that the OAG should confirm the status of the project in the subsequent audit cycle.

348. Non-Recovery of Outstanding Pasha Loans

1718. The statement of financial position reflects Pasha Fund asset of Kshs.45,193,389. The balance represents loans advanced to entrepreneurs to set up information hubs to be repaid within nine (9) years. However, the balance is in arrears and there has been no collection during the year under review. No provision for impairment of this asset has been created in the financial statements even though recovery is clearly doubtful. Additionally, there has been no interest charged on the revolving fund balance even though the loan has remained unpaid for twelve (12) months. In the circumstances, it has not been possible to confirm whether Management has prudently managed public resources.

Management Response

The Accounting Officer submitted the following—

1719. From the contract between ICTA (then Kenya Information Communication Technology Board) and the Bank, under the scope of work, the Bank was in charge of managing the disbursement of funds. This included accountability of the disbursed funds by establishing a loan repayment system, among other measures. The specific tasks included but not limited to loan follow ups and recovery.

1720. However, the Bank vide letters dated 03rd February 2017 and 21st June 2023 informed the Authority that the Entrepreneur loan accounts with outstanding balances were in the loss category on account of default and that further

recovery of the loans was impossible. The Bank has listed the defaulters with CRB.

1721. As per the contract between ICTB and the Bank, there was no collateral/security required to secure the loans, except for the project capital assets. In view of the above and noting that the funds loaned to the citizens are not recoverable, the ICT Authority proposed to institute a write-off process in line with Section 69 of the PFM Act 2012.

SUBMISSION BY THE FAMILY BANK LIMITED ON NON-RECOVERY OF OUTSTANDING PASHA LOANS

1722. The management of Family bank led by the CEO Ms. Rebecca Mbithi appeared before the Committee to present the banks position on the non-recovery of outstanding Pasha Loans and presented as follow:

> -The terms of the contract were to the effect that the Bank would manage the Digital Villages Revolving Fund (*the Fund*) which was meant to fund the establishment of ICT centers, known as Pasha Centers, across the country. The Bank's responsibility was to manage disbursement of funds, follow-up and recovery. These loans were referred to as 'Pasha Loans'.

1723. There was a formal process to identify and request for the services required by the Authority which allowed potential providers including Family Bank to review the request and submit bids.

1724. Vide a Request for Proposal (RFP) dated 24th August 2010, the Authority sent out an invitation to banks and microfinance institutions (Equity Bank, Family Bank, Faulu Kenya, Kenya Women Finance Trust and SMEP) to manage the Fund.

1725. Family Bank submitted its proposal on 21st September 2010, and the Authority invited the Bank to negotiate the terms of the said project. This culminated to a joint meeting of the two parties held on 30th September 2010 where they discussed several issues around the management of the fund. Having successfully negotiated the contract, the parties executed the contract (number KICTB/KTCIP/RFP/09/2010-2011) in October 2010.

1726. As a financial institution regulated by the Central Bank of Kenya under the Prudential Guidelines and other enabling statutes, the Bank had developed a detailed lending process. The table below compared the Bank's process flow and that followed for Pasha Loans. The differences were highlighted in italics and were as negotiated in the contract.

Loans Process Flow

APPLICATION STAGE	Responsibility:	PARTICULARS – NORMAL UNSECURED LOANS	PARTICULARS – PASHA LOANS
CUSTOMER APPLICATION	Customer/ Guarantors/	• Visits the branch and puts forth a loan request as per the financial needs. • Provides loan application requirements i.e. - Loan application - Valid documents supporting loan purpose. - Bank statements, financia	• Submits online application on IDCTS website • Visits the branch and puts forth a loan request as per the financial needs. • Provides loan application requirements i.e. - Loan application forms - Documents suppo rting

			l statements - KYC documentation - Copy of National ID & KRA pin certificate - Business permits - Guarantor details - List of chattels - Evidence of business existence for at least 2 years	loan purpose i.e. business plan, quotations for assets being financed. Lease Agreement for the Pasha Centre, - Maps location for Home & Proposed Pasha Centre - Minimum Education Level Form

			Four (KCSE) confirmation - Open to start-ups - KYC documentation (No existing account required)
INITIAL REVIEW	Business Banker	• Receive and verify documents collected. • Conduct a call back to authenticate the application and external documents. • Conduct home and business site visits. • Prepare a Credit File	• Receive and verify documents collected. • Conduct a call back to authenticate the application and external documents. • Conduct home and business site visits (existing/start up Business) and

		folder for the customer. • Assess financial and non-financial information relating to the customer as provided. • Check against the eligibility criteria set out for this particular product. • Recommend application for consideration to the Branch Credit committee. • Process the application and prepare a template ordinarily incorporating a full Credit Analysis in the standard format laid down by the Bank (i.e.	Proposed Pasha Centre). • Prepare a Credit file folder for the customer. • Asses financial and non-financial information relating to the customer as provided by the customer. • Check against the eligibility criteria set out for the Pasha product. • Recommend application for consideration to the Branch Credit Committee.

		Credit Request template)	• Process the application and prepare a template ordinarily incorporating a full Credit Analysis in the standard format laid down by the Bank (i.e., Credit Request template)
CREDIT APPRAISAL Branch Credit Committee Review	BCC members comprising of: Branch Manager/ Branch Operations Manager/ Business Bankers	• Reviews loan applications presented by the Business Banker. • Assesses the facility and where appropriate issues a Decline, Deferral (re-work) or an Approval (Branch Limits). • Recommends	• Reviews loan applications presented by the Business Banker. • Assesses the facility and where appropriate issues a Decline, Deferral (re-work) or recommends to H/O

		further reviews to H/O Credit Analysis Team for loans above delegated limits.	Credit Analysis Team for all recommended loans (No Branch Limits).
HO Credit Committee Review	Credit Analysts	• Receives applications from Branches. • Performs a further evaluation of the borrowers of the enterprise based on the loan application documents. • The Head Office Credit Committee may recommend a re-work, reject or approve the application. • If approved, issues a signed credit approval	• Receives applications from Branches. • Performs a further evaluation of the borrower's enterprise based on the loan application documents. • The Head Office Credit Committee may recommend a re-work, reject or recommend the application for approval to the

		memo for the loan granted and forwarded to Branch Credit Committee. • The Head Office Credit Approval Grid shall apply for ALL the credit requests received.	Grants Committee. • Issuance of a registration number and subsequent update on online registry managed by ICT Board. • Forwards the recommended applications to the KICTB Grants Committee for further review and Final Approval. • Issues an approval memo advising the Branch Credit Committee on Approved cases and the conditions

			thereof.
SECURITY PERFECTION	Business Banker and Branch Manager	• Generate letter of offer • Note: LOO must be clear on disbursements as advised by the Analyst. • Call customer to sign offer letter. • Prepare a Collateral File for the customer. • Proceed to register chattels mortgage over the proposed household, stock & business assets. • Register guarantee and indemnity from guarantors.	• Generate letter of offer • Note: LOO must be clear on disbursements as advised by the Analyst. • Call customer to sign offer letter. • Prepare a Collateral File for the customer. • Register chattels mortgage over all the business assets in the Pasha Centre. • No guarantee and indemnity from guarantors

DISBURSEMENT	Business Banker and Branch Manager	• Book the facility in the system and release funds into the customer's account. • Recover Processing fee and any other charge for the entire approved amount. • Insurance amount recovered and remitted to Banc Assurance dept. • Conduct a call over to ensure the booking is correctly done.	• *10%* customer's minimum contribution. • Book the facility in the system and release funds into the customer's account. • Recover Processing fee and any other charge for the entire approved amount. • Insurance amount recovered and remitted to Bancassurance dept. • Conduct a call over to ensure the booking is correctly

			done.

1727. Notably, the Authority had conducted training of potential entrepreneurs prior to the establishment of the Fund, and was to encourage those already trained to apply for the funds with a view to establish their own cyber businesses as start-ups, the Pasha Centers.

1728. The Bank's obligations were to manage the Fund, offering its expertise on onboarding and appraisal of applicants, disbursement and recovery of the loans. Specifically, the Bank was supposed to do the following:

(a) Receiving and vetting business plans

(b) Presenting the vetted applications to the Authority for approval

(c) Disbursing Pasha Loans duly approved by the Authority

(d) Collection, follow up and recovery of Pasha Loans

(e) Providing quarterly status reports to the Authority

1729. Pursuant to Part II (E) of the contract, under the subtitle headed 'LOAN RECOVERIES', the Bank was to recover the loans from the bank accounts of the borrowers through a check-off system monthly. The borrowers were required to maintain accounts at Family Bank for ease of recovery through check-off.

The Bank's follow up process involves monitoring of the loans to ensure performance through various strategies such as SMS alerts on instalment due dates, periodic client visits, and weekly branch meetings to discuss portfolio performance, requisite actions and daily reports on portfolio performance.

1730. As stipulated in the contract, the Bank had the responsibility of recovering the loans in default. Herein below is the Bank's process flow for the microloans in arrears which was applied to the Pasha Loans portfolio as well.

Micro Loan & Pasha Loan Recovery Process Flow

MICRO LOAN RECOVERY PROCESS FLOW		PASHA LOAN RECOVERY PROCESS FLOW
Activity	**Details/action**	**Details/action**
	The Relationship Officer at the branch	
Arrears 1-day plus	• The branch follows up on all arrears through phone calls so that the accounts in arrears are regularized as soon as possible.	• The branch follows up on all arrears through phone calls so that the accounts in arrears are regularized as soon as possible.
Arrears 14 days' plus	• The branch prepares a seven (7) days' Demand Letter for ALL accounts outstanding. The Demand letter should be hand delivered or sent via registered mail to any known postal address, emailed to the customer's verified number/email account by the Relationship Officer and an acknowledged copy is filed in the customer's file.	• The branch prepares a seven (7) days' Demand Letter for ALL accounts outstanding. The Demand letter should be hand delivered or sent via registered mail to any known postal address, emailed to the customer's verified number/email account by the Relationship Officer and acknowledged copy is filed in the customer's file.
Arrears 30 days' plus	• Relationship Officer prepares a second demand letter copied Guarantor giving the customer 14days default notice which is hand delivered to the customer/ Guarantor who should acknowledge receipt. • If the arrears are not cleared by	• Relationship Officer prepares a second demand letter giving the customer 14days default notice which is hand delivered to the customer who should acknowledge receipt (no guarantor requirement for Pasha Loans).

	89th day the file is forwarded to Head Office Collections and recoveries	• If the arrears are not cleared by 89th day the file is forwarded to Head Office Collections and recoveries
	Collections & Recoveries Officer-Head Office	
Arrears 90 days' plus	• On the 90th day the customer is automatically negatively listed with CRB	• On the 90th day the customer is automatically negatively listed with CRB
	• DRU to issue instructions to the Auctioneers who proclaims the securities (Chattels)	• DRU to issue instructions to the Auctioneer who proclaims the business assets.
	• The Auctioneer now repossesses and stores the chattels in a secured and insured yard for 7 days.	• The Auctioneer now repossesses and stores the business assets in a secured and insured yard for 7 days.
	• The Auctioneer advertises the Chattels in any of the major Dailies in preparation for sale. (7days)	• The Auctioneer advertises the business assets in any of the major Dailies in preparation for sale (7days)
	• The Auctioneer conducts the auction with highest bidder paying and the proceeds deposited in the Defaulter's account and transferred to the loan account. The Branch must send a representative who prepares a report on the same.	• The Auctioneer conducts the auction with highest bidder paying and the proceeds deposited in the Defaulter's account and transferred to the loan account. The Branch must send a representative who prepares a report on the same.
	• Where full recoveries have not been made after disposal of the	• Where full recoveries have not been made after disposal of

chattels, follow-up demands are made to the customer for a period of 6 months.

- If no payments have been received the loan is recommended for write-off as per the banks credit policy as stipulated by the CBK Prudential Guidelines of 2013: Article 3.9 on write-offs which states:
- An institution should write off a loan or a portion of a loan from its balance sheet when the institution loses control of the contractual rights over the loan or when all or part of a loan is deemed uncollectible or there is no realistic prospect of recovery. This normally evident at a stage where:

Write off of facilities classified as loss should be done within 180 days of their being classified as loss if there are no recoveries within this period.

the chattels. follow-up demands are made to the customer for a period of 6 months.

- If no payments have been received the loan is recommended for write-off as per the bank's credit policy as stipulated by the CBK Prudential Guidelines of 2013; Article 3.9
- **For Pasha Loans, set-off is to be done against the funds upon termination of the contract by ICT**

1731. The Bank received Kes. 108,495,790.00 from the Authority which was being disbursed as a revolving fund. Interest earned on the Fund as at January 2017 was Kes. 20,125,429.

1732. Out of the total amount of Kes. 53,692,591.00 disbursed to applicants from the Fund, the Bank collected Kes. 30,057,491.00 through check-off. The Bank applied the above mechanisms to the Pasha Loans where upon default, the Bank contacted the borrowers through phone calls, issue of demand letters and debt collection through auctioneers.

1733. As of 31st January 2017, an amount of Kes. 45,193,389.00 was outstanding from the borrowers.

1734. On 23rd January 2017, the Authority wrote to the Bank terminating the contract. The letter indicated the reasons for terminating the contract as below:

- That the Kenya ICT Board had since been dissolved and a new state corporation, 'The Information and Communications Technology Authority (ICTA)' created as per legal notice number 183 of 16th August 2013.
- Resolution by the ICTA Board on 24th November 2016 to close the Fund.
- That the Fund had remained inactive for a period exceeding 2 years hence the resolution to close the Fund.

1735. Upon receipt of the letter terminating the contract, the parties carried out a joint reconciliation process upon which they agreed that the Bank would remit the sum of Kes. 82,884,004.00 being the net amount with outstanding loan balances of Kes. 45,193,389.00. Thereafter the account was closed.

1736. Being a Fund Administration arrangement, the contract provided as follows:

2.6.3 Upon termination of this Contract pursuant to Clauses GC 2.6.1 or 2.6.2, KICTB shall make the following payments to the FI:

(a)Payment of any advances still outstanding for loans made pursuant to clause GC 6 related to services satisfactorily carried out prior to the effective date of termination;

1737. With the contract terminated, the Bank had no legal standing empowering it to collect from the borrowers since the Principal-Agency relationship came to an end. However, the Bank during the period 2010 and 2017 when it was managing the Fund aggressively pursued recovery efforts as evidenced above.

1738. The Pasha Centers being start-ups could not access funding from banks or other financial institution. It is well documented that funding start-ups were very risky and collection of such debts is very difficult.

1739. Despite the best efforts, ICTA did not manage to recover the outstanding amount of Kes. 45,193,389 dues to various factors including:

i. The customers in default closed their businesses and had no alternative sources of income to pay off the loans.

ii. Some of the borrowers could not be traced despite the aggressive efforts via the debt recovery team and external service providers.

iii. The Bank also received a request from a representative of the borrowers under the Pasha Association of Kenya to delist the borrowers from CRB as there were ongoing discussions with the Authority to write off the loans. However, in the absence of formal instructions from the Authority, the said request was not granted.

Committee Observations

1740. The Committee made the following observations: -

I. The Committee noted that the Bank was on boarded through an Expression of Interest advertised in Daily Nation on 30th July 2009 and a further Request for Proposal from the five shortlisted banks dated 24th August 2010.

II. The Committee was concerned with how Family Bank was chosen, given that there were other banks with wider geographical presence, whereby the management of ICTA informed the Members that an expression of interest was carried out inviting all banks.

III. The Committee noted that the bank had a policy on recovery of unsecured loansthat included the timelines and actions to be taken at each stage.

IV. The Committee noted that Family bank had demonstrated the effort it had carried out to recover the money which was sequenced as follows; issuance of first and second demand letters, follow up phone calls, listing at the Credit Reference Bureau and auctioning of property.

V. The Committee noted that the Pasha Loan was set up to assist startups come up with digital villages in the country, however the risk factor associated with them was factored thus waiving the need of having guarantors for ease of access of the funds by the startups.

VI. The Committee observed that Family bank was chosen based on their excellent track record of dealing effectively with high risk but low collateral loans which they had a score of 90%, however the Committee noted that the recovery of Pasha Loans were at 42%.

VII. The Committee observed that a total of 54 startups borrowed the loan and sixteen (16) fully repaid and others partially repaid and these startups were spread across twenty – six (26) of the forty – seven (47) counties.

VIII. The Committee observed that the Board of ICTA deliberated on the non-payment of outstanding balance for over two years and resolved to terminate the contract by writing to Family Bank.

IX. The Committee observed that the cost of following up on the defaulters would be higher and the equipment were obsolete in case of repossession thus the chance of recovering the defaulted loans was minimal.

Committee Recommendation

1741. The Committee recommends that Accounting Officer should, in consultation with the National Treasury, make provision for impairment of the Pasha fund asset in their financial statements.

1742. The matter remains unresolved as the loans are pending payments and OAG should keep in view of the matter in subsequent Financial Year.

FINANCIAL YEAR 2019/2020

The Auditor General gave a **qualified opinion audit** and raised the following concerns:

349. Unsupported-Special Grant expenses

1743. As discussed under note 17 to the financial statements, the statement of financial performance reflects special grants expenses of Kshs.2,786,316,723 included in balance of shared services of Kshs.345,735,317 is an expenditure of Kshs.2,093,585 in respect of travel accommodation and other subsistence which has not been supported.

1744. Further, the balance includes National Optical Fiber Backbone Infrastructure (NOFBI) project expenses of Kshs.21,053,189 which includes misclassified training and capacity building expenses of KShs.376,649 and KShs.2,105,991 under the East Africa Regional Transport Trade and Development Facilitation Project. The balance also includes daily and subsistence allowances claims of Kshs.958,220 for an officer. Management did not explain why the officers had not been issued with imprest and whether there was prior authority as per the financial regulations. Further, approved workplan for the activities were not provided for audit review.

1745. In addition, the balance includes Digital Literacy Programme for operations amount of Kshs.274,273,284 which includes unsupported misclassified training and capacity building expenses of Kshs.10,922,730, contracted and utility supplies of Kshs. 485,707 and office and general supplies of Kshs.263,727 all totaling to Kshs.11,672,164. The balance constitutes daily and subsistence allowance claims of Kshs.2,874,880 for an officer. However, the Management did not explain why the officer had not been issued with imprest and whether there was prior authority as per the financial regulations. Further, the balance includes unsupported legal services, arbitration fees and legal deposits costs amounting to Kshs.1,115,204. In the foregoing, the accuracy, completeness and validity of the expenditure of Kshs.2,786,316,723 in respect of special grant expenses reflected in the statement of financial performance for the year ended 30 June, 2020 could not be confirmed.

Management Response

The Accounting Officer submitted the following—

1746. The expenditure of Kshs.2,093,585 under Shared Services support documents were not provided for audit review.

1747. The NOFBI balance included misclassified training and capacity building expenses of KShs.376,649 and KShs.2,105,991 under the East Africa Regional Transport Trade and Development Facilitation Project. The expenses were correctly classified, the narrations on the payment documents were incorrect. The NOFBI balance included daily and subsistence allowances claims of Kshs.958,220 for an officer and management did not explain why the officers had not been issued with imprest and whether there was prior authority as per the financial regulations. As per the PFM Regulations 2015 Section 93 Subsection 4(b), an Accounting Officer shall ensure that imprest is not issued to applicants who have outstanding imprests. The officers had a running imprest and therefore could not be issued with additional imprests hence the paid-out claims.

1748. The DLP balance constituted KShs.274,273,284 which included unsupported misclassified training and capacity building expenses of Kshs.10,922,730, contracted and utility supplies of Kshs.485,707 and office and general supplies of Kshs.263,727 all totaling Kshs.11,672,164. The expenses were not misclassified. They were all budgeted for.

1749. The DLP balance constituted daily and subsistence allowance claims of Kshs.2,874,880 for an officer and that management did not explain why the officer had not been issued with imprest and whether there was prior authority as per the financial regulations. As per the PFM Regulations 2015 Section 93 Sub section 4(b), an Accounting Officer shall ensure that imprest is not issued to applicants who have outstanding imprests. The officers had a running imprest and therefore could not be issued with additional imprests hence the paid-out claims. The balance of Kshs.1,115,204 included unsupported legal services, arbitration fees and legal deposits costs.

Committee observation and Recommendation

The Committee noted at the time of examination, that the management had submitted documentation confirming the expenditure under the National Optical Fiber Backbone Infrastructure project and Digital Literacy Programme to the OAG for review and verification hence the matter is resolved.

1750. Further, the Committee recommends that the Accounting Officer should henceforth submit documents to the OAG on time in line with section 68 (2) (k) of the Public Finance Management Act, 2012. .

350. Inaccuracy of Escrow Account

1751. As disclosed under Note 28 to the financial statements, the statement of financial position reflects NOFBI II Expansion Escrow Account balance of Kshs.366,309,916. However, the USD 3,607,722 (at 106.522 rate) translated to KShs.384,303,207, resulting into an unreconciled variance of KShs.17,993,291.

1752. Further, Sections 5.2.1.2(1) and (2) of the escrow agreement states that minimum amounts of Rem 22,200,000 and Rem 57,600,000 is held in the debts service account during the period up to March, 2020 and after March, 2020 respectively. However, the Management has retained the balance at Rem 22,200,000.

1753. In the foregoing, the accuracy, completeness and validity of the reported escrow balance of Kshs.366,309,916 reflected in the statement of financial position as at 30 June, 2020 could not be ascertained.

Management Response

The Accounting Officer submitted as follows—

1754. The conversion rate of Ksh.106.55 used to translate the dollar amount in the Escrow Account to Kenya Shillings was generated from the current ERP system. The system uses an average of all the conversion rates for the financial year instead of the CBK spot rate as at 30th June 2020. The management have adjusted the same in the ERP and corresponding cash books. Section 5 (2a) of the Escrow Agreement requires a minimum balance of Rem 57,600,000. However, in the course of the financial year, the deposits to the Escrow Account were not possible due to the delays in Exchequer. Management did timely requisition of funds and frequent reminders to the National Treasury to release the funds as per the attached correspondences. The funds were remitted in the following year, 2020/21 FY, to fulfill the minimum requirement by the EXIM Bank.

Committee observation and Recommendation

1755. The Committee noted from the submission of the Accounting Officer at the time of examination that the conversion rate of Ksh.106.55 used to translate the dollar amount in the Escrow Account to Kenya Shillings was generated from the current ERP system. The system uses an average of all the

conversion rates for the financial year instead of the CBK spot rate as at 30th June 2020.

1754. Further, the Committee noted at the time of examination that the deposits to the Escrow Account were not possible due to the delays in Exchequer. The funds were remitted in the following year, 2020/21, to fulfil the minimum requirement by the EXIM Bank hence the matter is resolved.

351. Unsupported Deposits

1757. As disclosed under Note 23(a) to the financial statements, the statement of financial position reflects receivables from exchange transactions of Kshs.8,596,558, which includes deposits amounts of Kshs.3,054,350. However, Kshs.1,463,000 of the deposit's balances were not supported with relevant documentation. Consequently, the accuracy, completeness and validity of deposits of Kshs. 1,463,000 as at 30 June, 2020 could not be confirmed.

Management Response

1758. The Accounting Officer informed the Committee that that the deposits of Kshs.1,463,000 relates to an advance payment made to a law firm. A journal was passed to recognize the deposit as an expense following the end of the contract.

Committee observation and Recommendation

1759. The Committee noted from the submission of the Accounting Officer at the time of examination, that deposits of Kshs.1,463,000 related to an advance payment made to a law firm and a copy of the journal and sample reports from the legal firm were submitted to the OAG for review and verification hence the matter is resolved.

1760. Further, the Committee recommends that the Accounting Officer should henceforth submit documents to the OAG on time in line with section 68 (2) (k) of the Public Finance Management Act, 2012.

Emphasis of Matter

352. Project Special Account Reconciliation

1761. As disclosed under note 10.3 to the financial statement, the financial performance reflects proceeds from domestic and foreign grants of KShs.123,676,921. However, this excludes amounts withdrawn but unclaimed of USD 30,573.03 equivalent to Ksh.3,196,275 as at 30 June, 2020 reflected in the project special account statement. The amount represents cumulative funds transfers to the project bank account whose expenditure returns had not been submitted to the National Treasury by the close of the financial year. My opinion is not modified in respect of the effects of this matter.

Management Response

The Accounting Officer responded as follows—

1762. The financial performance reflected proceeds from domestic and foreign grants of KShs.123,676,921. However, this excludes amounts withdrawn but unclaimed of USD.30,573.03 equivalent to KSh.3,196,275 as at 30 June, 2020 reflected in the project special account statement.

1763. The expenditure returns were submitted to the National Treasury in the following financial year on 24th November 2020.

Committee observation and Recommendation

1764. The Committee noted from the submission of the Accounting Officer at the time examination that the expenditure returns were submitted to the National Treasury in the following financial year hence the matter is resolved.

Other Matter

353. Budgetary Control and Performance

1765. The statement of comparative budget and actual amounts reflects the final receipts budget and actual on a comparable basis of Ksh.3,300,066,431 and Kshs.1,887,564,957 respectively, resulting to an under-funding of Kshs.1,412,501,474 or 43% of the budget. The under-funding mainly occurred under the donor funded programmes. Similarly, the Project expended Kshs.3,399,850,010 against an approved budget of Kshs.3,300,066,431 resulting to an over-expenditure of Kshs.99,783,579 or 3% of the budget. The over-expenditure occured under the programs and purchase of fixed assets. The underfunding affected the planned activities and may have impacted negatively on service delivery to the public.

Management Response

The Accounting Officer submitted as follow—

1766. There was an under-funding of Kshs.1,412,501,474 or 43% of the budget. This is because the Development vote was only funded in the first half of the financial year Kshs.1,374,600.00. Exchequer request for the second half year was done in January 2020 however, these funds were not received. Management will ensure continuous engagement with the National Treasury to ensure budgets are adequately funded.

1767. There was an over-expenditure occurred under the programs and purchase of fixed assets. However, this was due to supplementary budget cuts. Management has put in place controls to ensure expenditures are within the approved budgets to avoid over-expenditures.

Committee observation

1768. The Committee noted from the submission of the Accounting Officer at the time examination that there was an under-funding of Kshs.1,412,501,474 or 43% of the budget, because the Development vote was only funded in the first half of the financial year Kshs.1,374,600.00.

1769. Further, the Committee noted that the over expenditure was as a result of supplementary budget cuts.

Committee Recommendation

1770. The Committee recommends that the National Treasury should ensure remittance of funds as per the budget or revise the budgets through supplementary budgets.

1771. Further, ICTA should realign its approved budget to the available funding.

354. Unresolved Prior year matters

1772. In the previous years' audit reports, several issues were raised under the report on financial statements, Reports on Lawfulness and Effectiveness in Use of Public Resources, and Report on Effectiveness of Internal Controls, Risk Management and Governance. However, the Management has not resolved the issues nor given any explanation for the failure to adhere to the

provisions of the Public Sector Accounting Standards Board templates and the National Treasury's circular Ref: PSASB/12/1/44 of 25 June, 2019.

Management Response

1773. The Accounting Officer reported that the Authority was in the process of preparing the report to address the issues for FY 2015/2016, 2016/2017 and 2017/2018.

Committee observation

1774. The Committee noted that at the time of examination the management had not submitted the report addressing the unresolved prior issue.

Committee Recommendations

1775. The Committee directs that the Accounting Officer to submit the report to address the unresolved prior year matters for the FY2015/2016,2016/2017 and 2017/2018 to the to the OAG for review and verification, within three (3) months of tabling this report.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

355. Irregular Contract for Data Centre

1776. As disclosed under Note 17 to the financial statements, the statement of financial performance reflects special grants expenses of Kshs.2,786,316,723. The shared services balance includes payments on maintenance of Government Data Centre contract totaling to Kshs.5,962,667. As reported in the previous year, review of records availed revealed that the maintenance contract which commenced on 28 September, 2015 and expired on 27 September, 2016 had been extended on two occasions thereby extending it to 31 March, 2018 and a subsequent renewal of contract on 18 June, 2018 for a period of one year. However, the documentation in support of the

procurement process for the contract extension and renewal were not provided for audit verification.

1777. Further, there were no contracts for the period between 19 June, 2019 to 27 October, 2019. Subsequently, the contract was awarded to the same supplier without subjecting it to competitive procurement as outlined in the Public Procurement and Asset Disposal Act, 2015. Consequently, Management is therefore in breach of the law.

Management Response

The Accounting Officer responded as follows—

1778. The contract of 18 June, 2018 for a period of one year was not a renewal but a fresh procurement which the same firm was successful.

1779. Documentation in support of the procurement process for the contract extension and renewal was not provided for audit verification during the audit period. The contract for the maintenance of the Government Data Centre for the period 19 June 2019 to 27 October 2019 including the contract extensions was availed later.

Committee observation and Recommendation

1780. The Committee noted from the submission of the Accounting Officer at the time of examination that the contract for the maintenance of the Government Data Centre for the period 19 June 2019 to 27 October 2019 including the contract extensions and renewals had been availed to the OAG for audit verification hence the matter is resolved.

1781. Further, the Committee recommends that the Accounting Officer should henceforth submit documents to the OAG on time in line with section 68 (2) (k) of the Public Finance Management Act, 2012.

356. Slow Project Funds Absorption

1782. The East Africa Regional Transport Trade and Development Facilitation Project commenced in November, 2015 with an estimated completion date

of 31 December, 2021. However, as reflected under the funding summary, out of the total commitment of Kshs.2,979,795,000 by IDA and the Government of Kenya, only Kshs.325,831,189 or 11% had been released to the project as at 30 June, 2020. As previously reported, there is slow absorption of the project funds. In the circumstances, I am unable to confirm whether value for money has been achieved through the project.

Management Response

1783. The Accounting officer stated that the project had faced challenges in funds disbursement hence the overall low absorption of funds. The original project design had challenges hence leading to stagnation of the project for a while. However, as from 2019, there has been engagements and consultations with other key project partners such as KENHA. The civil works component was moved to KENHA to avoid issues of fiber cuts during road construction. The reallocation of funds from ICTA to KENHA was approved in August 2019 by the World Bank.

1784. The project was currently on course 95% with an expected completion date of December 2023.

Committee observation and Recommendation

1785. The Committee noted at the time of examination that the commencement date of the project was July 1st 2020 with an expected completion date of 29th December, 2023. Further, as at 19th April, 2023 the project was at week 146 with 95% of the work completed hence the matter I resolved.

FINANCIAL YEAR 2020/2021

The Auditor General gave a **qualified opinion** and raised the following concerns:

357. Unsupported Special Grants Expenses

1786. The statement of financial performance reflects special grant expenses amounting to Kshs.1,036,124,754. As further disclosed in Note 18 to the financial statements, the expenditure includes Kshs.106,830,820 in respect of

National Optic Fibre Backbone Infrastructure (NOFBI) Project. Review of documents supporting the project expenses revealed that the amount was incurred in relation to travel and subsistence through imprests issued to employees of the Authority and the State Department for Innovation, Communication and Technology, which was implementing the Project. However, no documentation such as approved work plan for the Project and an agreement with the State Department requiring the Authority to undertake and bear costs of monitoring and evaluation of project activities was provided for audit review. As a result, the accuracy and validity completeness of the expenditure of Kshs. 1,036,124,754 in respect of special grants could not be confirmed.

Management Response

The Accounting Officer submitted as follows—

1787. Documentation such as an approved work plan for the Project and an agreement with the State Department requiring the Authority to undertake and bear costs of monitoring and evaluation of project activities was provided for audit review.

1788. However, the Signed Performance Contract FY 2020/2021 between the State Department of ICT and Innovation and the ICT Authority outlines the responsibility of the Authority during the period. In addition, Escrow Agreement defines the roles of ICTA as the operator and MOICT as the end user |

Committee observation and Recommendation

1789. The Committee noted at the time of examination, that the management had submitted documentation confirming the expenditure under the National Optical Fiber Backbone Infrastructure project and Digital Literacy Programme to the OAG for review and verification hence the matter is resolved.

1790. Further, the Committee recommends that the Accounting Officer should henceforth submit documents to the OAG on time in line with section 68 (2) (k) of the Public Finance Management Act, 2012.

358. Long Outstanding Pasha Loans

1791. The statement of financial position reflects Pasha Fund balance of Kshs.45,193,389. The balance which has been outstanding since the year 2017, represents loans advanced to entrepreneurs to set up information hubs with a condition of repayment within 9 years. However, during the year under review and in the prior years, no repayment had been received from the borrowers.

1792. Although the loans have remained outstanding for a long period and its recovery was doubtful. Management has not made an impairment provision for the loan amount. Further, interest chargeable on the loans was not included in the financial statements. In the circumstances, the accuracy and completeness of the Pasha Fund balance of Kshs.45,193,389 could not be confirmed.

Management Response

The Accounting Officer submitted as follows—

1793. A From the contract between ICTA (then Kenya Information Communication Technology Board) and the Bank, under the scope of work, the Bank was in charge of managing the disbursement of funds. This included accountability of the disbursed funds by establishing a loan repayment system, among other measures. The specific tasks included but not limited to loan follow ups and recovery.

1794. However, the Bank vide letters dated 03rd February 2017 and 21st June 2023 informed the Authority that the Entrepreneur loan accounts with outstanding balances were in the loss category on account of default and that further recovery of the loans was impossible. The Bank has listed the defaulters with CRB. Copies of correspondences, sample CRB reports and loan statements have been availed.

1795. You may note that as per the contract between KICTB and the Bank, there was no collateral/security required to secure the loans, except for the project capital assets. In view of the above and noting that the funds loaned to the citizens are not recoverable, the ICT Authority proposes to institute a write-off process in line with Section 69 of the PFM Act 2012.

Committee Observations

1796. The Committee made the following observations: -

(a) The Committee noted that the Bank was on boarded through an Expression of Interest advertised in Daily Nation on 30th July 2009 and a further Request for Proposal from the five shortlisted banks dated 24th August 2010.

(b) The Committee was concerned with how Family Bank was chosen, given that there were other banks with wider geographical presence, whereby the management of ICTA informed the Members that an expression of interest was carried out inviting all banks.

(c) The Committee noted that the bank had a policy on recovery of unsecured loans that included the timelines and actions to be taken at each stage.

(d) The Committee noted that Family bank had demonstrated the effort it had carried out to recover the money which was sequenced as follows: issuance of first and second demand letters, follow up phone calls, listing at the Credit Reference Bureau and auctioning of property.

(e) The Committee noted that the Pasha Loan was set up to assist startups come up with digital villages in the country, however the risk factor associated with them was factored thus waiving the need of having guarantors for ease of access of the funds by the startups.

(f) The Committee observed that Family bank was chosen based on their excellent track record of dealing effectively with high risk but low collateral loans which they had a score of 90%, however the Committee noted that the recovery of Pasha Loans were at 42%.

(g) The Committee observed that a total of 54 startups borrowed the loan and sixteen (16) fully repaid and others partially repaid and these startups were spread across twenty – six (26) of the forty – seven (47) counties.

(h) The Committee observed that the Board of ICTA deliberated on the non-payment of outstanding balance for over two years and resolved to terminate the contract by writing to Family Bank.

(i) The Committee observed that the cost of following up on the defaulters would be higher and the equipment were obsolete in case of repossession thus the chance of recovering the defaulted loans was minimal.

Committee Recommendation

1797. The Committee recommends that Accounting Officer should, in consultation with the National Treasury, make provision for impairment of the Pasha fund asset in their financial statements.

1798. The matter remains unresolved as the loans are pending payments and OAG should keep in view of the matter in subsequent Financial Year

Key Audit Matters

359. Budgetary Control and Performance

1799. The statement of comparison of budget and actual amounts reflects final revenue budget and actual on comparable basis of Kshs.2,315,109,000 and Kshs.2,168,500,711 respectively resulting to an under-funding of Kshs.146,608,289 or 6% of the budget. Similarly, the Authority expended Kshs.1,933,414,590 against an approved budget of Kshs.2,315, 109,000 resulting to an under-expenditure of Kshs.381,694,410 or 16% of the budget. The underfunding and underperformance affected the planned activities and may have impacted negatively on service delivery to the public.

Management Response

The Accounting Officer submitted as follows—

1800. The statement of comparison of budget and actual amounts reflected an under-funding of Kshs.146,608,289 or 6% of the budget. This was due to the budget cuts through the Supplementary Estimates hence the underfunding. For under-expenditure, the development budget was cut by half at supplementary III towards the end of the year hence some activities had to be moved to the next financial year.

1801. The statement of comparison of budget and actual amounts reflected an under-expenditure of Kshs.381,694,410 or 16% of the budget. This was attributed to the budget cuts through the supplementary estimates. However, the Authority's Budget was not funded in full by the exchequer. Management has continuously held discussions with National Treasury on exchequer issues to ensure full funding.

Committee observations

1802. The Committee noted at the time examination that there was an under-funding of Kshs.146,608,289 or 6% of the budget, as a result of the budget cuts through supplementary estimates.

1803. The Committee noted at the time of examination that the under-expenditure of Kshs.381,694,410 or 16% of the budget was as a result of supplementary budget cuts.

Committee Recommendations

1804. The Committee recommends that the National Treasury should ensure remittance of funds as per the budget or revise the budgets through supplementary budgets.

1805. Further, ICTA should realign its approved budget to the available funding.

360. Unresolved Prior Year Audit Matters

1806. In the previous year's report, several issues were raised under the Report on Financial Statements and Report on Lawfulness and Effectiveness in Use of Public Resources. Although, Management has indicated in the progress on follow up of auditor's recommendations section of the financial statements that all the issues have been resolved. However, the issues remained unresolved as the matters were yet to be discussed by the National Assembly's Public Investments Committee.

Management Response

1807. The Accounting Officer submitted that the Authority was in the process of preparing the report to address the issues for FY 2015/2016, 2016/2017 and 2017/2018.

Committee observation and Recommendation

1808. The Committee noted that at the time of examination the unresolved prior year audit matters had been considered and resolved hence the matter is resolved.

Signature .....

HON. DAVID PROSING, CBS, M.P.
CHAIRPERSON, PIC – COMMERCIAL AFFAIRS & ENERGY

Date 4/6/2025



Adoption of the Second Report of the Public Investments Committee on Commercial Affairs & Energy on the Examination of the Reports of the Auditor General on the Financial Statements of Selected States Corporations

We, the Honourable Members of the Public Investments Committee on Commercial Affairs & Energy, do hereby affix our signatures to this Second Report of the Committee on its examination of the Financial Statements of selected State Corporations to affirm our approval and confirm its accuracy, validity and authenticity:

	NAMES	SIGNATURE
1.	Hon. David Pkosing, CBS, M.P - **Chairperson**	
2.	Hon. Dr. John Arile Nanok, M.P. – **Vice Chairperson**	
3.	Hon. Dr. Adan Keynan Wehliye, CBS, M.P	
4.	Hon. Festus Mwang' Kiunjuri, EGH, M.P	
5.	Hon. Sarah Paulata Korere, M.P	
6.	Hon. Dr. Babu Owino Paul Ongili, M.P	
7.	Hon. Dr. Beatrice Adagala, M.P	
8.	Hon. Esther Muthoni Passaris, M.P.	
9.	Hon. Paul Kahindi Katana, M.P	
10.	Hon. Betty Njeri Maina, M.P	
11.	Hon. Charo Kazungu Tungule, M.P	
12.	Hon. David Kipkiger M.P.	
13.	Hon. Duncan Mathenge Maina, M.P	
14.	Hon. Ronald Kamwiko Karauri, M.P	
15.	Hon. Yusuf Mohamed Farah, M.P	

MINUTES OF THE 8TH SITTING OF THE PUBLIC INVESTMENTS, COMMITTEE ON COMMERCIAL AFFAIRS & ENERGY HELD ON THURSDAY 9TH MARCH 2022 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS, AT 10:00 A.M.

PRESENT

1. Hon. David Pkosing, CBS, MP - **Chairperson**
2. Hon. James Opiyo Wandayi, CBS, MP
3. Hon. Sarah Paulata Korere, MP
4. Hon. Babu Owino Paul Ongili, MP
5. Hon. Paul Kahindi Katana, MP
6. Hon. Charo Kazungu Tungule, MP
7. Hon. Mariamat Jebet Kitany, MP
8. Hon. Peter Irungu Kihungi, MP
9. Hon. Ronald Kamwiko Karauri, MP

APOLOGIES

1. Hon. Dr. Lilian Achieng Gogo, MP - **Vice Chairperson**
2. Hon. Adan Wehliye Keynan, CBS, MP
3. Hon. Mwangi Kiunjuri, EGH, MP
4. Hon. Beatrice Kahai Adagala, MP
5. Hon. John Machua Waithaka, MP
6. Hon. Yussuf Mohamed Farah, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Ahmad Guliye	-	Clerk Assistant II
2. Mr. Letaya Morintat	-	Clerk Assistant III
3. Mr. Andrew Kipchumba	-	Clerk Assistant III
4. Mr. Sydney Lugaga	-	Legal Counsel I
5. Ms. Sheila Chelanilin	-	Serjeant at Arms
6. Mr. Dominic Mwanzhwa	-	Legal Counsel II
7. Ms. Judith Kiprop	-	Fiscal Analyst III
8. Mr. Yenel JEo	-	Serjeant at Arms
9. Ms. Gladwell Amimo	-	Research Officer III

10. Ms. Mercy Keroboi - Audio Officer

MIN. NO. NA/PIC-CA&E/2023/038: PRELIMINARIES

The meeting was called to order at 10:10 a.m. with a prayer said by the Chairperson. Thereafter, introductions were made.

MIN. NO. NA/PIC-CA&E/2023/039: ADOPTION OF THE AGENDA

The agenda of the meeting was adopted as outlined in the notice of meeting after it was proposed and seconded by Hon. Sarah Paulata Korere, M.P and Hon. Babu Owino, M.P respectively.

MIN. NO. NA/PIC-CA&E/2023/040: COMMUNICATION FROM THE CHAIR

The Chairperson welcomed Members and the stakeholders present to the meeting.

MIN.NO.NA/PIC-CA&E/2023/041: CONFIRMATION OF MINUTES

This agenda item was deferred to the next meeting.

MIN.NO.NA/PIC-CA&E/2023/042: EXAMINATION OF THE AUDITED ACCOUNTS OF KENYA RAILWAYS CORPORATION FOR THE FY 2018/2019 TO 2020/2021

I. The Committee noted with concern of the absence of the management of the Kenya Railways Corporation during the scheduled meeting without justifiable cause.

II. The Committee noted that an apology was not tendered in good time and at the time the meeting was convened, no apology was officially received by the Committee.

III. After deliberations, the Committee resolved to accord the management another opportunity to appear before it on Wednesday 15th March, 2023 at 10.00 a.m. failure to which the Committee will be left with no choice but to subject the Management of Kenya Railways Corporation to the provisions of Section 18(1) of the Parliamentary Powers and Privileges Act, 2017.

MIN.NO.NA/PIC-CA&E/2022/048: ANY OTHER BUSINESS (A.O.B)

After deliberations on the upcoming scheduled meetings with the State Corporations, the Committee resolved as follows;

I. The meeting with the Kenya Forest Service be rescheduled to Wednesday, 22nd March, 2022 at 10.00 a.m.

II. An invitation be sent to the Energy & Petroleum Regulatory Authority (EPRA) for a meeting on Wednesday, 23rd March 2022 at 10.00 a.m. to respond to the Auditor General's reservations for the FY 2016/2017 TO 2020/201.

III. A request be made to the Speaker of the National Assembly to allow the Committee sit on Wednesdays and transact business.

IV. The Committee to organize for a retreat and sit through during the short recess in order to examine audited reports of more State Corporations.

MIN.NO.NA/PIC-CA&E/2022/044: ADJOURNMENT

There being no other business the meeting was adjourned at 10:40 a.m. The next meeting will be held on Tuesday, 14th March, 2022 at 10:00 a.m.

Signature .....

HON. DAVID PKOSING, CBS, M.P.
(CHAIRPERSON)

Date 16/3/2022

MINUTES OF THE 9TH SETTING OF THE PUBLIC INVESTMENTS COMMITTEE ON COMMERCIAL AFFAIRS & ENERGY HELD ON WEDNESDAY 12TH MARCH 2019 ON 4TH FLOOR CONTINENTAL HOUSE, PARLIAMENT BUILDINGS, AT 10:00 A.M.

PRESENT

1. Hon. David Pkosing, CBS, MP - **Chairperson**
2. Hon. James Opiyo Wandayi, CBS, MP
3. Hon. Mwangi Kiunjuri, EGH, MP
4. Hon. Sarah Paulata Korere, MP
5. Hon. Rabo Owino Paul Ongili, MP
6. Hon. Paul Kahindi Katana, MP
7. Hon. Charo Kazungu Tungule, MP
8. Hon. Marianne Jebet Kitany, MP

APOLOGIES

1. Hon. Dr. Lilian Achieng Gogo, MP - **Vice Chairperson**
2. Hon. Adan Wehliye Keynan, CBS, MP
3. Hon. Beatrice Kalasi Adagala, MP
4. Hon. John Muchiri Waithaka, MP
5. Hon. Peter Irungu Kihangi, MP
6. Hon. Ronald Kamwiko Karauri, MP
7. Hon. Yussuf Mohamed Farah, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Ahmed Guliye - Clerk Assistant II
2. Mr. Letaya Morintat - Clerk Assistant III
3. Mr. Andrew Ejechumba - Clerk Assistant III
4. Dr. Benjamin Ngimor - Senior Fiscal Analyst
5. Mr. Sydney Lugaga - Senior Legal Counsel
6. Ms. Sheila Chebetibin - Serjeant at Arms
7. Mr. Dominic Mwenalwa - Legal Counsel II
8. Ms. Judith Njirap - Fiscal Analyst III
9. Mr. Yesel Jillo - Serjeant at Arms
10. Ms. Gladwell Amimo - Research Officer III
11. Ms. Mercy Kerubo - Audio Officer

OFFICE OF THE AUDITOR-GENERAL

12. Mr. Njoroge Waithima – Director
13. Mr. Henry Manegese – Parliamentary Liaison Officer

THE NATIONAL TREASURY

14. Mr. Humphrey Mola – Deputy Director

15. Ms. Florence Ngungu – Senior Investment Officer
16. Mr. Livingstone Mburu – Inspectorate of State Corporations

KENYA RAILWAYS CORPORATION

1. Mr. Philip J. Mainga – Managing Director
2. Mr. Stanley Gitari – Ag. General Manager Legal services & Co. Secretary
3. Ms. Jemimah Mutu – Finance Manager
4. Mr. Peter Kamahia – Accounts Manager

MIN. NO. NA/PIC-CA&E/2022/044: PRELIMINARIES

The meeting was called to order at 10:05 a.m. with a prayer said by the Chairperson. Thereafter, introductions were made.

MIN. NO. NA/PIC-CA&E/2022/046: ADOPTION OF THE AGENDA

The agenda of the meeting was adopted as outlined in the notice of meeting after it was proposed and seconded by Hon. Bidu Owino, M.P. and Hon. Paul Kahindi Katana, M.P respectively.

MIN. NO. NA/PIC-CA&E/2022/047: COMMUNICATION FROM THE CHAIR

The Chairperson welcomed Members and the witnesses present to the meeting.

MIN.NO.NA/PIC-CA&E/2022/048: CONFIRMATION OF MINUTES

This agenda item was deferred to the next meeting.

MIN.NO.NA/PIC-CA&E/2022/049: EXAMINATION OF THE AUDITED ACCOUNTS OF THE KENYA RAILWAYS CORPORATION FOR THE FY 2018/2019 TO 2020/2021

The management of Kenya Railways Corporation led by its Managing Director, Mr. Philip Mainga appeared before the Committee to adduce evidence on the audited accounts of the corporation for the Financial Years 2018/2019 to 2021/2021. The Committee was informed as follows; -

1.0 Non-Disclosure of Material Uncertainty Related to Going Concern

Note 17.1 (f) to the financial statements on critical accounting estimates and judgements indicates that the financial statements for the year have been prepared on a going concern basis. However, the statement of financial position as at 30 June, 2019 reflects current liabilities balance of Kes 838,601,100,747.00 which exceeds the current assets balance Kes 90,396,857,135 (2018: Kes55,786,871,369) resulting to a negative working capital of Kes 108,404,980 (2018 negative Kes 110,810,000). Further, the Corporation continue to perform dismally where the statement of

comprehensive income for the year ended 30 June, 2019 reflects an operating loss of Kes 8,009,414,710 (2018: loss – Kes 5,502,898,629)

The above conditions are indicative of material uncertainty that may cast significant doubt on the Corporation's ability to continue as a going concern unless satisfactory measures are taken to reverse the trend. The continued survival of the Corporation is therefore dependent on the creditor goodwill and Government support.

Management Response

The management acknowledged the observations made by the Office of the Auditor General and responded as follows;

On the Current Liabilities (CL)being higher than the Current Assets (CA). The current ratio (CA/CL) of approximately 1:3 is attributable to Deferred Income which is Kes 188,830,900,296.00. The deferred income is mainly due to cash received that cannot be recognized as revenue in the year it is received but as revenue when earned and in case it is an asset, amortized in the year the benefits accrue.

As per note 33 of the financial statements, the main item is SGR Deferred Income Kes 174.8 Billion. This relates to amounts received as government grant towards the SGR project from the Railway Development Levy Fund. (RDLF). Once the asset is recognized, the deferred income will be amortized annually over the life of the asset.

The management has since reclassified the deferred income from current liabilities to non-current liabilities owing to the nature of recognition of deferred income arising from the resultant assets that spreads to more than one year.

The working capital is also affected by the increase in creditors. There has been a significant growth in the payables and accrued charges. This was mainly due to the following: -

1. **SGR Contractor Liability** – Kes **8,885,703,319**. This relates to SGR Phase 1A for Interim Payment Certificate no. This is Phase 1A-IPC 3 and 4 local portion certificates which had been raised but payment not made as at 30.06.2019 by RDLF.

2. **SGR Land Compensation** – Kes **8,307,857,107** of uncleared land compensation liabilities payable to Project Affected Persons (PAPs). This will be cleared through the RDLF once budgetary allocation towards the same

8. **SGR Operator Liability** – Kes 46,558,985,530 of operations costs relating to SGR operations and maintenance fees for the period June 2017 to June 2018. However, a liability of Kes 2 Billion had been offset during the period. The Operator will be paid through exchequer and escrow revenue account collections.

As at 31st December 2021, the Corporation had cleared the contractor liability, reduced the operator's liability to Kes 18 billion and reduced overall creditors to Kes 65 billion from Kes 80 billion. These measures have greatly improved our liquidity position that is currently 1.4:1 and is expected to improve further.

On deterioration of operating results from an operating loss of Kes 5,102,302,458 in 2017/18 to an operating loss of Kes 8,808,818,710.00 in 2018/19, the management responded as follows

The figure above are net financial results. This figure includes amounts received as operational grants from the National Government, the interest charged and SGR depreciation which are not directly linked to operational performance. In the year 2017-2018, the Corporation received Kes 6.1 billion whereas only Kes 35 million was received in 2018-2019.

An analysis of gross margin comprising of direct operating cost and revenue is represented as below;

	30th June 2018 Kshs.	30th June 2019 Kshs.	30th June 2020 Kshs.	30th June 2021 Kshs.	30th June 2022 Kshs.
REVENUE					
Main Income	5,109,713,810	13,078,180,177	15,720,662,189	17,405,925,998	18,695,540,751
Discount Allowed		(32,242,810)	(1,291,001,200)	(601,802,780)	(1,108,314,171)
Other income	1,114,892,619	2,109,180,360	70,334,331	173,204,343	142,012,384
TOTAL REVENUE	6,224,644,430	14,154,338,713	14,501,995,098	16,877,304,120	17,797,144,891
Direct expenses	(40,100,189)	(43,871,864)	(48,338,192)	(38,958,946)	(39,338,355)
Administration expenses	(1,891,929,693)	(888,188,217)	(834,642,049)	(1,379,180,052)	(1,854,715,693)
Staff Cost	(1,483,877,772)	(1,305,723,840)	(1,404,208,188)	(680,228,616)	(864,828,588)
Net Operating expenses	(3,393,177,946)	(18,241,624,852)	(18,918,882,384)	(18,080,277,551)	(18,752,230,449)
OPERATING EXPENSES	(26,809,086,702)	(21,324,697,974)	(21,706,070,870)	(21,178,946,148)	(22,395,733,665)
EBITDA	(6,865,685,792)	(7,170,141,253)	(7,240,868,015)	(4,458,642,027)	(4,878,589,864)

NB

*The revenues have been growing since inception

*Cost have also been increasing commensurate to the growth in volumes

*The net loss has been decreasing pointing growing efficiency and improve performance

Operationally, the improvement is evidenced by the position below moving from an operational deficit of Kes 9.8 billion to Kes 4.8 billion an improvement of 510%. It is however important to appreciate that rail operations fall in two categories, passenger and freight services. World over,

passenger services are a social service to enhance movement of people to create an enabling environment to spur economic growth.

Freight services is the compensating business that can drive the break-even of the rail operations. Based on this fact, the Corporations is embarking on a drive to increase the freight tonnage which were low in the first year of operations due to market entry lie SGR and re-entry do MGR.

MGR freight services have 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; there was deferred maintenance in the Rolling Stock leading to general inefficiency and constraint in capacity. KR is building back broken business relations with suppliers and customers including shipping lines who are core to the container business.

SGR freight had first year of full operations. The major freight component was containerized cargo. KR is putting in place mechanisms to deal with conventional cargo like clinker, grains and fertilizer. This have a higher yields and profit margins once exploited.KR also wants to build partnership relationships with shippers and bulk cargo handlers. Also envisaged is to synchronize operations with other government agencies like KRA and KPA who are an integral cog to the successful movement of cargo. KR also has aligned its human resource establishment to meet its new business model by having a new organizational structure in place.

The SGR project is also partially complete with Phase One and 2A complete while 2B and 2C still pending. KR is therefore putting in place mechanisms to increase its freight tonnage by linking the SGR to Meter Gauge Railway line as we await implementation of Phase 2B and 2C, this way we will be able to capture transit cargo to other East African nations.

Chair, this position is expected to improve further on full takeover of the SGR.
We equally appreciate that increased competition and liberalization of transport sector poses a great challenge to the sustainability of our freight operations. However, Chair, our services remain attractive owing to the following factors;

- Safety of our operations with no major incident reported on our key network of SGR
- Reliability of our services
- Stability of our prices that aids in long term planning
- Last mile connectivity through MGRs expansive network of sidings

In terms of strategy, the Corporation was undertaking the following interventions;

- Purchasing of trucks to facilitate last mile connectivity
- Strategic partnership to secure and guarantee volumes with key customers
- Investment in overhaul and new purchase of MGR rolling stock
- Revamping of the siding networks
- Revamping of branch lines

- Turnaround of the rail assets

Committee observations: -

1. The committee noted that the SGR and MGR commuter operations was the largest contributor to the operational losses
2. The committee also noted that the SGR contractual obligations was responsible for KRC's high operational losses and that KRC needs to avail the original SGR contract so the committee can have a clear view of the components of the contract that may be contributing to this loss.
3. The committee also observed that the in the financial year 2020/21 the negative working capital of KRC improved compared to the previous years.

Committee recommendations: -

1. KRC should contemplate on innovative ways of increasing revenue and reducing operational losses by leveraging more on the profitable cargo freight as it is not visible under the current economic circumstances to get government subsidy or change passenger tariffs.

9.0 Illegal Allocation of Land

As disclosed under Note 18 to the financial statements, the statement of financial position reflects property, plant and equipment balance of Kes 94,885,693,871 but as previously reported, various parcels of land were allocated to private persons 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 nine (9) industrial plots measuring approximately three (3) acres, a piece of land within Kibuya railway station measuring approximately two (2) acres and several parcels of land adjacent to Mombasa railway station measuring between 0.75 to one (1) acre have been irregularly allocated to private persons with some having been developed.

Further, another five hundred and twenty-nine (529) parcels of land had been illegally allocated across the country. However, Management has sought court intervention to repossess twenty-seven (27) parcels.

From the foregoing, the accuracy and the fair presentation of property, plant and equipment balance of Kes 94,885,693,871.00 as at 30 June, 2019 could not be confirmed.

Management Response

The management acknowledged the observations made by the Office of the Auditor General and responded as follows;

Limuru

Beyond the initial objective of the Kenya Uganda Railway of connecting the two countries, it became apparent that the provision of warehouse plots, go-down plots and industrial plots served with rail sidings was necessary for further expansion of Commerce and Trade in Kenya. The Government of Kenya availed land to Kenya Railways for development and administration of rail served industrial and warehouse plots across the country.

The total land reserved for Railway administration within Limuru Railway Station as per Railway drawing No. 4887/3 of 09th April 1959 amounted to 40 acres approximately.

The Government set aside 1.00 acres of land to Kenya Railways for go-down plots in Limuru. The land was further subdivided into eight industrial plots- No. 7892/2-9 (Plots 7892/3 was consolidated with additional area to form 7892/10 in the year 1975). The Balance of the land has been surveyed and documented as per Survey plan 461/46 with an area of 15.86 ha (39.19 acres). The Corporation is progressing issuance of title deed for the land through the National Land Commission and the Ministry of Lands and Physical Planning.

Kenya Railways issued leasehold grants to interested developers for development of go-downs and warehouses for a term of 99 years with effect from 1st June 1968. The leases were later registered with the Commissioner of Lands. The grantees pay basic land rent to the Corporation which holds the freehold interest over the properties. **(See Appendix 1 leases on plot 7892/2).**

Acc.No.	Name	LR/Plot No.	Area Acs.	Asset No.	Serial No.	Ownership Status
LC/NRB/LMU/LMU/786	Prabhudas Thakker And Vipool	7892/2	0.1203	LCNRB286	19480	Under Kenya Railways
LC/NRB/LMU/LMU/787	Limuru Tibiya General Store	7892/3	0.1205	LCNRB484	19483	Under Kenya Railways
LC/NRB/LMU/LMU/789	Limuru Tibiya Gen. Store	7892/4	0.1203	LCNRB487	19487	Under Kenya Railways
LC/NRB/LMU/LMU/800	Hassan Ali & Mohammed A. Awale	7892/5	0.1203	LCNRB289	19489	Under Kenya Railways
LC/NRB/LMU/LMU/802	Limuru Pyrethrum Growers Co-Op	7892/6	0.1475	LCNRB290	19490	Under Kenya Railways
LC/NRB/LMU/LMU/803	Limuru Dairy Farmers Co-Op Soc	7892/7&8	0.2286	LCNRB489	19489	Under Kenya Railways

LC/NRB/LMU/LMU/700	Vipool Prabudas & Rajesh Prabudas	7888/10		0.17	LC/NRB/883	19484	Under Kenya Railways

The above parcels of land are therefore still under the administration of Kenya Railways as entrusted by the Government of Kenya.

Chair, we request that you find merit in our submission and vacate this reservation.

Kikuyu

The total land reserved for Kikuyu Railways Station as per Kikuyu Trading Centre approved Development Plan No.13 of 14th March 1957 is approximately 12.5 Hectares (30.8 Acres).

A survey was done in 1961 and a survey plan F/R No 86/21 was produced affirming and documenting the land area of 30.8 Acres. Due to increased demand for rail served industrial and Go-down plots, Kenya Railways further set aside approximately 5 acres of land within Kikuyu Railway Station for industrial and Go-down plots. The balance of 25.8 acres still remains as railway operational land. The land has since been surveyed and submitted to the Director of Surveys for authentication and registration.

The 5 acres' land was subdivided into 23 portions-KYU/TOWN/138-160. Survey plan provided as appendix.

The portions of land were later allocated to interested developers on leasehold grants for between 45-70 years from 1968. The leases were registered with the Commissioner of lands. The Corporation holds the freehold interests over the land and receives basic land rent from the grantees. list of Go-down and Industrial plots long lease tenants in Kikuyu Station provided as appendix.

Among the grantees some have since put up Go-downs and other industrial developments as per the special conditions of the grants. Other portions remain vacant and undeveloped.

Requested Action

The Corporation requested the matter to be closed since the above parcels of Kikuyu Railways Station land were still under the administration of Kenya Railways as entrusted by the Government of Kenya and they have fully accounted for the Land.

Mombasa Railway Station- Mombasa Block XIV/84

Mombasa Railway Station land measures approximately 36.84 acres (14.91 ha). This includes Mombasa Marshalling yard area, the railway station area, residential houses area and the

Mombasa region office area. The land has been surveyed and area documented as per the Survey Plan No. 868/44 and 168/60.

The subject property - Mombasa Block XIV/46 is within Mombasa Railway Station along Mijikenda Street. It has an incompleted warehouse development. The piece of land measures approximately 0.0855 ha (0.785 acs.)

The property was initially leased out to M/s Kwale Saw Mills (Ramanbhai Dahbhai Patel and Ghanshiam Ramanbhai Patel) as a timber stacking yard in 1974. M/s Kwale Saw Mills later applied for a long lease. They were later allegedly issued with a 99 years lease in 1988 at a yearly rent of **Kes 36,000.00**. The lease was registered on or about the 2nd of November, 1988 and a certificate of lease issued on 12th September, 2002. (**See Appendix 2 Lease and certificate of lease**).

The long lease was however granted contrary to provisions of Sec. 18 (2) (b) of the Kenya Railways Act, which stipulates that the Boards approval and Ministerial consent have to be obtained before a long lease is granted and hence the process was irregular.

The Corporation later filed a suit against Kwale Saw Mills for recovery of the land on 27th August 2004. Kenya Railways further sought injunctive orders pending hearing and determination of the suit restraining the defendants from selling or alienating the said piece of land and continuing with the construction works. The matter is still in Court pending determination. The Corporation has been in negotiations with the defendants in order to have the long-standing matter settled amicably and secure the interests of the Corporation.

509 No parcels of Irregularly Allocated Land

It was further determined that over time, the Commissioner of Lands and Local Authorities went beyond their powers and irregularly allocated over Five Hundred Parcels of land within railway land. List of Irregularly allocated properties provided as appendix. This was mainly attributed to the fact that Kenya Railways Operational Land had not been surveyed and was vested in the Corporation under a vesting Order. From early 1990s some Government officials took advantage and allocated the Corporation's land without the knowledge of Kenya Railways.

Current Measures taken by KRC to secure the Land

The Corporation has further instituted measures to ensure that Kenya Railways Land is secured across the country. The Corporation is undertaking survey and registration to obtain title deeds for all Operational Land that had never been previously surveyed.

To achieve this objective, the Corporation engaged four surveying Consultants to undertake countrywide survey of all operational land. The land consists of all railway station reserves, marshalling yards and any other un-surveyed operational land adding to a total of 150 parcels of land and approximately 8000 acres.

1. Geodev (E) Limited
2. Geoflex Consultants
3. Precision Instruments Ltd.
4. Geosurv Systems Limited

The Terms of Reference (TOR) for the above consultancy was to carry out survey and registration of KR landed asset portfolio for purposes of obtaining ownership documents (Title deeds) as guided by the Survey Manual, Survey Act, Land Act 2012, the Physical Planning Act and any other relevant regulation.

Surveys of 150 parcels of land have been completed with a total of 144 out of 150 (96 %) Stations and MasterEing yards authenticated at the Director of Surveys. 85 certificates of title have been processed and submitted to the Corporation. 60 title documents are pending registration at the Ministry of Lands and Physical Planning and 17 documents are yet to be processed at the Ministry of Lands.

The Corporation through the office of the Director of Surveys has ensured that overlapping irregular surveys within Railway Operational Land as originally reserved will be cancelled and land documented under Kenya Railways.

The Corporation has further engaged various agencies (EACC, Courts, Ministry of Lands and NLC) in the recovery of irregularly allocated land. This has seen some irregularly allocated land in Kisumu, Nairobi and Mombasa revert to the Corporation. Several suits are also pending determination in courts.

The Corporation is also in the process of rehabilitating and revitalizing the Meter Gauge Railway System across the Country.

1. Nairobi-Nanyuki branch line-completed and operational.
2. Nakuru-Kisumu branch Line-Ongoing
3. Kisumu-Butere branch Line-Ongoing
4. Limuru-Kitale branch Line-Ongoing
5. Gilgil-Nyahururu branch Line-Ongoing

To ensure security of operations the Corporation has embarked on reclaiming all encroached land and securing the land through fencing. This has ensured that the Corporation remains in possession of the land and deter unauthorized interference with railway land.

Chair, we have contacted EACC vide a letter dated 2nd March ,2023 attached as Appendix 7

Committee observations: -

- The response was insufficient and the committee tasked KRC to table the following in the next three weeks from the date of the meeting: -

  - Land ownership confirmation documents
  - Lease agreements
  - A schedule confirmation of revenue received by KRC from the lands in question

- The Committee also noted that there was need for KRC and the OAG to reconcile about 1.9 acres of land that appears to be missing in the accounting.

3.0 Classification and Fair Statement of Short-Term Investments

As disclosed under Note 21 to the financial statements, the statement of financial position reflects short term investments balance of Rs 770,000,000 (2018 Rs 8,178,135,077). As previously reported, included in the balance is Rs 198,843,000 (original amount Rs 918,975,879) under fixed deposit with Chaw Bank Limited [in Receivership] that was subsequently taken over by State Bank of Mauritius Bank (SBM) in an arrangement where 78% of the value of deposits was taken over by SBM Bank to be made available over a 5-year period. The balance representing 22% of the deposit remained under moratorium and whose accessibility remains uncertain.

Consequently, the continued classification of the deposit as short-term investments and the fair statement of the investments of Rs 770,000,000 as at 30 June, 2019 is therefore not accurate.

Management Response

The management acknowledged the observations made by the Office of the Auditor General and responded as follows;

The amount referred above relates to amounts in SBM bank. However, the audit observations are incorrect as the amount of Rs 770,000,000 does not include the Rs 198,843,000. An excerpt of note 21 where Short-Term Investment is disclosed as below;

	SHORT TERM			
21	INVESTMENTS			
	FDR with consolidated bank			
1	@ 12.25%		11	55,000,000.00

ii	FDR with KCB @ 11.65%	700,000,000	808,698,891.73
iii	RTI money with KCB on call @ 10%	70,000,000	11,000,000.00
iv	BANK OF AFRICA @ 10.75%		-
v	Treasury bills @ 6.8%	0	894,800,650.00
vi	CFC BANK @ 10%	0	-
vii	FDR WITH CHASE BANK		818,375,878.75
	TOTAL	770,000,000.00	1,689,500,410.48

In KRC's Financial Statements and Annual Report for 2016/15, the amount has been categorized correctly as cash deposits and guarantees, a position KB has shared with the OAG team.

The main reason for this classification and accounting is that it is not interest earning and its recoverability is in doubt as it does not fall under the description of a Short-Term Investment as per IFRS 9.

According to IFRS, short-term investments are classified as either "held for trading" or "available for sale." Held for trading investments are those that are actively traded in a market and are held with the intention of making a profit on short-term fluctuations in price. Available for sale investments are those that are not held for trading, but are held with the intention of selling them in the short term if needed.

Chair, it is important to bring to the attention of the committee events preceding the current situation.

Background

The Corporation had invested Kes 800,000,000 with Chase Bank in November 2015 for a period of 6 months and Kes 500,000,000 in March 2016 for a period of 3 months. The bank was placed under receivership on 7th April 2016 before the maturity of these two deposits. The funds had earned interest of Kes 18,375,878.65 as at this date. Kenya Deposit Insurance Corporation (KDIC) was then appointed to assume management and control of the bank with effect from 10th April 2016.

The details of Kes 818,375,879 reported in the Financial Statement are as follows;

	AMOUNT (Kes)	INTEREST RATE	EFFECTIVE DATE	TENOR PERIOD
Fixed Deposit	500,000,000.00	13%	10.08.10	3 months
Fixed Deposit	300,000,000.00	18%	12.11.13	6 months
Interest accrued	18,575,978.65			Holdover Account
Total	**818,575,978.65**			

Subsequently, on 17th April 2014, the Central Bank of Kenya (CBK) and Kenya Deposit Insurance Corporation (KDIC) announced the signing of an agreement between SBM Bank (Kenya) Limited 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 that there will be a transfer of 75 percent of the value of deposits currently under moratorium at CBLR, and the transfer of the majority of staff and branches of the existing CBLR operations. 25 percent of the value of moratorium deposits will remain in CBLR.

As per the table below Kes 409,234,780.00 was the amount retained in Chase Bank in Receivership and (Kes 89,580,870.75 and Kes 900,769,545.00) totalling to Kes 990,350,415.75 was the amount transferred to SBM Bank.

A/C No's	Balance as at 30.06.16 Kes	Transfer to Non-Moratorium Kes	Amount under Moratorium Kes	KDIC (Chase Bank IR) 25% of Moratorium funds Kes	Transfer to SBM Bank (75% of Moratorium funds) Kes
8501007806 0	200,000,000.0 0	1,000,000.00	**299,000,000. 00**	74,750,000.00	224,250,000. 00
8501007800 0	500,000,000.0 0	1,000,000.00	**600,000,000. 00**	124,750,000.0 0	374,250,000. 00
Liquidation a/c	18,575,978.65	18,575,978.7 5	**2,010,122.00**	754,530.00	2,256,345.00

	818,373,878.63	80,308,878.75	801,018,185.00	600,254,780.00	-400,764,845.00

See Appendix 9 dated 1st October 2018 SBM Bank letter – ICB Account after transition

The funds transferred to SBM Bank of Kes 621,333,725.75 have been released and accessed – Bank Statements provided as appendix.

The figure in the Audit Report of Kes 204,648,080 was erroneously arrived at after subjecting the whole balance of Kes 818,373,878.63 to the 75% and 25%, without considering funds transferred to the non-moratorium of Kes 80,308,878.75. Therefore, the correct amounts under moratorium in Chase Bank (Kenya) Limited (In Receivership) is Kes 600,254,780.00 not Kes 204,648,080. The moratorium funds of Kes 600,254,780 still remains in Chase Bank in Receivership. As per the latest update by KDIC which was issued to the public on 10th May 2021, the liquidation process has commenced and the insured deposit balances will be paid equitably as and when the liquidator accumulates sufficient funds from the liquidation process.

The Corporation is following up the Liquidation process status with KDIC as we await the conclusion of the liquidation process upon which the accessibility of the funds will be known.

Committee observations: -

- The Committee noted that there was lack of prudence in the management and questioned the motive of the decision to deposit funds in Chase Bank since the bank was put under receivership shortly after.
- The committee also expressed reservations on the recoverability of the Kes 600, 254, 780 still under Chase Bank.
- The committee observed that there was need for KRC to furnish it with the Financial statements of the company for the period prior to the investment deposit in Chase Bank.
- Members also noted that there was need to establish whether there was an investment policy on the investment of public money by state agencies and by extension KRC.

6.0 Unsupported Inventories

The statement of financial position reflects stores inventories balance of Kes 5,038,982,039 (2018- Kes 5,818,581,818) However, the balance was not supported by stock take sheets and reports. In the circumstances it has not been possible to confirm the validity and accuracy of inventories valued at Kes5,038,982,039 as at 30 June, 2019.

Management Response

The management acknowledged the observations made by the Office of the Auditor General and responded as follows;

In the year under review, the Corporation initiated a stock take process, however, the stock counting process was not completed by the closure of the financial year under consideration. The following are reasons why the stock take process took long and it was not completed within the financial year under review;

1. **Post concession transition challenges** – initially the stores were manned by 99No staff, but during the concession transition process, the staff number were reduced to 47No staff who could not adequately handle the stores function appropriately, thus delay in the stock take process.
2. **Preparatory works** – this being the inaugural comprehensive stock take (not sample stock taking), a lot of preparatory works needed to be done in readiness of stock take. This entailed bush clearing to access some inventories like permanent way materials which are stored outdoors. Because the stores were not properly arranged, there was a lot of sorting, categorization and classification of store items for ease of counting.
3. **Complexity and uniqueness of RR Store items** – because of the specialized nature of Kenya railways operations, most the store items are locomotives spare parts which required mechanical technicians to identify and sort. Most of these mechanical technicians who had institution operation memory had been laid-off/ retrenched. The Corporation required approximately 40No mechanical technicians but only 4No were available to be engaged on temporary contractual arrangement, thus requiring more time for identification and sorting exercise.
4. **Taking over of MGR stores after concession termination** – upon termination of Concession agreement and the concessionaire, RVR had to exit, and the Corporation was preparing to take over MGR stores which were in the custody of RVR for purpose of securing stock items from theft, thus time and manpower constraints.

Measures being taken

The Management has now aligned the management of stores. Adequate staff have now been posted to the various stock areas.

Additionally, the Corporation was in the process of implementing a new robust ERP that is capable of effectively handling stock unlike the current ERP that had not envisaged the stock complexities arising from running of MGR and SGR. The new system, SAP, is expected to be commissioned in quarter 4 of the Financial year 2022-2023. As part of the migration of data, the

Corporation will be undertaking a zero-based stock count. This will provide a platform to resolve all stock issues including obsolescence, non-identification and costing.

Requested Action
The Corporation requested to present a comprehensive inventory position.

Committee resolution -

- The committee noted that the response was sufficient but there was a need for KRC to submit a comprehensive report on the inventories in three weeks' time from the date of the meeting.

5.0 Trade and other Receivables

5.1 Unreconciled Trade and Other Receivables
The trade debtors balance of Kes 4,816,837,910 includes an amount of
Kes 3,003,838,696 owed by the Kenya Ports Authority (KPA) compared to a balance of Kes 1,661,838,000 reflected in Kenya Ports Authority books thereby resulting to unreconciled variance of Kes 1,174,500,696.

Management Response

KRC figure of receivable from KPA is based on the outstanding balance arising from freight charges on actual tonnage of freight hauled less payments received from KPA as per the Take or Pay Agreement framework.

Currently, a joint reconciliation is carried out every quarter between the two organizations. The above difference was resolved in the subsequent quarterly reconciliations. The teams report is current as at 30.06.2021 and a copy of the joint report submitted as an appendix. This notwithstanding, we have sought the make-up of Kes 1,174,500,696 so as to reconcile the numbers with little success. We are seeking the assistance of this committee to facilitate a joint meeting with KPA to reconcile the balance as at 30th June 2019.

KRC has an elaborate revenue billing and Accounts Receivable management process. The billing is done per container loaded and moved.
At the end of the month, the schedule of containers hauled by respective train manifest is billed to KPA by the 5th of the succeeding month.

KPA remits funds to KRC monthly based on the billing awaiting the quarterly reconciliation. The amount is applied and the unpaid balance is carried as a receivable. KRC has billed for all containers called and that is what is reported in the KR Financial statements. Therefore, for purposes of debtors' circularization, we expected KPA to confirm our balance with a reconciliation.

The details of the KPA balance were not shared but KRC provided the account receivable basis to the OAG team.

Committee resolution: -

- The Committee noted that there was a need for a tripartite meeting between KRC, KPA and the OAG to reconcile the books of accounts and report back the correct position to the Committee in three weeks from the date of this meeting.

MIN.NO.NA/PIC-CA&E/2023/050: ADJOURNMENT

The meeting was adjourned at 1.30 p.m. to resume at 2.30 p.m.

Signature .....

HON. DAVID PROSING, CBS, M.P.
(CHAIRPERSON)

Date 18/4/2023

MINUTES OF THE 10TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE ON COMMERCIAL AFFAIRS & ENERGY HELD ON WEDNESDAY 15TH MARCH 2023 ON 4TH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 2:30 P.M.

PRESENT

1. Hon. David Pkosing, CBS, MP - **Chairperson**
2. Hon. James Opiyo Wandayi, CBS, MP
3. Hon. Mwangi Kiunjuri, EGH, MP
4. Hon. Sarah Paulata Korere, MP
5. Hon. Babu Owino Paul Ongili, MP
6. Hon. Paul Kahindi Katana, MP
7. Hon. Charo Kazungu Tungale, MP
8. Hon. Marianne Jebet Kitany, MP

APOLOGIES

1. Hon. Dr. Lilian Achieng Gogo, MP - **Vice Chairperson**
2. Hon. Adan Wehliye Keynan, CBS, MP
3. Hon. Beatrice Kahai Adagala, MP
4. Hon. John Machua Waithaka, MP
5. Hon. Peter Irungu Kihungi, MP
6. Hon. Ronald Kamwilio Karauri, MP
7. Hon. Yussuf Mohamed Farah, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Ahmad Guliye	-	Clerk Assistant II
2. Mr. Lenya Morintat	-	Clerk Assistant III
3. Mr. Andrew Kipchumba	-	Clerk Assistant III
4. Dr. Benjamin Ngimat	-	Senior Fiscal Analyst
5. Mr. Sydney Lagaga	-	Senior Legal Counsel
6. Ms. Sheila Chebotibio	-	Serjeant at Arms
7. Mr. Dominic Mwendwa	-	Legal Counsel II
8. Ms. Judith Kipsop	-	Fiscal Analyst III
9. Mr. Yussil Jillo	-	Serjeant at Arms
10. Ms. Gladwell Anzimo	-	Research Officer III
11. Ms. Mercy Kerubo	-	Audio Officer

OFFICE OF THE AUDITOR-GENERAL

12. Mr. Njoroge Waithima – Director
13. Mr. Henry Manegene – Parliamentary Liaison Officer

THE NATIONAL TREASURY

14. Mr. Humphrey Muia – Deputy Director

15. Ms. Florence Ngangu – Senior Investment Officer
16. Mr. Livingstone Mbaru – Inspectorate of State Corporations

KENYA RAILWAYS CORPORATION

1. Mr. Philip J. Mainga – Managing Director
2. Mr. Stanley Gitari – Ag. General Manager Legal services & Co. Secretary
3. Ms. Jemimah Mutu – Finance Manager
4. Mr. Peter Ramahla – Accounts Manager

MIN. NO. NA/PIC-CA&E/2021/021: PRELIMINARIES

The meeting was called to order at 02.30 p.m. with a prayer said by the Chairperson.

MIN.NO.NA/PIC-CA&E/2021/022: EXAMINATION OF AUDITED ACCCOUNTS OF KENYA RAILWAY CORPORATION FOR THE FY2018/10 TO FY 2020/2021

The Committee resumed considering evidence for FY2016/19 to FY 2020/2021
TRADE AND OTHER RECEIVABLES

5.0 Unsupported debtors and other receivables

1. **FY 2018/2019**

Included in trade and other receivables balance of Kes 1,889,803,035 constitutes an amount of Kes 10,000,000 and Kes 104,043,439 owed by National Land Commission and Rift Valley Transition Revenue respectively, which had not been supported. Similarly, trade and other receivables balance includes an amount of Kes 8,196,760,846 that has not been supported with a schedule to explain how the balances have been computed.

Management Response

For the make-up of Other Receivable balance of Kes 8,196,760,846 submitted as appendix, the same was also shared with the Office of the Auditor General for reconciliation.

National Land Commission
Included also in the trade receivable balance is Kes 10,000,000 owed by National Land Commission for which there are no supporting documents.

Management Response
On the 19th January 2018 vide a letter ref: VAL 1951/PhaseIA to KRC, NLC requested for Kes 10 Million administrative charge for site inspection and sensitization programs. A letter from NLC was availed to the OAG team requesting for funds and proof of funds transfer. Accountability was expected from NLC as the amount was an advance.

The amount is yet to be accounted for by the Commission. KRC has however written reminders to NLC to account for the same. The receivable is therefore rightly recognized as a Debtor until NLC accounts for the money advanced.
Copies of correspondences were submitted as annexures.

KRC intends to recover the same from future remittances to NLC if the same remains unaccounted for.

Rift Valley Railways
Included also in the trade debtors balance is Kes 196,845,650 described as
"Rift Valley Railway Transition Revenue" for which is unsupported.

Management Response
The RVR transition account relates 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 our Navision ERP for debtors' management to control billing and receipt payments. However, the individual debtor accounts have since been created in the Navision ERP System for better receivables management.

A schedule to account for the list of the 16 trade debtors forming the Kes 196,845,650.00 was provided.
Furthermore, some of the customers were still active customers with KRC including Maisha Mabati, Vivo Energy, ASP, Grain Bulk Handlers Ltd (GBHL), Dantex, SPIF while the rest are shipping line rolling through the TOPA arrangement. All the outstanding debts for active clients have been cleared.
The current statements of GBHL and Maisha Mabati showing only current invoices as outstanding was provided.

FY 2019/2020

Unsupported Debtors -Other Receivables

Included in the trade and other receivables balance are amounts of Kes. 10,000,000 and Kes.3,272,648,725 owed by the National Land Commission and Rift Valley Transition Revenue respectively, for which supporting documents were not provided for audit review.

National Land Commission

Included also in the trade receivable balance is Kes. 10,000,000 owed by National Land Commission for which there are no supporting documents.

Management Response

On the 18th January 2018 vide a letter ref: VAL 1461/PhaseIA to KR, NLC requested for Kes 10 Million administrative charge for site inspection and sensitization programs. A letter from NLC was availed to the OAG team and proof of transfer of funds. Accountability was expected from NLC since the amount was an advance.

The amount is yet to be accounted for by the Commission. KR has however written reminders to NLC to account for the same. The receivable is therefore rightly recognized until NLC accounts for the money advanced.
Copies of correspondences are attached herewith for ease of reference as **Appendix 14**

KR will recover the same from future remittances to NLC if the same remains unaccounted for.

Rift Valley Railways
Included also in the trade debtors balance is Kes. 2,272,448,725, described as "Rift Valley Railway Transition Revenue" for which is unsupported.

Management Response

Of the trade debtors is an amount of Kes 2.2 Billion due from RVR which is a legacy debt after termination of the concession agreement in June 2017. Management is in the process of reviewing all the existing debtors and the likelihood of being realized with a timeline of Quarter III in FY 2020/2021. This will inform the write off request procedure after all recoverability options have been exhausted. However, the Corporations Financial Statements for FY 2020/21 will provide for the debt 100% and make a disclosure of the same.

The debt has now been fully provided and it is part of the ongoing Arbitration case between RVR and the Government of Kenya.

FY 2020/2021

Other Receivables

Other receivables balance of Kes.580,890,334 disclosed in Note 24 to the financial statements includes World Bank receivable balance of Kes.151,899,050 which relates to Kenya Railways Corporation staff pending bills from the Ministry of Transport, Infrastructure, Housing and Urban Development and Public Works. This balance arose during the pre-concession period and has been outstanding in the Corporation's books for a long time. It is however not clear how the Management intends to recover the outstanding balance from the World Bank and thus casting doubts on the recoverability of this amount.

In the circumstances, the accuracy and recoverability of the trade and other receivables balance of Kes.10,506,011,811 could not be confirmed.

Management Response

The amount relates to KR staff pending bills from the then Parent Ministry, MOTI HUD pre-concession. These are amounts released by World Bank to support the staff payments which required a reconciliation for amounts to be remitted to KR for release to staff. KR paid the amounts and is seeking reimbursement of the amounts. The schedule was provided as an appendix.

Committee observation

The Committee made the following observations;

1. The committee noted that the issue was recurring across all the three financial years under review.
2. The committee sought to know why the debt owed to National Land Commission was not captured in financial statement for the year 2020/2021.

Committee Resolution

1. KRC management was tasked to provide the schedule of debtors and proof of payments to the Office of the Auditor General, and submit evidence to the Committee in three weeks.

1.8 **Long Outstanding Debtors**
FY 2018/2019

The trade and other receivables balance includes amounts totaling to Kes 5,889,118,725 which have been outstanding for periods exceeding one year, and whose recovery is doubtful. The provisions for doubtful debts amounting to Kes 1,068,946,451 was not supported and the adequacy of the provision could not be confirmed.

Management Response;
The policy of the organization is to provide a general provision 5% of debtors as doubtful. However, the Corporation additionally provided a first time full and specific provision of Kes 1,087,488,761.84 for all closed accounts. In the opinion of the Management, the provision is sufficient.

Closure of accounts occurs when there is vacation, desertion, eviction or any other mechanism of termination of leases.

The Corporation has now instituted a debt collection committee to pursue all outstanding debts. The Corporation is also pursuing legal remedies including suits for recovery of debt and exercise of lien on properties.

The schedule of all provided accounts was submitted as an appendix.

In the year 2020-2021, the Corporation made a specific provision for the debt owing from the concessionaire Rift Valley Railways of Kes 8.5 billion being rent and concession fee unpaid as at the time of termination of the concession

FY 2019/2020

The trade and other receivables balance includes amounts totaling to Kes. 3,815,736,680 which have been outstanding for periods exceeding one year, and whose recovery is doubtful. The provisions for doubtful debts amounting to Kes. 1,040,305,695 was not supported and the adequacy of the provision could not be confirmed.

In the circumstances, the accuracy and fair statement of the reported trade and other receivables balance of Kes. 18,158,201,719 as at 30 June, 2020 could not be confirmed.

Management Response

The Corporation makes a specific full provision for receivable in respect to closed accounts. Closed accounts relate to tenants who have vacated. The schedule for this was shared with the OAG team. Additionally, of the remaining active accounts, a 5% general doubtful debts provision is made. The summation of the Closed accounts specific provision and the general provision makes up the of Kes. 1,040,305,695 which is deemed sufficient, factoring the nature of lease contracting that requires quarterly billing. Therefore, for IOR all receivables above 90 days being uncollectible may not be realistic in the context of our billing cycle.

FY2020/2021

The statement of financial position reflects trade and other receivables balance of Kes. 10,206,811,911 as disclosed in Note 29 to the financial statements which includes prepayments balance of Kes. 6,791,041,787.The balance includes an advance lumpsum balance of Kes. 11,815,896 included as a single entry in the general ledger and which occurred on 30 June, 2010 and remained outstanding thus casting doubt on its collectability. Further, included in the trade and other receivables balance is staff receivables balance of Kes.61,897,887 for which the following unsatisfactory observations were made:

i. Included in the staff receivables balance of Kes.61,897,887 is staff debtors balance of Kes.10,696,058. However, review of the staff debtors balance ledger revealed that staff debtors of Kes. 10,196,163.6 relate to transactions that occurred between 30 June, 2010 and 30 April, 2020 thus casting doubt on its recoverability.

ii. Included in the staff receivables balance of Kes.61,897,887 is an amount due from pensioners of Kes. 92,195,000. Out of this balance, Kes.84,168,068 relates to transactions that occurred between 30 June, 2010 and 30 June, 2020 thus casting doubt on its recoverability.

iii. Included in the staff receivables balance of Kes.61,897,887 is salary advance amount of Kes.1,813,707. Review of the salary advance ledger revealed that advances totalling to Kes. 1,787,360 related to the period between 30 June, 2010 to 30 June, 2020 casting doubt on recoverability of this balance.

Management Response

The Management is in agreement with the auditors observation . The amounts have now been fully provided for as doubtful debts in the Financial Statements for year 2021-2022 that is still under audit. Financial Statements were submitted as an appendix.

Committee observations

- The Committee sought to know at what point would the debts transition to write off given that these debts have been outstanding for a long time.
- Committee sought to know the identity of the big debtors owing Kenya Railways approximately kes 5.1B
- The Committee also sought to know the status of the court cases between Kenya Railways versus the debtors.

1.6 Receivable with Negative Balances

FY2018/19

The reported trade debtors and other receivables balance of Kes10,115,658,880 is net of debtors with negative balances of Kes30,230,042. This is contrary to the provisions of International Financial Reporting Standard (IFRS) 1 which states that assets and liabilities and income and

expenditure, shall not be offset unless required or permitted by International Financial Reporting Standards.

In the circumstances, the accuracy and fair statement of the reported trade and other receivables balance of Kes 16,115,608,480 as at 30 June, 2019 could not be confirmed.

Management Response

The debtors with negative balance are our customers who have paid amounts in respect to land or property allocated but have not taken custody as the land is pending a pegging exercise.
All the accounts are also being reconciled to ensure all billings were done. None billing of accounts will occur on matters court orders have been served.
In the meantime, the Corporation is currently reporting negative debtors as pre-payments under current liabilities.

Committee observations

1. The Committee observed that the National Land Commission debt was still unpaid in the financial year 2019/20 and tasked KR management on the steps they were taking to recover the money.
2. The Committee observed the Auditor General report for the FY 2020/21 did not capture the NLC outstanding debt, however Members noted that the amount was in the ledger books which was captured and not explained.
3. The Committee directed the Office of the Auditor General to capture the NLC debt when examining the FY 2021/22 as it was omitted in the The OAG report for FY 2020/21.

6 Irregular Land Compensation

The Capital Works-in-Progress balance of Kes 675,897,818,376 includes a balance of Ksh. 12,000,000,000 being land compensation under SGR Phase 1. The supporting documents for compensations amounting to 1,045,459,897 to Project Affected Persons (PAPS), by way of beneficiary copies of National Identity Cards, Kenya Revenue Authority (KRA) Personal Identification Number (PIN) certificates and title deed surrenders from the National Land Commission were not provided.

Further, overpayments of Kes14,468,768 were made to Project Affected Persons (PAPS) who were paid Kes15,732,406 instead of the entitlement Kes 1,092,856. Although recovery of Kes 5,029,770 has been subsequently made, a balance of Kes 8,970,978 was outstanding as at 30 June, 2019.

In the circumstances, the legality of the unsupported payments of Kes 1,045,459,897 and full recovery of Kes 8,970,978 on land compensation could not be ascertained.

Response on Unsupported Payments - Kes 1,045,459,897

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 provided 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.

The disbursement process to the Project Affected Persons (PAPS) began in December 2018. Kenya Railways (KR) received correspondence from the National Land Commission (NLC) which had compensations schedules. The schedule had a list of PAPs, location and amount to be compensated for land and or developments. 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."

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.

The controls deployed by KR in the disbursement process were to ensure that the PAPs names and amounts compensated for land and or developments acquired matched compensation schedules provided by NLC. KR also ensured that the wire transfers was to bank details provided by PAPs as per the filled forms. KR also worked closely with its main bankers KCB and other banks to ensure that compensation monies went to the rightful beneficiaries by confirming bank details name and account numbers in advance.
KR also followed a documented Standard Operating Procedure (SOP) which required NLC to approve all payments before KR released the same to PAPs bank accounts. This ensured that NLC had direct supervision over the disbursement in the land acquisition process.

The Kes 1,048,880, 697.00 payments related to the 1st payment processed in the compensation exercise on behalf of NLC. KR roles were mainly disbursement upon confirmation that the names of the PAPs appear in the NLC compensation schedules. Notable is that despite the documents i.e. ID copy and KRA PIN certificates not being attached in the first payment, KR applied compensatory control measures to ensure that the details filled on the form were authenticated by use of the relevant/ authentic government ICT platforms. For the PAPs National ID card numbers given on the payment schedules, they were cross-checked on the e-citizen platform to confirm that they were matching. The cross-checking was also done on the PAPs KRA PINs on the i-tax pin-checker platform to confirm that the details are also matching with the NLC payment schedules.

Committee observation

- The Committee could not ascertain the identity of Project Affected Persons (PAPs) as provided by the management in their response.

Committee resolution

The committee being not satisfied with the response provided by Kenya Railways, directed the Management to supply the following documents to the Committee in three weeks,

- Copies of **identity cards** (ID) of compensated persons.
- Kenya Revenue Authority **PIN nos.** of compensated persons.
- The **title deed** surrenders from National Land Commission.

7.0 Unsupported Railway Operational Expenses

As disclosed under Note 10 to the financial statements, the statement of profit or loss and other comprehensive income reflects rail operational expenses amounting to Kes 19,949,064,913. The expenditure constitutes rail operational expenses amounting to Kes 1,886,006,401 which had not been supported with schedules for audit review. The above balance constitutes SGR insurance, Channel occupancy and Opex Indexation of Kes 482,873,035, Kes 3,802,170 and Kes 1,399,424,196 respectively.

Consequently, it has not been possible to confirm the accuracy, completeness and legality of the reported railway operational expenditure of Kes 1,886,006,401 included as rail operational expenses during the year under review.

Management Response,

The schedules have been shared for review. It is attached as appendix 29. Chair, some of these items are accrued based on management assessment, the existing contracts and operational data for the period.

Committee observation

The Committee observed that the query was not in the subsequent financial year 2019/2020, as the schedule of the expenses had been provided to the Office of the Auditor General and the matter was closed.

8.0 Unreconciled Standard Gauge Railway (SGR)- Freight Revenue FY2018/2019

As disclosed under Note 5(a) to the financial statements, the statement of profit or loss and other comprehensive income reflects main income of Kes11,034,869,582.However, the balance constitutes an amount of Kes 10,214,491,874 in respect of SGR freight revenue out of which a

balance of Kes 8,891,514,800 differs with Kenya Ports Authority (KPA) figure of Kes 8,885,724,017 resulting into an unexplained variance of Kes 492,109,817.Although the Corporation generates invoices to KPA using the Freight Management System (FMS), the debtor's statement showing the level of indebtedness was not provided for audit review.

In the circumstances, the accuracy and completeness of the main income of Kes 10,214,401, 674 for the year ended 30 June 2019 could not be confirmed.

Management Response

The figure of Kes 8,891,514,800 in our records is the total of all Freight revenue from SGR for both conventional and Container business. KPA only handles container business and thus the comparison may not have been correct.

We further requested the team to share the make-up of the KPA balance of Kes 8,885,724,017 which was not availed thus we could not reconcile. The freight management system used for invoicing is not used for management of accounts receivables. It thus cannot give a statement of receivables. Currently a joint reconciliation is carried out every quarter between the two organizations. The above difference was resolved in the subsequent quarterly reconciliations. The teams report is current as at 30/06/2021 and a copy of the joint report is hereby attached as Appendix 23.

Committee Observation.

The Committee observed that the issue had been dealt in 6.1, where KRC, KPC and OAG are required to hold a joint sitting and reconcile their books of account and report back to the Committee in three weeks.

8.0 Irregular Use of MGR Revenue Collection for Rail Operations FY 2018/2019

During the year under review, it was observed that cash collections from Kikuyu and Kahawa routes amounting to Kes84,501,890 were not banked. Although Management stated that the unbanked cash was used on payment for locomotive fuel and repair and maintenance of the locomotives and the railway track, the Corporation had contracted service providers on the same operational expenses.

In the circumstances, it has not been possible to determine propriety in the utilization of Kes84,501 ,890 allegedly spent directly to finance operations.

Management Response

In the year under review, Kenya Railways and Rift Valley Railways(RVR) Kenya terminated a 25-year Concessionaire Agreement in August 2017. However, due to the abrupt termination and essence to continue full operations with minimum disruptions of both freight and passenger operations, KR took over the operations with immediate effect. KR was to operate through Meter

Gauge Railway (MGR) division in a seamless way as operations transitions. Operational challenges were to be envisaged due to the nature of transition that took place which required KR to continue with RVR business processes until the full transition was in place. Abrupt changes would have affected haulage of pre -existing customers freight and also commuters train movement that is key to traffic decongestion. Key to rail business performance which is operationally heavy is cash for operational expenditure support.

One of challenges was set up of petty cash and ordinary staff imprest systems to support critical services and emergencies in form of incidences and accidents. During the transition period as the RVR business processes applied where the use of station earnings was authorized by the General Manager (MGR), which was a carry over as per RVR policy (and indeed a policy pre concession) where station earnings were utilized to support operations. Never the less, in realization that no procurement procedure was in place for all supplies including critical supplies, the use of station earnings was inevitable to sustain operations.

This however was meant to facilitate critical operational needs as regional imprests were to be set up.

The revenue from the operations at the stations was correctly recognized on realization.

All the expenses were accrued as they were incurred and all schedules, authorizations and accounting documents provided to the external audit team for review.

However, this was regularized on full transition and the cash collections from all stations, including the above mentioned are being banked. The various stations have also been facilitated with imprest to ensure that their operational requirements in cash are being fulfilled.

Committee Observation

The committee observed that this query was not recurring in the subsequent financial years, and noted that KRC had issued imprests to the staff for accountability of funds spent.

10.0 Adjustments in the Statement of Changes in Equity

A review of the Statement of Changes in Equity revealed the following unsatisfactory matters.

10.1 Unexplained Price Year Adjustments

The statement of changes in equity for the year ended 30 June,2019 reflects an opening balance of accumulated losses of Kes 82,734,906,484 which was adjusted to Kes 85,476,134,293 by a further loss of Kes 729,227,809 without any disclosure or explanations. It was not ascertained whether the error(s) relate(s) or was noted during the year under review as the comparative accumulated loss is still maintained at Kes 82,734,906,484. This is contrary to International

Accounting Standard 8 which requires restating the comparative amounts for the prior period(s) 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.

Consequently, the accuracy and the validity of the amount adjustment made cannot be confirmed and is contrary to the standard adjusted and accuracy of the accumulated losses in the statement of changes in equity for the year ended 30 June 2018.

Management response;

The adjustments relate to SGR operational cost of indexation and loading and unloading costs. Our computation of indexation is based on the estimate percentage of dollar denominated SGR operational and maintenance cost. However, this is subject to movement in exchange rates and other variables.

Similarly, a commensurate accrual is made for loading and unloading cost. However, there was a change in the basis that led to revision of previous numbers. This is what was provided as prior year adjustment in line with IAS 8.42 but specifically 8.49 on treatment of prior year adjustments.

10.2 Unexplained Adjustment in Restructuring

Further, the statement reflects current adjustment reducing the restructuring balance from Kes 80,816,846,088 to Kes 80,650,890,618 by Kes 165,955,470 on account of receipts in cash. However, the nature of the adjustment was not explained or disclosed in the financial statements. Further Note 28 in support of the restructuring balance reflects a varying opening balance of Kes 80,251,901,298 and an adjustment of Kes 14,208,682, which still totals to Kes 80,650,890,618.

Consequently, the validity and correctness of the amount adjusted and accuracy of the restructuring balance of Kes 165,955,470 in the statement of changes in equity for the year ended 30 June, 2018 could be confirmed.

Management response;

The restructuring account is purposed to record all legacy issues of ER specifically stock and staff legacy obligations prior to November 2006. ER had stock of unique rolling stock parts that were purchased by the concessionaire and Tata Chemicals Magadi Ltd. All stock issues are therefore mapped to this particular account.

The adjustment chair was inadvertently indicated as cash adjustment whereas it related to legacy stock. It was an issues of incorrect description. The two variances/adjustments chair relates to the legacy stocks.

The same has been corrected in our subsequent financial statements.

Committee Observation

The committee observed the adjustments in the statements of changes in equity had been made and supported by OAG statement.

FY 2019/2020

2.0 Land with Disputes and Unbilled Leases

Audit inspection revealed that leases with accumulated charges of Kes. 111,060,256 in Mombasa have been in dispute since 2013. The tenants have not been paying their lease dues. Further, customers who were given lease accounts in 2018 were not invoiced for 2019 and the Corporation lost about Kes. 10,049,600 annually from non-billing.

Management Response

Our tenants in the subject properties rejected the reviewed rates and filed a suit in court. A case in point is case number, CASE NO. CMCC NO E11771 OF 2021-NAIROBI - CASSMAN BROWN T/A FALLBROOK INVESTMENTS LTD VS KENYA RAILWAYS CORPORATION & ANOTHER

However, the Corporation is constantly engaging them with a view of negotiating towards settling for an acceptable rate for all parties. A negotiation exercise was conducted in 2019 however, some tenants rejected to engage. The Corporation continues to engage them constantly to open up for negotiations. The Corporation also takes advantage of the requests for renewal, consents and any other requests done by the tenants to negotiate and settle for a rate that is acceptable to all parties.

On the issue of unbilled leases, these were lease allocations that had been granted but the tenants had not taken possession because of the pending administrative activity pegging. Most have now been regularized and billing is up to date save for one account.

8.3 Encroachment of Land (Ziwani Nakuru)

Land measuring approximately seven (7) acres in Nakuru Ziwani estate belonging to the Corporation has been encroached on by the County Government of Nakuru and currently used as bus park. The land had been allocated to customers on a long-term lease of 25 years with Kes. 57,500,000 having been paid as premium attracting an annual rent of Kes. 13,800,000. Management has not explained the steps being taken to revert the land to the tenants. Further, the Corporation continues to lose the opportunity to collect the annual rent of Kes. 13,800,000.

Management Response

The County Government of Nakuru in an effort to decongest the town as a measure to control the spread of the deadly and highly infectious Corona Virus Pandemic without notice relocated the bus stage to Ziwani estate. Nonetheless, the Corporation and the County Government of Nakuru entered into Memorandum of Understanding with the Corporation in which it was agreed that the County vacates the land once the pandemic is controlled under the following clause as per attached MOU which is awaiting by the County

"CGN undertakes to indemnify KR from claims by tenants whose tenancies have been discontinued because of the actions by the County Government, the CGN further voluntarily commits to deposit Kes. 17,500,000/=being a deposit equivalent to annual rent payable in the three parcels as follows; Ziwani Estate Kes. 9,000,000/= per annum, Kisaliuli Kes. 1,500,000/= per annum, and Station area Kes. 6,800,000 per annum""

The Corporation also wrote to the Ministry of Interior, MoTI-HUD and Treasury to resolve the matter.

2.5 Malaba Apartments

The Corporation renovated 24 units of two (2) bedroom apartments at Malaba but the apartments have remained unoccupied. Other than loss of revenue annually, the units are deteriorating due to non-occupancy. Further, four (4) buildings in Malaba have been encroached by private occupants.

Management Response

The apartments were renovated and completed however there were outstanding to do with lack of water supply and electricity in the houses. Water being a basic requirement did not make the houses attractive coupled with the Covid pandemic therefore the houses remained unoccupied. Management has now been able to resolve the water problem by overhauling the water reticulation system which was completed in November 2020. Management has also undertaken repair of the faulty wiring and installed the missing power meters this exercise was completed on the second week of March 2021.

21 units have been leased out, the remaining 3 units KRC 17814, KRC 17815 and KRC 17816 are occupied by Kenya Railways operational staff working in Meter Gauge Railway awaiting completion of Malaba Running room considering the staff are posted to handle operations which run 24 hours.

Internal review of the project has been done and lessons learned from the project to avert a repeat of the same issues that affected the delivery of the project objective at the earliest.

2.6 Residential Buildings in Kisumu

The 247 residential units in Kisumu have been forcefully occupied by organizations with no lease agreements and therefore not paying rent. The Corporation is losing rent to the tune of Kes.87,484,800 annually.

From the foregoing, the accuracy and the fair presentation of property, plant and equipment balance of Kes. 484,585,767,259 as at 30 June, 2020 could not be confirmed.

Management Response

The houses in Kisumu had been vacated to facilitate revitalisation of the port. During the revitalisation, there were various government agencies facilitating the exercise to ensure its success. They were subsequently allocated to security personnel and other personnel who were part of the Kisumu Port revitalization exercise. Kisumu Port has been operationalized. This is because the port is a high security area which cannot allow for leasing by people other than those with port passes.

KR is in the process of regularizing tenancy agreements with the occupants in an arm's length transaction.

Committee observation.

The committee made the following observations;

- That the land with disputes and unbilled leases should be under review every financial year and documented in the OAG annual report, and the KRC management to include persons whose leases have been terminated in the management response.
- The OAG to confirm the current status of Nakuru station area land and the status of encroachment of KRC land by Nakuru County government in the current financial year.
- The Malaba apartments was fully occupied after the challenge of water was solved.

7. Default in Repayment of Exim Bank Loan (On- Lent)

FY 2020/2021

The statement of financial position reflects Exim Bank loan (on-lent) balance of Kes.389,093,145,806 as disclosed in Note 28 to the financial statements. However, the Management did not make any repayments during the year under review towards this loan. Further, as disclosed in Note 33 to the financial statements, the payables and accrued charges reflects a balance of Kes.50,900,344,125 which includes a default penalty payable balance of Kes.644,595,297. Loan records revealed that the Corporation incurred the penalties and interests on the on-lent loan due to non-settlement of the maturing obligations as and when they fell due.

In the circumstances, the Corporation continues to be exposed financially due to none settlement of the loan obligation.

Management Response

The Corporation did not make any repayments during the year under review towards Exim bank loan (on lent).

The reason for delayed payment is that KR has been engaging National Treasury on the restructuring of the SGR On lent Loan and the modalities on the repayments. The Management wrote to The National Treasury and Planning on review the On-Lent loan vide letter dated 16th July 2021 and in response a Committee was formed to review the On-Lent loan arrangement.

Also the SGR Escrow Accounts that collect the SGR Revenues are ring fenced under the Escrow Payment Agreement between the relevant entities therefore requiring approval to utilize the funds. The Management therefore is waiting for conclusion of the review.

Committee observation

The committee observed the EXIM loan was a government loan and thus should not be included in KRC financial books. The Committee further directed the management of KRC to seek advisory on the status of the loan from the National Treasury.

Committee recommendation

The Committee directed the Kenya Railways Management to tabulate all clarifications in liaison with The Office of the Auditor General and submit to the Committee within three weeks.

MIN.NO.NA/PIC-CA&E/2023/055: ADJOURNMENT

There being no other business the meeting was adjourned at 05:02 p.m. The next meeting will be held on notice.

Signature .....

HON. DAVID PKOSING, CBS, M.P.
(CHAIRPERSON)

Date.....18/1/2023.....

MINUTES OF THE 15TH SITTING OF THE PUBLIC INVESTMENTS, COMMITTEE ON COMMERCIAL AFFAIRS & ENERGY HELD ON TUESDAY 28TH MARCH 2023 AT HILTON GARDEN INN IN MACHAKOS COUNTY, AT 10:00 A.M.

PRESENT

1. Hon. David Pkosing, CBS, MP - **Chairperson**
2. Hon. Dr. Lilian Achieng Gogo, MP - **Vice Chairperson**
3. Hon. James Opiyo Wandayi, CBS, MP
4. Hon. Adan Wehliye Keynan, CBS, MP
5. Hon. Mwangi Kiunjuri, EGH, MP
6. Hon. Balu Owino Paul Ongili, MP
7. Hon. Beatrice Kahai Adagala, MP
8. Hon. Marianne Jebet Kitany, MP
9. Hon. Peter Irungu Kihungi, MP
10. Hon. John Machua Waithaka, MP
11. Hon. Yussuf Mohamed Farah, MP
12. Hon. Ronald Ramwiko Karauri, MP

APOLOGIES

1. Hon. Sarah Paulata Korere, MP
2. Hon. Paul Rabinli Katana, MP
3. Hon. Charo Kazungu Tungole, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1.	Mr. Ahmad Guliye	-	Clerk Assistant II
2.	Mr. Letaya Morintat	-	Clerk Assistant III
3.	Mr. Andrew Kipchumba	-	Clerk Assistant III
4.	Dr. Benjamin Ngimor	-	Senior Fiscal Analyst
5.	Mr. Yezil Jillo	-	Serjeant at Arms
6.	Ms. Gladwell Amimo	-	Research Officer III
7.	Mr. Meldrick Kevin Sakami	-	Audio Officer
8.	Juliet Mmayo	-	Office Assistant

OFFICE OF THE AUDITOR-GENERAL

1. Jarvil Nyasani – Deputy Director Audit
2. Abdirahim Ali Maalim – Principal Auditor
3. Henry Manegene – Parliamentary Liaison

NATIONAL TREASURY

1. Humphrey Muia – Deputy Director

7. Florence Ngungu – Senior Investment Officer
8. Livingstone Mburu – Inspectorate of State Corporations

KENYA PIPELINE COMPANY

1. Joe Sang – Managing Director
2. Zilper Abong'o – General Manager Strategy
3. Eng. David Muriuki – General Manager Infrastructure
4. Thomas Ngira – General Manager Human Resource and Administration
5. Mukami Kamau – Communications Officer
6. Agnes Njiru – Senior Accountant
7. Martin Wanyama – General Manager (POSM)
8. Sadam Swaleh – Technical Advisor to the MD
9. Anthony Ndegwa – FAM
10. Maureen Mwenje – Ag. General Manager (SC)
11. Flora Okoth – Company Secretary
12. Pius Mwendwa – General Manager Finance

MIN. NO. NA/PIC-CA&E/2022/007: PRELIMINARIES

The meeting was called to order at 10:15 a.m. with a prayer said by the Chairperson, and introductions made thereafter.

MIN. NO. NA/PIC-CA&E/2022/008: COMMUNICATION FROM THE CHAIR

The Chairperson welcomed members and the witnesses present.

MIN.NO.NA/PIC-CA&E/2022/009: CONFIRMATION OF MINUTES

This agenda item was deferred to the next meeting.

MIN.NO.NA/PIC-CA&E/2022/010: EXAMINATION OF THE AUDITED ACCOUNTS OF KENYA PIPELINE COMPANY FOR THE FY 2020/21.

1. **Encroached Company Land**

Review of the freehold land documents revealed a piece of land located in Nakuru County with book value of Kshs. 700,000,000 which measures 97.10 acres which had had been illegally encroached and permanent structures put up by the encroachers. According to the inspection and verification done by a valuer engaged by the Company in 2018 to undertake valuation of the Company assets, only five (5) acres valued at Kshs. 75,000,000 was occupied by the Company.

with the rest of parcel measuring 48.10 acres valued at Kshs. 925,000,000 being occupied by the encroachers.

As a result, the ownership of the parcel which has been illegally encroached is threatened.

Management Response:

As per KPC records, the parcel of land LR No. 11954/83 of 8.97 hectares (9 acres) is not encroached. This was hived from a larger parcel LR No. 11954/3 of land of 10.07 hectares (87.1 acres) which initially belonged to KPC part of which was disposed of to a third party. KPC records currently reflect the correct acreage. The records have since been updated. Sale & lease agreements were submitted as annexures.

Committee observations: -

i. The Committee noted that there was disparity in the value of the land reported in the OAG report and the actual price KPC disposed the land.
ii. The Committee also noted that there was need for KPC to provide evidence that the Public Procurement and Disposal Act was adhered to while disposing off the said land.
iii. The Committee noted that the OAG should scrutinize the documents and the sale agreement and establish proof of payment of the full purchase price in accordance with the terms stipulated in the agreement for sale.

Committee resolution: -

The committee resolved that Kenya Pipeline Company (KPC) management to appear before the Committee with a comprehensive report on an end to end process used during the sale of the said land within a month from the date of the meeting.

2. Loss on Leased Facilities

As disclosed in Note 7 to the financial statements, are direct costs of Kshs.2,911,487,891 in respect of pipeline maintenance. Included in the costs are lease payments to Kenya Petroleum Refineries Limited (KPRL) amounting to Kshs. 1,820,256,510 for use of pipeline network, storage tanks and associated infrastructure during the year under review. A comparison of total lease costs against total lease income for the year revealed that the Company realized income amounting to Kshs. 894,250,510 thereby resulting to a net loss on the lease of Kshs. 583,000,001.

In addition, the lease agreement revealed that the lease payments were based on expenses incurred by KPRL during the year covered by the lease agreement. However, the Company was not in control of costs incurred by KPRL and therefore could not institute measures that could minimise them in line with realizable income.

In the circumstances, the lease affected the overall performance of the Company and may need to be reviewed for efficiency.

Management Response:

The Cabinet directed KPC to take over Kenya Petroleum Refineries Limited (KPRL) in 2016. The Company entered into a lease agreement with KPRL as it pursues the take-over.

KPC has been taking care of all the operating costs and investing in infrastructure at KPRL geared towards helping KPC in managing stock-outs and demurrage. Some of the investments include enhancing the storage facilities at Port Reitz. KPC is also looking at leveraging on KPRL to achieve some of its key strategic initiatives such as in Liquefied Petroleum Gas (LPG).

Committee observation: -

i. The Committee noted that no Cabinet memo was submitted authorizing the transfer of ownership of KPRL to KPC.
ii. It was also observed that KPC was not breaking even in the existing lease arrangement with the KPRL.
iii. The Committee also observed that all the costs incurred by KPC in KPRL will end up as losses if KPC did not take full ownership of KPRL.

Committee resolution: -

The Committee resolved that KPC to provide the Cabinet Memo authorizing the take-over of Kenya Petroleum Refineries Ltd (KPRL).

5. Long Outstanding Receivables

The statement of financial position reflects trade and other receivables balance of Kshs.9,160,355,600. Further, as detailed in Note 25 to the financial statements, the amount includes Kshs.106,636,301 in respect of prepaid construction costs which has been outstanding since 2007. Although a provision was made in the books of the Company in respect of the amount, no evidence of efforts to recover the same was provided for audit review.

In the circumstances, recoverability of the balance of Kshs.106,636,301 in respect of prepaid construction cost included in trade and other receivables balance could not be confirmed.

Management Response:

This was an old balance brought forward in 2007 during the data migration from the old ERP to SAP. The balance related to a payment made to Data Logix (a vendor) and the matter is still in court.

KPC already holds bad debt provisions in the books of accounts for Data Logix as they await the court decision on the matter.

Committee observations -

i. The Committee noted that there was need for Data Logix, the Lawyer responsible for the case and all persons of interest to appear before the Committee to unravel the truth and resolve this matter.
ii. The Committee also observed that there was need to unravel the ownership of Data Logix and establish whether there was collusion and insider trading with the KPC.

Committee resolution

The Committee resolved that KPC to provide the CR-12 of Data-Logix Ltd and documentations detailing how the services of Wekesa & Siriyo Advocates were procured to represent the Company (KPC) within four weeks.

6. Un-Procedural Waivers

The Transport and Storage Agreement (TSA) between Kenya Pipeline Company (KPC) and the Oil Marketing Companies (OMC) provides for penalty charges when OMC products overstay in the KPC facilities. The penalty charge is one of the recognized revenue streams for the Company.

Review of billing records revealed that four (4) OMCs were billed and invoiced for overstayed product penalties in the period between 2018 to 2021. The revenues had been recognized in the books of the Company in their respective years of occurrence. However, during the year under review, penalties amounting to Kshs.468,042,077 were waived by the Board in a meeting held on 18 May, 2021. The waivers were not accompanied by requisite approval from the Cabinet Secretary for The National Treasury or the Cabinet as provided for under Regulation 148(6) and (8) of the Public Finance Management (National Government) Regulations, 2015, which requires any write off above Kshs. 100,000 to be approved by the Cabinet Secretary and any write off above 1% of the entity's budget to be approved by the Cabinet. In addition, the waiver reported in the financial statements amounted to Kshs.549,841,166 resulting in unexplained variance of Kshs.86,099,089.

In the circumstances, Management was in breach of the law.

Management Response:

The ageing waiver was a management business decision driven by the market dynamics that cause Oil marketing Companies (OMCs)'s product to overstay in the system beyond their control after. This implemented after approvals were granted by the parent ministry.

The business decisions to issue credit were heavily driven by flights cancellation and movement restrictions due to COVID -19, lockdowns in Kenya, Uganda and Rwanda. All these companies in question are active and solvent companies.

Ministry of Energy and Petroleum (MoEP) is involved due to market dynamics of supply and demand in the country and region to secure product availability.

The Waiver process is currently structured in a way that the OMCs complaint is first addressed to KPC, and internal analysis is done. Where there is a valid case the MoEP approval is compulsory for waiver to be granted.

Management has incorporated in the approval process of waivers, the National Treasury through Ministry of Energy and Petroleum (MoEP). This is after subjecting the request to management and Board Approval.

Committee Observation: -

i. The Committee noted that the waivers were extended to OMC's without the necessary approval from the National Treasury or the Cabinet for that matter as stipulated in the law.
ii. The four OMC's in question were Total and GAPCO Energy, Rubis Energy, Fine Jet Energy and Gulf Energy.
iii. The Committee also observed that Board minutes authorizing the waivers were not provided.
iv. The Committee also observed that there was need for KPC to provide a procedure or policy framework guiding the process of sanctioning such waivers.
v. The Committee also noted that there was need for the Board to appear before it to explain how the waivers were arrived at.

Committee Resolutions: -

i. The Committee resolved that KPC was not well prepared to respond to the questions raised by the Auditor General and therefore needed time to prepare satisfactory responses under the guidance of the office of the Auditor General on the structure of the responses.
ii. KPC was granted four weeks within which they are expected to appear before the Committee with satisfactory responses.
iii. KPC was directed to submit minutes of the Board of Directors authorizing the waivers of penalties owed to the four Oil Marketing Companies (OMCs) contrary to the provisions of the applicable laws.

MIN.NO.NA/PIC-CA&E/2022/971: ADJOURNMENT

There being no other business to discuss, the meeting was adjourned at 2.30 p.m. The next meeting will be held on Wednesday, 29th March 2023 at 10.00 a.m.

Signature .....

HON. DAVID PKOSING, CBS, M.P.
(CHAIRPERSON)

Date 16/4/2023

MINUTES OF THE 23RD SITTING OF THE PUBLIC INVESTMENTS COMMITTEE ON COMMERCIAL AFFAIRS & ENERGY HELD ON THURSDAY, 4TH MAY 2023 AT COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10:00 A.M.

PRESENT

1. Hon. David Pkosing, CBS, MP - **Chairperson**
2. Hon. Dr. Lilian Achieng Gogo, MP - **Vice Chairperson**
3. Hon. Dr. Adan Wehliye Keynan, CBS, MP
4. Hon. Mwangi Kiunjuri, EGH, MP
5. Hon. Babu Owino Paul Ongili, MP
6. Hon. Beatrice Kalui Adagala, MP
7. Hon. Paul Sabinoli Katana, MP
8. Hon. Charo Karungo Tungule, MP
9. Hon. Marianne Jebet Kitany, MP
10. Hon. Peter Irungu Kihungi, MP
11. Hon. Ronald Kamwiko Karauri, MP
12. Hon. Yussuf Mohamed Farah, MP

APOLOGIES

1. Hon. James Ojeyo Wandayi, MGH, MP
2. Hon. Sarah Paulata Korere, MP
3. Hon. John Machua Waithaka, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Ahmad Guliye	-	Clerk Assistant II
2. Mr. Lenaya Moriasat	-	Clerk Assistant III
3. Mr. Andrew Kipchumba	-	Clerk Assistant III
4. Mr. Sydney Lagaga	-	Senior Legal Counsel
5. Mr. Dominic Mwendwa	-	Legal Counsel II
6. Ms. Gladwell Amimo	-	Research Officer III
7. Mr. Amos Tiuli	-	Hansard officer III
8. Mr. Mariná Mwangi	-	Media relations Officer
9. Mr. Yetil Jillo	-	Sergeant at arms
10. Ms. Mercy Kerubo	-	Audio Officer

OFFICE OF THE AUDITOR-GENERAL

1. Mr. Evans K. Saleka	-	Deputy Director Audit
2. Mr. Henry Musogene	-	Parliamentary Liaison Officer

8. Ms. Priscilla Maina - Director Audit

NATIONAL TREASURY

Ms. Cherly Majwa - Assistant Director Investments

INSPECTORATE OF STATE CORPORATIONS

John Karanja - Officer

GEOTHERMAL DEVELOPMENT COMPANY

1. Mr. Paul Ngugi - Chief Executive Officer
2. Mr. Stephen Rusimei - General Manager Finance
3. Ms. Agnes Muthengi - Ag. General Manager Legal Services
4. Mr. Cornel Ofwona - General Manager Geothermal resource department
5. Ms. Jacklyne N. Wakhungu - Ag. Manager Finance

MIN. NO. NA/PIC-CA&E/2022/0131: PRELIMINARIES

The meeting was called to order at 10:11 a.m. with a prayer said by the Chairperson. Thereafter, introductions were made.

MIN. NO. NA/PIC-CA&E/2022/0132: COMMUNICATION FROM THE CHAIR

The Chairperson welcomed Members and the witnesses present to the meeting.

MIN.NO.NA/PIC-CA&E/2022/0133: CONFIRMATION OF MINUTES

This agenda item was deferred to the next meeting.

MIN.NO.NA/PIC-CA&E/2022/0134: EXAMINATION OF THE REPORTS OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF THE GEOTHERMAL DEVELOPMENT COMPANY FOR THE FY 2017/2018 TO FY 2020/2021

The management of Geothermal Development Company (GDC), led by the Chief Executive Officer Mr. Paul Ngugi appeared before the Committee to present evidence on the audit queries that had been raised by the Auditor General for the FY 2017/18 to FY 2020/21.

FY 2017/18

The Auditor General gave an unqualified opinion audit.

Other matters

Corporation Tax and related Penalties

The Auditor General noted that GDC being a state corporation was 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 Kshs. 8,880,274,000 (2017: 2,409,858,000) for the years ended 30 June 2013, 2016 and 2017 and quarterly instalments due as at 30 June 2018. The financial statements further reflected Other Payables amounting to Kshs. 1,882,800,000, as per Note 15, which include interest and penalties of Kshs. 1,118,804,859 (2017: 710,017,000), arising from non-payment of income taxes. He further noted that although the Company had in the past requested for budgetary allocation by the National Treasury to enable it offset the liability, the same had not been settled. As noted, this delay in payment of income taxes has exposed the Company to penalties and interest, which continues to increase with the continued delay.

Response

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. *(Correspondences on the matter were submitted as annexures)*

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 830 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) Engaging its shareholders and stakeholders (Ministry of Energy, The National Treasury & KRA) with a view of finding a lasting solution to the tax matter.

Committee Observation

1. The committee noted that GDC was mandated to pay taxes as per the country's laws and the letter requesting for tax exemption was rejected by the Kenya Revenue Authority

(KRA). Despite the communication from KRA, the management of GDC had not shown a plan on how it will settle the tax arrears owed to KRA.

II. The response provided by the management of GDC was unsatisfactory as it didn't answer the audit query as raised by the Auditor General.

Committee recommendation

The Committee granted the management of GDC two weeks to provide a satisfactory response on the audit query as raised by the Auditor General.

FY2018/19

The Auditor General gave an unqualified opinion audit.

Other matters

1. **Long Outstanding Corporation Tax and related Penalties**

The Auditor General noted that GDC being a state corporation was 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 Kshs. 4,044,870,000 (2018: 3,223,274,000), for the years ended 30 June 2015, 2016, 2017 and 2018 and quarterly instalments due as at 30 June 2019. The financial statements further reflected other tax liabilities amounting to Kshs. 2,678,205,000, as per Note 16, which include interest and penalties of Kshs. 1,440,607,350 (2018: 1,114,504,024), arising from non-payment of income taxes. The Auditor general noted that Management had made a request for abandonment of the liability which was not granted and subsequently the Company paid an instalment of Kshs. 80,000,000 during the year under review. As noted, the delay in payment of income taxes has exposed the Company to penalties and interest, which continues to increase with the continued delay.

Response

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 *(correspondences on the matter are attached for your review)*.

In order to address this matter, the Company has taken the following steps:

a. The Company has continued engaging KRA on the matter with the aim of forging an agreeable debt settlement plan and feasible way forward.
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 830 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.

Committee Observation

The Committee noted this query was recurring from the previous financial year and the response provided by the management of GDC was unsatisfactory as it didn't answer the audit query as raised by the Auditor General.

Committee Resolution

The Committee granted the management of GDC two weeks to provide a satisfactory response on the audit query as raised by the Auditor General.

2. Unproductive and Abandoned Wells

The Auditor General noted that as similarly reported in the 2016/2017 audit report and as disclosed in note 9 to the financial statements, the statements of profit or loss and other comprehensive income reflected Other Expenses amounting to Kshs. 1,705,975,000 which constitutes an amount of Kshs. 917,002,000 (2018: Nil) which relates to the cost of unproductive and abandoned wells, written off during the year under review. According to Management in past responses, success rates for geothermal wells increase as more wells are dilled to provide surface information. The cost of unproductive and abandoned wells written off by the Company are significant and requires enhanced management attention with the aim of minimizing drilling losses.

Response

The Company's mandate was 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 two completed wells which turned out to have low permeability and low temperature.

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 Observation

I. The Members expressed reservations with the high cost of drilling the wells and tasked the office of the Auditor General to provide a breakdown of the figures they raised in the audit query.
II. The Committee inquired on the type of technology employed by GDC in carrying out the geological survey and expertise of the personnel carrying out the feasibility studies before drilling of the wells, given the huge losses on abandoned wells.
III. The Committee was concerned with lack of policy framework documents that guides the company on allowable risks during exploration of wells.

Committee Resolution

The committee resolved as follows;

I. The office of the Auditor General to clarify on the audit queries (1, 2, 3, 4) of FY 2018/19 to bring more clarity on the figures highlighted as it cut across the four queries.
II. The management of GDC was granted two weeks to provide satisfactory responses on the queries raised by the Auditor General.

MIN.NO.NA/PIC-CA&E/2022/013: ADJOURNMENT

There being no other business to discuss, the meeting was adjourned at 1.07 p.m. the next meeting will be held on notice.

Signature .....

HON. DAVID PKOSING, CBS, M.P.
(CHAIRPERSON)

Date 27/6/2023

MINUTES OF THE 81ST SITTING OF THE PUBLIC INVESTMENTS COMMITTEE ON COMMERCIAL AFFAIRS & ENERGY HELD IN COMMITTEE ROOM ON 5TH FLOOR CONTINENTAL HOUSE, ON WEDNESDAY 31ST MAY, 2023 AT 10:00 A.M.

PRESENT

1. Hon. David Pkosing, CBS, MP - **Chairperson**
2. Hon. James Opiyo Wandayi, MGH, MP
3. Hon. Mwangi Kiunjuri, EGH, MP
4. Hon. Sarah Paulata Korere, MP
5. Hon. Babu Owino Paul Ongili, MP
6. Hon. Maraxwa Jobet Kitany, MP
7. Hon. Ronald Kamwiko Karauri, MP
8. Hon. Yusuf Mohamed Farah, MP

APOLOGIES

1. Hon. Dr. Lilian Achieng Gogo, MP - **Vice Chairperson**
2. Hon. Dr. Adan Wehliye Keynan, CBS, MP
3. Hon. Beatrice Kobai Adagala, MP
4. Hon. Paul Rakindi Katana, MP
5. Hon. Chute Kananga Tungule, MP
6. Hon. John Muchiri Waithaka, MP
7. Hon. Peter Irungu Kihangi, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Andrew Kipchumba - Clerk Assistant III
2. Ms. Gladwell Anima - Research Officer III
3. Mr. Amos Tindi - Hansard Officer III
4. Ms. Edith Cheng'eno - Media Relations Officer III
5. Mr. Yesil Illo - Sergeant at Arms
6. Ms. Mercy Kerubo - Audio Officer

OFFICE OF THE AUDITOR-GENERAL

1. Mr. Patrick Kibe - Manager Audit
2. Mr. Henry Masegese - Parliamentary Liaison Officer
3. Mr. Andrew Ratala - Auditor

NATIONAL TREASURY

1. Mr. Anthony Mwiriji - Economist
2. Ms. Catherine Ntinii - Senior Investments Officer

INSPECTORATE OF STATE CORPORATIONS

Mr. CPA Francis Mutua - Inspector

NATIONAL WATER HARVESTING AND STORAGE AUTHORITY

1. Eng. John Mahia - Ag. Chief Executive Officer
2. Eng. David Gitau - Manager Construction
3. Mr. CPA Patrick Ataro - General Manager Finance
4. Mr. CPA Erick K. Gachuri - Principal Accountant
5. Ms. CPA Margaret Kithumi - Manager Finance

MIN. NO. NA/PIC-CA&E/2023/0141: PRELIMINARIES

The meeting was called to order at 10:20 a.m. with a prayer said by the Chairperson. Thereafter, introductions were made.

MIN. NO. NA/PIC-CA&E/2023/0140: COMMUNICATION FROM THE CHAIR

The Chairperson welcomed Members and the witnesses present to the meeting. He presented a brief summary of the years under which the Committee were to examine the audited accounts of National Water Harvesting and Storage Authority, and pointed out that two queries were recurring.

MIN.NO.NA/PIC-CA&E/2023/0143: CONFIRMATION OF MINUTES

This agenda item was deferred to the next meeting.

MIN.NO.NA/PIC-CA&E/2023/0144: EXAMINATION OF THE AUDITED ACCOUNTS OF NATIONAL WATER HARVESTING AND STORAGE AUTHORITY FOR THE FY 2018/2019 TO FY 2020/2021

The management of National Water Harvesting and Storage Authority (NWHSA), led by the Ag. Chief Executive Officer Eng. John Mahia appeared before the Committee to adduce evidence on the audit queries that had been raised by the Auditor General for the FY 2018/19 to FY 2020/21.

FY 2019/20

1. Cash and Cash Equivalents

The statement of financial position reflects a balance of Kshs.870,515,511 under cash and cash equivalents as at 30 June, 2020. However, as previously reported, the balance excluded an amount of Kshs. 31,890,430 relating to unposted items reflected in the bank reconciliations as detailed below:

Account Name	Account No.	Date First Reported	Amount In Kshs
Development A/c	1114280593	2009	24,871,140
Special A/c	1114670978	2006	2,155,890
Recurrent A/c	1114680484	2006	5,068,006
			31,895,450

The items had been outstanding for more than ten (10) years and it was not clear why Management had not investigated the unposted items to clear them from the reconciliation statements.

Consequently, the accuracy and completeness of cash and cash equivalents balance of Kshs. 370,515,551 as at 30 June, 2020 could not be confirmed.

Management Response

As correctly observed by the auditors, the Recurrent, Special and Development accounts had various long outstanding unposted items as well as reconciling items. The items arose after the Authority tried to reconstruct its finance records and documents which had been destroyed by an inferno that gutted it's premises in the September 2006. By then the Authority was relying on the manual system where the cash books were held in hard copies. In an endeavour to determine the cause of the reconciling items including the unposted ones, the Authority requested for bank statements and copies of cheques from the Kenya Commercial Bank Ltd. In some cases the bank was experiencing difficulties in obtaining the information as it dated back to 2005. It was under these circumstances that the Finance Committee of the Board resolved to write off the same. However, the full board recommended that the Governance, Risk and Audit Committee of the Board scrutinizes the correct position before the full board approval. This was yet to be finalized. A committee (See Annex marked as COMMITTEE 1) had since been formed to assist the Internal Audit Department prepare a report for presentation to the Board of Directors. The same shall be tabled before the Board in the fy 2022-2023.

It was also important to note that the issue of the reconciling items was deliberated in the Public Investments Committee of the National Assembly as contained in its 41st Report. The Committee recommended that the Managing Director ensures that proper reconciliation of accounts is undertaken by the Authority on a regular basis as provided for by financial regulations and as per requirements of IAS.

As advised, the Authority undertakes monthly bank reconciliations as required by the law. The same are available for verification.

Committee Observation

I. The Committee noted that the query was recurring from the FY16/19.
II. The Committee was informed that the records of the amount raised by the Auditor was missing due to a fire that gutted the premises of NWHSA.
III. The Committee informed the management they need to get a write off of the amount by following a laid down procedure of getting a concurrence from the Cabinet Secretary of National Treasury, through the parent Ministry.

Committee Resolution

The management was tasked to start the process of writing off the amount by following due process and get clearance within six months.

2. Delays and Escalated Costs in Construction of Siyoi — Muruny Dam

The statement of financial position reflects a balance of Kshs. 21,030,383,893 under property, plant and equipment which, as disclosed in Note 21 to the financial statements, includes an amount of Kshs. 20,067,919,389 relating to capital work-in-progress. The work in progress of Kshs. 20,067,919,389 includes an amount of Kshs. 8,818,894,304 relating to construction of the Siyoi Muruny Dam and Water Supply Project, located in West Pokot County, in two lots.

2.1 Lot 1

Lot 1 entailed construction of the dam whose contract was awarded to a Chinese contractor in March, 2015, at a contract price of Kshs. 5,030,162,765. The Authority has made payments amounting to Kshs. 4,347,467,473 to the contractor. However, although the contract, which was for thirty-six (36) months commencing 30 March, 2015 and ending on 30 March, 2018, had 5 extensions, to 30 July, 2018, 19 August, 2018 and subsequently to 18 March, 2020, the progress report provided for audit review indicated that only approximately 54% of the works had been completed as at 30 June, 2020.

Further, payment certificates totalling Kshs. 447,340,209 due for payment as at 30 June, 2020 were yet to be settled due to lack of budgetary allocation from The National Treasury.

However, the contractor resumed work in November, 2020.

2.2 Lot 2

Lot 2 entailed construction of Siyoi Kapenguria Water Supply for which the contract was awarded to a contractor in March, 2015 for 52 Months (223 Weeks) at a contract price of Kshs. 4,140,828,304. The Authority had made accumulative payments of Kshs. 3,678,015,289 to the contractor as at 30 June, 2020. The contract completion date was extended by five (5) months to 29 August, 2018 and subsequently to 10 July, 2018. However, the progress report provided for audit indicated that the contractor resumed works in November, 2020.

Under the circumstances, it was not possible to confirm that the Project would be completed within schedule and in a cost-effective manner.

Management Response

As observed by the auditors, the two contracts under the project (Lot 1 & Lot 2) had experienced inordinate delays. This was attributed to:

a) Inadequate budget allocation for the project over the project life, and

b) Suspension of works due to default on interim payments by the Employer (Authority).

Specifically, the financing trend for the project in comparison to the annual project requirement was as tabulated herebelow:

Financial Year	Approved Budget Allocation	Actual Funds received	Variance	Project Requirement	(Under)financing
	Kes	Kes	Kes	Kes	Kes
2014-2015	700,000,000.00	700,000,000.00	0.00	600,000,000.00	(100,000,000.00)
2015-2016	800,000,000.00	950,000,000.00	0.00	2,214,195,840.87	(1,264,195,840.87)
2016-2017	1,217,718,840.00	1,217,718,840.00	0.00	2,214,195,840.87	(1,496,476,840.87)
2017-2018	1,600,700,000.00	1,600,700,000.00	0.00	2,214,195,840.87	(1,277,295,840.87)
2018-2019	1,200,000,000.00	300,000,000.00	900,000,000.00	0	300,000,000.00
2019-2020	800,000,000.00	800,000,000.00	0.00	0	800,000,000.00
	6,318,418,840.00	5,568,418,840.00	900,000,000.00	9,242,987,203.00	(3,673,968,574.60)
				59.60%	

As depicted in the table above, at the intended completion date of the project (30th March 2018), the project had only been financed upto 59.60% of the contractual cost.

This led to delays in meeting interim certificates, which in turn led to suspension of works by the contractor under sub-clause 16.1 [Contractor's Entitlement to suspend Works] of the General Conditions of the Contract citing the Employer's failure to comply with Sub-Clause 2.4 [Employer's Financial Arrangements] and Sub-Clause 14.7 [Delayed Payment] as his reasons.

Contractually, the Contractor may suspend works if the Employer is in breach of certain clauses of the contract. One of clause in the General Conditions of Contract is 16.1 where the Contractor can suspend works due to non-payment. The Employer is also required to furnish the Contractor the Financial arrangements that had been made and are being maintained to enable the Employer

to pay the Contract Price once the works are executed (Clause 2.4 of General Conditions of Contract)

Consequently, suspension of contract had an effect on the project completion period which also has a direct cost relating to claims (Clause 20.1 of General Conditions of Contract), interest on delayed payments (clause 14.8 of General Conditions of Contract) and Variation of Prices.

Therefore, the projects cost effectiveness in implementation was and continues to be affected by such costs as a result of funding challenges.

The Authority has however written to the Parent Ministry requesting for full funding to mitigate against further escalation of costs. See attachment marked as MUBUNY

Committee Observations

I. The Committee noted the project was fully funded by the government, and ksh. 300M had been allocated in the financial year 2018/2019 against ksh. 1.6B that's required to complete the project.
II. The Committee was informed that the project was to cost ksh. 9.5b, but a variance of approximately ksh. 1.0B had accumulated due to delays after the initial plan of 5years for the project completion was exceeded.
III. The Committee tasked the management to come up with innovative ways of raising funds to complete the project e.g. public private partnership in liaison with the government.

Committee Resolution

The audit query to remain pending and to recur in subsequent audit reports till the project is complete.

1. **Composition of the Board of Directors**

The statement of financial performance reflects an expenditure of Kshs. 47,612,021 in respect of remuneration of Directors during the year under review. However, the Cabinet Secretary appointed twelve (12) Directors including the Chief Executive Officer instead of ten (10) Directors as provided for under Section 81(2) of the Water Act, 2016, resulting to an excess of two (2) Directors. This resulted in unnecessary extra costs on remuneration to the Directors. Further, the Audit and Risk Committee did not have any Director with expertise in auditing, financial management or accounting experience and knowledge in risk management and membership of professional body in good standing, as required under the Mwongozo Code of Governance for State Corporations. The Board was therefore, not properly constituted.

Management Response

The matter was brought to the attention of the appointing Authority.

This has since been addressed through the Appointment of the Authority's Board in compliance with the Water Act, 2016.

See attached Gazette Notice No. 8087 of 5th July, 2018 attached and marked as BOARD APPOINTMENT.

Further, it was true that the Board Audit committee did not have a member with the requisite financial background.

However, this was addressed through the appointment of an Alternate Director to the Principal Secretary (National Treasury & Planning) to the Board on 31st January 2020.

The Audit Committee was also reconstituted to include the Alternate director who had the requisite financial background. See attachments marked as AUDIT COMMITTEE.

Committee Observations

I. The Committee sought to know the duration the two directors served in the organization, whereby they were informed they served for three years earning the full benefits of a director.
II. The Committee sought to know who appointed the extra directors, and any documentation evidence showing correspondence between the management and appointing authority that the appointment was against the law.
III. The Committee observed the organization did not have full time Director in the Board Audit Committee.

Committee Resolutions

The Committee resolved as follows;

I. The management to provide documentation if any, objecting the appointment of the two directors as it was against the Water Act 2016.
II. The management to compute the total amount that was paid to the two directors and table before the Committee.
III. The management to provide an explanation on why the accounting officer of NWHSA shouldn't be surcharged for the amount paid to the two directors.
IV. The management was granted one week (16th May 2022) to submit the documents before the Committee.

FY 18/19

6. Unsupported and Offsetting of Trade and Other Payables from Exchange Transactions

The statement of financial position reflects trade and other payables from exchange transactions balance of Kshs.1, 134,408,781. However, as previously reported, the balance included debit balances totaling Kshs.444,233,618 for which supporting schedules were not provided and which

were offset against the payables contrary to the provisions of Paragraph 46 of IPSAS 1 — Presentation of Financial Statements - which prohibits offsetting of assets and liabilities, revenue and expenses.

In addition, included in the balance of Kshs. 1,134,802,781 were trade payables of Kshs. 304,015,254 which had been outstanding for more than one year and for which Management did not provide detailed supplier ledgers and supporting documents for audit verification.

In view of the foregoing, it was not possible to confirm the accuracy, validity and completeness of the trade and other payables from exchange transactions balance of Kshs. 1,134,802,781.

Management Response

The long outstanding trade payables were as a direct result of inadequate budgetary provision for multi-year projects that were under implementation including Maruny (Siyoi) which was allocated a budget of Kes 1 Billion against an expenditure of Kes 1.6Billion and thus a shortfall of Kes 600Million), other historical pending bills that were still under review by an internal pending bills committee and payables that were subject to court proceedings and thus frozen ending court determination as was noted in the contingent liabilities from the FY 2017-2018.

To address this, the management sought for adequate funding for the projects from the Parent Ministry to clear the bills. The same had been gradually received over the years to date.

Further, the management noted the provisions of Paragraph 46 of IPSAS 1 — Presentation of Financial Statements and undertakes to comply with future presentation of the Financial Statements. A reconciliation of the trade payables is being undertaken and shall be duly presented for audit.

Committee Observations

I. The Committee noted that the management response was not adequate, as it didn't answer the query as raised by the auditor.
II. The Committee was concerned why the management did not provide documentation evidence to the auditor yet it was in their possession.

Committee Resolution

The Committee tasked the management to submit a satisfactory response together with supporting documents to the auditor for verification by 14th May 2021.

5. Trade and Other Payables from Exchange Transactions (FY 19/20)

The statement of financial position reflects a balance of Kshs. 1,253,092,579 under trade and other payables from exchange transactions which, as disclosed in Note 23 to the financial statements, includes trade payables of Kshs 800,886,878, accruals of Kshs. 10,994,135 and third party payments of Kshs 17,017,894. These payables include debit balances of Kshs.445,850,411, Kshs. 86,020,009 and Kshs. 10,880,682, respectively, which were netted off against the credit balances. This is contrary to International Public Sector Accounting Standards (IPSAS) 1: Preparation and Presentation of Financial Statements — which requires assets and liabilities to be presented separately in the financial statements. The supporting schedules and explanations for netting off the balances were not provided.

Further, the Authority had legal cases and the courts awarded judgement against the Authority with costs amounting to Kshs. 104,763,214. However, the legal costs have not been accrued as part of the trade and other payables from exchange transactions.

In addition, the trade and other payables balance of Kshs.1,253,092,579 includes amounts received in advance totalling to Kshs.17,886,720, relating to the Authority's business unit. However, some of the business unit's works were completed and handed over to the respective clients while others became dry boreholes and others had no supporting documentation. The balance of Kshs. 17,886,720 should have been recognized as income for the completed works or refundable amounts for the dry boreholes.

The trade and other payables balance of Kshs.1,253,092,579 also includes trade payables amounting to Kshs.369,634,826 and retention funds held on behalf of suppliers amounting to Kshs.92,540,421 which have been outstanding for more than two years. No explanation was provided for failure to refund the amounts due to the creditors.

Under the circumstances, the accuracy and completeness of trade and other payables from exchange transactions balance of Kshs. 1,253,092,579 as at 30 June, 2020 could not be confirmed.

Management Response

The management notes the provisions of Paragraph 46 of IPSAS 1 - Presentation of Financial Statements and undertakes to comply by separating trade payables and trade receivables with future presentation of the Financial Statements.

Legal Cases and Court Awards

The Authority includes liabilities as payables when they are incurred. The legal cases and court awards are reported as contingent liabilities under Note 27 of the Financial Statements. These were considered potential but not had not been incurred as they were all active or under appeal.

Business Unit Liabilities

The payments received in advance under the business unit had not crystallized into sales as the projects were ongoing and had not reached certification stage.

Retentions held on behalf of suppliers

The management confirms that the amount held over 5 years relates to Muruny (Siyoi) Dam Project which is a multi year project that commenced on 30th March 2013. This money is correctly held as it shall be released when the project is certified as substantially complete. See Retention vouchers attached and marked as RET VOUCHERS.

Further, the management is in the process of reconciling the Retention Control Account through an appointed internal committee (see attached and marked as RET COMMITTEE) to enable it confirm the status of projects whose retention is due to enable it release the retained monies. The records shall be updated accordingly.

Trade Payables

The long outstanding trade payables were as a direct result of inadequate budgetary provision for multi-year projects that were under implementation including Muruny (Siyoi) which was allocated a budget of Kes.400Million against an expenditure of Kes.600Million and thus a shortfall of Kes.150Million, other historical pending bills that were still under review by an internal pending bills committee and payables that were subject to court proceedings and thus frozen ending court determination as was noted in the contingent liabilities from the FY 2017-2018.

To address this, the management sought for adequate funding fo the projects from the Parent Ministry to clear the bills. The same has been gradually received over the years to date.

Committee Observations

I. The Committee noted the issue was recurring from the previous financial year and the response provided by management was not adequate.
II. The committee informed the auditor to check the query in the current financial year audit and confirm whether the management had corrected the anomaly in their financial reporting system.

Committee Resolutions

The Committee resolved as follows;

I. The management to provide list of court cases to the auditor.
II. The management to provide the liability carried to FY 20/21 on the business unit liabilities.
III. The management of NWHSA to present a list of business done in the financial year, for the completed ones, management to submit completion certificates to the auditor for verification.
IV. The management to table a list of all entities owed under 'trade and other payables from exchange transactions' to the auditor.

V. The management was granted to 16th May 2023 submit the documents to the auditor.

MIN.NO.NA/PIC-CA&E/0085/0145: ADJOURNMENT

There being no other business to discuss, the meeting was adjourned at 12.20 p.m. the next meeting will be held on notice.

Signature .....

HON. DAVID PROSING, CBS, M.P.
(CHAIRPERSON)

Date 29/6/2023

MINUTES OF THE 19TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE ON COMMERCIAL AFFAIRS & ENERGY HELD ON WEDNESDAY, 17TH MAY 2023 AT HILTON GARDEN INN, GARDEN SUITE 1, MACHAKOS COUNTY AT 10:00 A.M.

PRESENT

1. Hon. David Pkosing, CBS, MP - **Chairperson**
2. Hon. Dr. Lilian Achieng Gogo, MP - **Vice Chairperson**
3. Hon. Dr. Adan Wehliye Keynan, CBS, MP
4. Hon. Mwangi Kunjuri, EGH, MP
5. Hon. Sarah Paulata Korere, MP
6. Hon. Babu Owino Paul Ongili, MP
7. Hon. Beatrice Kahai Adagala, MP
8. Hon. Charo Ramanga Tungule, MP
9. Hon. John Machua Waithaka, MP
10. Hon. Peter Irungu Kihungi, MP
11. Hon. Marianne Jebet Kitany, MP
12. Hon. Ronald Kamwiko Karauri, MP
13. Hon. Yussuf Mohamed Farah, MP

APOLOGIES

1. Hon. James Opiyo Wandayi, MGH, MP
2. Hon. Paul Kahindi Katana, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Ms. Florence Aluoyo - Director AA&SC
2. Mr. Ahmad Gullye - Clerk Assistant II
3. Mr. Letaya Meintat - Clerk Assistant III
4. Mr. Andrew Kipchumba - Clerk Assistant III
5. Mr. Sidney Lagaga - Legal Counsel
6. Ms. Gladwell Amimo - Research Officer III
7. Ms. Judith Ripop - Hansard Officer III
8. Mr. Murimi Mwangi - Media Relations Officer III
9. Mr. Richard Sang - Sergeant at Arms
10. Mr. Kelvin Lengusi - Audio Officer

OFFICE OF THE AUDITOR-GENERAL

1. Mr. Justus O. Okumu - Director Audit
2. Mr. Henry Maregesa - Committee Liaison

NATIONAL TREASURY

i. Mr. Bodrick Koome	-	Senior Investment Officer
ii. Ms. Catherine Naioki	-	Senior Investments Officer

INSPECTORATE OF STATE CORPORATIONS

Mr. Victor Momanyi - Inspector

KENYA MARITIME AUTHORITY

i.	Dr. Erastus Ouingo	- Director General
ii.	Mr. Henry Mwasaru	- Principal HR Officer
iii.	Mr. Edwin Were	- Finance Manager
iv.	Mr. Alphonse Kioko	- ICT Manager
v.	Ms. Jane F. Otieno	- Head of Legal
vi.	Ms. Bevaline Landu	- Head of Supply Chain Management
vii.	Mr. Julius Oguta	- Principal Accountant

MIN. NO. NA/PIC-CA&E/2022/0130: PRELIMINARIES

The meeting was called to order at 10.30 a.m. with a prayer said by the Chairperson. Thereafter, introductions were made.

MIN. NO. NA/PIC-CA&E/2022/0131: COMMUNICATION FROM THE CHAIR

The Chairperson welcomed Members and the witnesses present. He gave a brief summary of the years under which the Committee would examine the audited accounts of the Kenya Maritime Authority, starting with FY 2018/19.

MIN.NO NA/PIC-CA&E/2022/0134: CONFIRMATION OF MINUTES

This agenda item was deferred to the next meeting.

MIN.NO NA/PIC-CA&E/2022/0135: EXAMINATION OF THE REPORTS OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF THE KENYA MARITIME AUTHORITY FOR THE FY 2018/2019 TO FY 2020/2021

1. **Domestic Air Travel and Local Duty Travel Allowances**

The statement of financial performance reflects an amount of Kshs.878,847,826 under general office expenditure which, as disclosed in Note 17 to the financial statements, includes domestic and overseas air travel costs of Kshs.90,070,000 and duty travel allowances - domestic and foreign of Kshs.44,343,888, all totaling Kshs.134,503,557. However, the expenditure included Kshs.737,810 spent on domestic air travel and Kshs.1,340,846 spent on local duty travel

allowances, all totaling to Kshs.2,079,638 for staff of the State Department for Shipping and Maritime Affairs. However, the Management did not provide explanations why Kenya Maritime Authority incurred the expenditure on behalf of the State Department which has its own budget.

Consequently, the propriety and validity of domestic and overseas air travel and duty travel allowances of Kshs.2,079,638 could not be confirmed.

Management Response

It was reported that the airfare was incurred during travels in furtherance of the Authority's mandate. The officers attended the International Maritime Organization Council, Seafarers wage council and blue economy meetings to champion the government policies in regards to the subject matters. Further, the Authority as the lead agency mandated with the regulatory role in the industry, had 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.

To ensure the activities are clearly identified, the Authority has since created a collaboration vote which caters for expenditures with other parties/agencies which would aid in the furtherance of Authority's mandate.

Committee observations;

I. Given that the audit query was recurring in subsequent years of audit, the parent ministry should have budgeted for the expenditure.
II. Members noted that the authority for KMA to spend money without the requisite budgetary allocation was missing.
III. The Committee also questioned whether the referenced officers may have drawn facilitation from KMA as well as the parent ministry.

Committee resolution

The Committee directed KMA to table evidence authorizing expenditure as well as the evidence that the officers did not draw facilitation from the parent ministry in one weeks' time from the date of these meeting.

8. Budgetary Control and Performance

The statement of comparison of budget and actual amounts indicates that the Authority had an approved budget of Kshs.1,636,360,000 compared to actual receipts of Kshs.1,321,503,306 or 98% of budgeted receipts. Similarly, the Authority's actual expenditure amounted to Kshs.789,151,466 against a budgeted expenditure of Kshs.1,097,010,000 resulting to an under-expenditure of Kshs.307,709,534 or 28% of the budgeted expenditure.

The under-expenditure may have affected the planned activities of the Authority and could have impacted negatively on service delivery to the public.

Management Response

The entity informed the members that the main source of revenue for the Authority is MS fee that rely on the import and export cargo. Any slight change in volumes affect the amount collectible by the Authority. Some of the Macro economic factors that affect the import and exports are beyond the Authority control.

Targeted activities were achieved at reduced cost without compromising service delivery to the public.

Committee observation;

The Committee was convinced with the management response and the evidence provided.

2. Trade and Other Receivables from Exchange Transactions

The statement of financial position and Note 21 to the financial statements reflect trade and other receivables from exchange transactions balance of Kshs.85,405,480. However, the following observations were made:

Trade Receivables

As previously reported, included in the trade receivables from exchange transactions balance of Kshs.85,405,480 is an amount of Kshs.13,402,809 in respect of trade receivables, out of which Kshs.6,604,812 had been outstanding since 1 July, 2013. The Management did not provide satisfactory explanations why these debts had not been collected and no evidence was provided to indicate that the matter had been referred to an agency for collection as provided in the credit policy. The policy provides that any amount outstanding for over forty-five (45) days should be referred to an agency to ensure follow up and subsequent settlement.

Consequently, the recoverability and validity of trade debtors balance of Kshs.6,604,812 could not be confirmed.

Management Response

KMA reported that, majority of the long outstanding debtors were small vessel owners most of whom were no longer in business and not traceable. Through enhanced multiagency safety awareness campaigns collection efforts have improved over the period.

Although the credit policy stipulates that the long outstanding debts should be handed over to debt collection agency, the cost of engaging the agency outweighs the debts involved.

To address the problem the Authority has preferred looking of inspections through making prepayments based on proforma invoices.

Committee observations;

I. The Committee observed that KMA's credit policy outlines that settlement should be made within 45 days but some debts were not settled for as long as 6 years.
II. The Committee also noted that, there was need for KMA to amend its credit policy to reflect with the reality.
III. The Committee also sought to know if KMA had a repayment plan in the current credit policy.

Committee resolutions;

I. KMA should provide the draft policy to be approved by the Board to the Committee.
II. KMA should provide for bad debts to eliminate recurrence of the audit query.

4. Other Non-Trade Receivables

Supply, Review and Installation of Enterprise Resource Planning

The trade receivables also include an amount of Kshs.58,581,700 in respect of other non-trade receivables, out of which an amount of Kshs.8,875,749 related to a claim from a supplier for non-performance of contractual obligations. The payment represented 20% of the contract sum of Kshs.11,878,748 which was payable after first project meeting, contract sign off and signing of the project charter. The contract for supply, review, upgrade, installation and support of the Enterprise Resource Planning (ERP) system and integration with the electronic data management system and other systems was signed on 13 December, 2016 for a contract period of twelve (12) weeks. Available records showed that the Project stalled before reaching the second milestone and the Management indicated that efforts to recover the claim was ongoing. However, as at the time of audit in the month of September, 2018, thirty-two (32) months after the expiry of the contract period, the service provider had not completed the work.

Consequently, the recoverability of other trade debtors of Kshs.8,875,749 could not be confirmed.

Management Response

The authority reported that the contract was for a duration of twelve (12) weeks. The project had a Workplan, which was pegged on individual deliverables. The first deliverable entailed organizing meetings, contract charter sign off and project sign off.

The costs for the first deliverable at a total amount of Kshs. 8,875,749 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. The authority confirmed that no payments were made on the outstanding deliverables.

Committee observations;

I. The Committee observed that KMA ought to provide evidence of recovery of the money from the contractor.
II. The committee observed that KMA made no effort to recover the money.

Committee resolutions;

I. The Committee directed KMA to commence efforts to recover the money within three months from the date of these meeting.
II. Failure to recover the money within the stipulated timeframe should lead to the surcharge of the officers involved, Finance, Procurement and the Director General.

5. Advance Payment for Construction of Headquarters

Included in the other non-trade receivables balance of Kshs.52,501,705 is an amount of Kshs. 40,883,811 in respect to an advance payment to a contractor for construction of the Authority's Headquarters. However, the validity of the advance payment security lapsed on 31 January, 2018 and had not been renewed as at 30 June, 2019. Further, the Management provided a partial advance security of Kshs.11,569,034 issued by a Bank on 05 November, 2019 and valid up to 08 February, 2020. The balance of Kshs.29,316,281 or 72% of the advance payment was therefore not secured. The payment was therefore, contrary to Section 147(1) of the Public Procurement and Asset Disposal Act, 2015 which provides that under exceptional circumstances, advance payment may be granted and shall not exceed twenty per cent (20 %) of the price of the tender and shall be paid upon submission by the successful tenderer to the procuring entity of an advance payment security equivalent to the advance itself and that security shall be given by a reputable bank or any authorized financial institution issued by a corresponding bank in Kenya recognized by the Central Bank of Kenya, in case the successful tenderer is a foreigner.

In the circumstances, the validity, regularity and recoverability of other non-trade receivables balance of Kshs.29,316,281 could not be confirmed.

At the time of payment, the advance payment Guarantee issued on February 01, 2017 covered the advance of Kshs 192,323,904.

Management Response

The authority informed the Committee that at the time of payment, the advance payment guarantee issued on February 01, 2017 covered the advance of Kshs 192,323,904 and at the time of notification of the anomaly a further Kshs 28,819,340.05 had been recovered through IPC No. 16 in December 2020 and the Advance Payment Guarantee of Kshs 11,569,034 sufficiently covered the balance.

Committee observations;

I. The Committee ought to be provided with evidence to confirm that the KMA had fully recovered the advance payment.
II. The Committee noted that, the advance payment made was more the legally accepted amount.

Committee resolutions;

The Committee directed KMA to provide the Interim Payment (IP) Certificate to the OAG and the office of the Clerk within one week from the date of these meeting.

6. Capital Work in Progress

As disclosed in Note 17 to the financial statements, the property, plant and equipment balance of Kshs.1,572,225,097 includes an amount of Kshs.1,235,260,101 in respect of capital work in progress being the cumulative cost of the ongoing works on Kenya Maritime Authority Headquarters Project at a total cost of Kshs.1,748,170,418. The works consists of main building works, electrical, plumbing and drainage, air conditioning and elevator installation works. The following observations were made:

Payment of General Preliminaries

As previously reported, the capital work in progress balance of Kshs.1,235,260,101 includes an amount of Kshs.580,481,019, being payments for interim certificate numbers 2, 3 and 4. Audit review of the interim certificates indicated that, the payments were made by the Authority for particular preliminaries included in the Bill of Quantities, at a cost of Kshs.3,500,000 which was paid in full plus 15% or Kshs.525,000 profit for groundbreaking ceremony. The preliminaries, being provisional amounts, are reimbursed on production of evidence of actual costs incurred. However, the Authority paid the contractor the full amount without evidence of actual cost incurred.

Consequently, the propriety and validity of ground-breaking ceremony cost of Kshs.4,100,000 could not be confirmed.

Management Response

The ground-breaking ceremony cost of Kshs.4,100,000 was recovered from Interim Payment Certificate 18.

Committee resolution;

The Committee directed KMA to provide the Interim Payment Certificate to the OAG and the office of the Clerk within one week from the date of these meeting.

11. Construction of Headquarters Subcontracts

Included in the contract sum of Kshs.1,728,178,910 for construction of Kenya Maritime Authority Headquarters, are prime costs and provisional sums amounting to Kshs.390,452,000 or 22.6%, contrary to the guidelines provided by the Public Procurement Oversight Authority, which provides under Section VII Bills of Quantities Paragraph 2.0(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'.

Consequently, the Authority contravened the Law and the validity and propriety of prime costs and provisional sums amounting to Kshs.390,452,000 could not be confirmed.

Management Response

The authority informed the committee that the documents used to procure the works were sourced from standard PPOA issued documentation. Therein participation of specialized contractors is well captured and applied with specialized work also tendered at the same time as the main contractor. Provision of Provisional Cost and Prime Cost sums were allowed for in the main document as captured from the consultants and client. Subsequently, the specialized works were tendered and evaluated as standalone contracts, but with agreements with the main contractor as they share site and site coordination.

Committee observations;

I. The Committee noted that the specialized works were not part of the main contract as is stipulated in law.
II. The committee also observed that KMA may have contravened the law in procuring the sub contracts.

Committee resolution;

The Committee directed KMA to submit the main contract and the sub contracts to the office of the Auditor General and the Committee through the office of the Clerk within one week from the date of the meeting.

12. Electrical Works Sub- Contract

The Authority evaluated sub-contractors to carry out works listed in provisional sums and prime costs under the supervision of the main works contractor. However, review of the procurement of the electrical works contractor revealed that the lowest evaluated bidder had quoted

Kshs 113,976,976 which was corrected to Kshs 224,592,876 at evaluation stage, contrary to Section 68 of the Public Procurement and Asset Disposal Act, 2015 which states that the tender sum as submitted and read out during the tender opening shall be absolute and final and shall not be the subject of correction, adjustment or amendment in any way by any person or entity.

Further, records provided for audit indicated that the Authority disengaged from the subcontract on 5 November, 2018 and the subcontractor acknowledged the disengagement on 19 November, 2018. However, based on the professional advice by the Solicitor-General on 1 November, 2018, the Kenya Maritime Authority has no contractual relationship with the subcontractor, but the main contractor. Therefore, the subcontractor may seek legal redress and be awarded damages.

Consequently, the Management was in breach of the Law. Further, the validity and regularity of the electrical contract price of Kshs.224,592,876 could not be confirmed.

Management Response

The authority informed the committee that, the contractor declined to revert back to the read-out amounts as all others had done through an addendum dated 26th July, 2018, under those circumstances, the project manager advised the Authority to disengage from the contract because it was not legally enforceable. The matter saw the Authority seek Legal advisory from the Attorney General twice.

Committee observations;

I. Members sought to know whether the disengaged contractor had already started working.
II. The Committee also inquired to know whether the contractual obligation was with KMA or the main contractor.
III. The Committee observed the involvement of KMA in sourcing for the subcontractor may have been guided by interests and not the law.

Committee resolutions;

I. The Committee directed KMA to provide the analysis of quotations to support the award of the contract and the quotations by others.
II. The Committee directed KMA to provide documentation on the addendum on when the management noticed there were huge differences on the quoted sums.

MIN.NO.NA/PIC-CA&E/2023/0156: ADJOURNMENT

The meeting was adjourned at 1.15 p.m. The following meeting to resume at 3.00 p.m. of the same day at the same venue.

Signature .....

HON. DAVID PKOSING, CBS, M.P.
(CHAIRPERSON)

Date 29/6/2023

MINUTES OF THE 28TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE ON COMMERCIAL AFFAIRS & ENERGY HELD ON THURSDAY, 11TH MAY 2023 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10.00 A.M.

PRESENT

1. Hon. David Pkosing, CBS, MP - **Chairperson**
2. Hon. Baba Owino Paul Ongili, MP
3. Hon. Marianne Jebet Kitany, MP
4. Hon. Ronald Rotwiko Rarotr, MP
5. Hon. Yussuf Mohamed Farah, MP

APOLOGIES

1. Hon. Dr. Lilian Achieng Gogo, MP - **Vice Chairperson**
2. Hon. James Opiyo Wandayi, MGH, MP
3. Hon. Dr. Adan Wehliye Keynan, CBS, MP
4. Hon. Mwangi Kiunjuri, EGH, MP
5. Hon. Sarah Paulata Korere, MP
6. Hon. Beatrice Kahai Adagala, MP
7. Hon. Paul Kahindi Katana, MP
8. Hon. Charo Kazungu Tungale, MP
9. Hon. John Muchua Waithaka, MP
10. Hon. Peter Irungu Kihungi, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Andrew Kipchumba - Clerk Assistant III
2. Ms. Emma Essendi - Senior Legal Counsel
3. Ms. Gladwell Anjimo - Research Officer III
4. Mr. Amos Tindi - Hansard Officer III
5. Ms. Edith Chepng'eno - Media Relations Officer III
6. Mr. Yeti Jillo - Sergeant at Arms
7. Ms. Mercy Kerubo - Audio Officer

OFFICE OF THE AUDITOR-GENERAL

1. Mr. Isaac Ngayu - Manager Audit
2. Mr. Henry Masegere - Parliamentary Liaison
3. Mr. Samwel Nyamamba - Auditor

NATIONAL TREASURY

1. Mr. Bedrick Koore - Economist

INSPECTORATE OF STATE CORPORATIONS

Mr. Michael Maruri - Inspector

INFORMATION AND COMMUNICATION TECHNOLOGY AUTHORITY

1. Mr. Stanley Kamanguya - Chief Executive Officer
2. Hon. Sylvanus Maliliin - Board Chairperson
3. Mr. Thomas Odhiambo - Ag. Director
4. Mr. Oliver Fyoko - Ag. Director
5. Mr. Michael Odhiambo - Ag. Director
6. Ms. Pauline Kinotho - Ag. Director Legal Services

MIN. NO. NA/PIC-CA&E/2023/0146: PRELIMINARIES

The meeting was called to order at 10:51a.m. with a prayer said by the Chairperson. Thereafter, introductions were made.

MIN. NO. NA/PIC-CA&E/2023/0147: COMMUNICATION FROM THE CHAIR

The Chairperson welcomed Members and the witnesses present.

MIN.NO.NA/PIC-CA&E/2023/0148: CONFIRMATION OF MINUTES

This agenda item was deferred to the next meeting.

MIN.NO.NA/PIC-CA&E/2023/0149: EXAMINATION OF THE AUDITED ACCOUNTS OF INFORMATION COMMUNICATION AND TECHNOLOGY AUTHORITY FOR THE FY 2018/2019 TO FY 2020/2021

The management of Information Communication and Technology Authority, led by the Chief Executive Officer Mr. Stanley Kamanguya appeared before the Committee to adduce evidence on the audit queries that had been raised by the Auditor General for the FY 2018/19 to FY 2020/21.

FY 2018/19

1. **Unsupported Rent and Parking**

As disclosed under Note 28 to the financial statements, the statement of financial performance reflects general expenses of Kshs.62,527,744. which includes rent and parking of Kshs.58,131,118. out of which expenses amounting to Kshs.1,116,718 was not supported by a signed lease agreement.

Consequently, the accuracy and validity of rent and parking expenses balance of Kshs.1,116,718 for the year ended 30 June, 2019 could not be confirmed.

Management Response

The Management stated that the rent and parking expenses amounting to Kshs.1,110,732 was not supported by a signed lease agreement. However, the lease agreement for 8th floor has been availed even though it not was signed since the lease agreement was done with a wrong name. The lease has since expired and the Authority vacated the premises. Lease agreement and correspondences with the Landlord is attached. A letter requesting for discharge was written to the landlord.

Committee Observation

The Committee noted there was no lease agreement between the management and the landlord, in regards to the of the 8th floor.

Committee Resolution

The Committee tasked the management to obtain a discharge letter from the premise owner and submit to the Committee by end June 2021.

2. **Unsupported Transparency and Communication Infrastructure Project, TCIP Expenses**

As disclosed under Note 18 to the financial statements, the statement of financial performance reflects Transparency and Communication Infrastructure Project, TCIP expenses amount of Kshs.55,903,008. It was noted that the Authority used part of the proceeds of TCIP Project funds financed by the World Bank for the supply, installation, configuration and commissioning of a Resource Management System (RMS). The budgetary allocation as per TCIP procurement plan was Kshs.71 The supplier was awarded the contract at a contract price of Kshs.68,504,618.40 and the contract was signed on 13 April, 2016. The implementation period was agreed to be three (3) months upon submission of an agreed project plan. However, during the audit review, three (3) years after the contract was signed, the operational usage of the system was at only 9.2 % with human resource module not signed-off completely. Total amount of Kshs.90,393,958.04 had already been paid to the supplier with an outstanding balance of Kshs. 18,590,950.36 as at 16 February, 2018. The Management has explained that the system had not been handed over and the issues noted had not been resolved at the time of audit.

Further, the amount includes payment to seven (7) consultants working on Integrated Financial Management Information System (IFMIS) and information security system. However, the Management did not provide, for audit review the consultants' contract and pre-agreed performance indicators. Further, documents availed for audit indicate that TCIP project came to an end on 31 December, 2010 with a grace period of four (4) months to ensure closure and continuity.

Under the circumstances, it was not possible to confirm the value for money in respect of TCIP expenses totalling Kshs.55,903,008 for the year ended 30 June, 2018.

Management Response

The Management stated that there was an outstanding balance of Kshs 12,300,800.00 as at 16 February, 2018. The contractor was unable to fulfill his contractual requirements to completion which entailed handing over the system to ICTA. The contractor locked ICTA out of the system and this was reported to the DCI. The matter was currently under investigation and letter to DCI and the response from the DCI was submitted as annexures.

The management acknowledged it did not provide documents, for audit review the consultants' contract and pre-agreed performance indicators. The contracts have been availed.

The management noted that the TCIP project came to an end on 31 December, 2016 with a grace period of four (4) months to ensure closure and continuity. However, closure of some sensitive parts of the project i.e., IFMIS support and Information Security took longer than six months. For this reason, The Government of Kenya took over the payment of the consultants to allow proper closure and running of these sensitive areas of the project. ICTA has attached communications from the National Treasury, approving the consultants to continue supporting the project.

Committee observations

I. The Committee was concerned with how the company paid for a system and yet the contractor locked the management from using it.
II. The Committee noted the issue was still outstanding in the current financial year.
III. The Committee observed that contracts of the consultants was not provided in the annexures.

Committee resolutions

The Committee resolved as follows;

I. The management to submit CR12 of the Millennium Instruments Limited contractor and provide the current address of the company.
II. The management to produce the tender documents, including an advert, number of companies that applied and award process to Millennium Instruments Limited.
III. The management to provide the payment schedule done to the company.
IV. The management to submit the contracts of the consultants and the current status of those contracts to the Auditor General. The Auditor to give an update on the consultant contracts in the next Committee meeting with ICTA.
V. The management to table the documents to the Committee by 25th May 2018.

8. Non-Recovery of Outstanding Pasha Loans

The statement of financial position reflects Pasha Fund asset of Kshs 85,100,800. The balance represents loans advanced to entrepreneurs to set up information hubs to be repaid within nine

(9) years. However, the balance is in arrears and there has been no collection during the year under review. No provision for impairment of this asset has been created in the financial statements even though recovery is clearly doubtful. Additionally, there has been no interest charged on the revolving fund balance even though the loan has remained unpaid for twelve (12) months.

In the circumstances, it has not been possible to confirm whether Management has prudently managed public resources.

Management Response

The Contract was entered into between the Kenya Information and Communication Technology Board (KITCB) and a local Bank (the Financial Institution) on the 3rd of November 2010. Under the Contract, KICTB was mandated to provide funds obtained from the World Bank to the Bank, which in turn was mandated to manage the funds under the Digital Village Revolving Fund (DVRF) Project.

The Contract outlines the duties and responsibilities of the bank among other provisions. Refer to ***Part III (D) page 01(Annex 11)*** Such duties and responsibilities include, but are not limited to, accountability for the disbursed funds by establishing a loan repayment system, and the specific tasks include loans follow-up and recovery.

According to a letter from the bank to the ICT Authority dated 8th February 2011, the Bank received Ksh.108,895,790 from the KICTB towards the DVRF. Out of the amount, Ksh.87,888,142 and Ksh.87,955,500 were approved for disbursal by the Grant Committee for Phases I and II of the DVRF respectively, leaving a balance of Ksh.82,653,148.

The letter further indicated that the funds under the DVRF had grown to Ksh. 108,077,292 due to the interest earned, and that due to the fact that a loan portfolio of Ksh.46,193,249 (principal and interest) had not been paid and indicated that the loans are under the loss category. The Bank then remitted Ksh.62,884,004 to the ICT Authority.

The Authority has written to the bank on the matters. *(Supporting documents provided)*

Provision for Bad Debts has been provided in the FY2022/2023 *(Supporting documents provided)*.

Committee observations

I. The audit query was recurring and the response provided by management was not adequate.
II. The Committee noted that the criteria of selecting beneficiaries of Pasha Loans was set jointly by the World Bank, ICTA and the Bank.
III. The Committee observed that Family bank was chosen through an Expression of Interests.
IV. The Committee noted the proper documentation of Pasha Loan was lacking.

V. The Committee observed that the management had sought authority from the National Treasury to reallocate the Ksh. 81M remitted from Family Bank.

Committee Resolution

The Committee resolved as follows;

I. The management to provide a clear management response on the query and provide proper documentation.
II. The management to provide a clear list of Pesha Loans beneficiaries, and further provide details list of all DVRF entities that defaulted on the loan.
III. The representative of the National Treasury to provide clarity on the World Bank money loaned to ICTA in the subsequent Committee meeting with the Authority.
IV. The management to submit all documents to the Committee and the Auditor by 31st May 2023.

MIN.NO.NA/PIC-CA&E/2023/0130: ANY OTHER BUSINESS (AOB)

The Committee was informed that a retreat would be held in Hilton Garden Inn from 14th-21st May 2023, to examine the audited accounts of selected State Corporations.

MIN.NO.NA/PIC-CA&E/2023/0131: ADJOURNMENT

The meeting was adjourned at 12.50 p.m. the next meeting will be held on notice.

Signature .....

HON. DAVID PKOSING, CBS, M.P.
(CHAIRPERSON)

Date 23/6/2023

MINUTES OF THE 30TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE ON COMMERCIAL AFFAIRS & ENERGY HELD ON WEDNESDAY, 17TH MAY 2023 AT HILTON GARDEN INN, GARDEN SUITE 1 IN MACHAKOS COUNTY AT 02:30 P.M.

PRESENT

1. Hon. David Pkosing, CBS, MP - **Chairperson**
2. Hon. Dr. Lilian Achieng Gogo, MP - **Vice Chairperson**
3. Hon. Dr. Adan Wehliye Keynan, CBS, MP
4. Hon. Mwangi Kiunjuri, EGH, MP
5. Hon. Sarah Paulata Korere, MP
6. Hon. Babu Owino Paul Ongili, MP
7. Hon. Beatrice Kahai Adagala, MP
8. Hon. Charo Karungo Tungule, MP
9. Hon. John Machua Waithaka, MP
10. Hon. Marianne Jebet Kitany, MP
11. Hon. Peter Irungu Kihungi, MP
12. Hon. Ronald Kamwiko Karauri, MP
13. Hon. Yussuf Mohamed Farah, MP

APOLOGIES

1. Hon. James Opiyo Wandayi, MGH, MP
2. Hon. Paul Kahindi Katana, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Andrew Kipchumba - Clerk Assistant III
2. Mr. Lenayo Morintat - Clerk Assistant III
3. Mr. Sydney Lugaga - Legal Counsel
4. Ms. Gladwell Amimo - Research Officer III
5. Ms. Judy Kiprop - Fiscal Analyst
6. Mr. Marimi Mwangi - Media Relations Officer
7. Mr. Richard Sang - Sergeant at Arms
8. Mr. Kelvin Lengasi - Audio Officer

OFFICE OF THE AUDITOR-GENERAL

1. Mr. Justus Otuma - Director Audit
2. Mr. Henry Manegese - Parliamentary Liaison

THE NATIONAL TREASURY

1.	Mr. Anthony Mwirigi	-	Economist
2.	Ms. Catherine Nzioki	-	Senior Investments Officer

INSPECTORATE OF STATE CORPORATIONS

Mr. Victor Mwanyi	-	Inspector

KENYA MARITIME AUTHORITY

1.	Mr. John Onyango	-	Ag. Director General
2.	Mr. Henry Mwanaru	-	Principal Human Resource Officer
3.	Mr. Edwin Were	-	Finance manager
4.	Mr. Alphonse Eioko	-	ICT Manager
5.	Ms. Jane F. Otieno	-	Legal Manager
6.	Ms. Bevaline Lusala	-	Supply Chain Manager
7.	Mr. Julius Ogutu	-	Principal Accountant

MIN. NO. NA/PIC-CA&E/2022/0117: PRELIMINARIES

The meeting was called to order at 08:30 p.m. with a prayer said by the Chairperson.

MIN. NO. NA/PIC-CA&E/2022/0118: COMMUNICATION FROM THE CHAIR

The Chairperson welcomed Members and the witnesses present.

MIN.NO.NA/PIC-CA&E/2022/0119: CONFIRMATION OF MINUTES

This agenda item was deferred to the next meeting.

MIN.NO.NA/PIC-CA&E/2022/0120: EXAMINATION OF THE REPORTS OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF THE KENYA MARITIME AUTHORITY FOR THE FY 2018/2019 TO FY 2020/2021

The KMA Ag. Managing Director Mr. John Onyango remained to present the evidence on the audit queries raised by the Auditor.

1. **Employee Costs**

As disclosed in Note 13 to the financial statements, the statement of financial performance reflects an expenditure of Kshs.413,217,933 relating to employees' costs. The following observations were made;

1.1 **Training in Foreign Country Organized by Local Organization**

The staff training expenditure also included accommodation allowances of Kshs.404,170 paid to two (2) Directors of the Authority that attended a training on corporate governance organized by Strathmore Business School, in Dar-es-Salaam, Tanzania. It was not clear why the Management allowed the two Directors to be trained in a foreign country by an Institution based in Kenya, contrary to Paragraph 6.8.2 of the Guidelines on Managing Training in the Public Service of February, 2017 which provided that an approval to train in foreign based institutions will be granted only in instances where the course applied for was not available in any local institution.

In the circumstances, the Management was in breach of the Law and the regularity and propriety of the expenditure amounting to Kshs 404,170 on training could not be confirmed.

Management Response

As provided by the Guidelines on Managing Training in the Public Service of February 2017, Strathmore Business School is Kenyan training institution and were offering the course the Directors attended.

The training offered by Strathmore Business School was scheduled to take place in Dar-es-Salaam and not within the Country. During that time the two (2) Board Members had the opportunity to be trained while they were not engaged in Board matters.

Committee observation

The committee noted that the course attended by the two board members outside the country was highly likely to be offered locally.

Committee resolutions

The Committee resolved as follows;

I. The management of KMA were directed to submit the course manual from Strathmore University that, showing the course was not offered in Kenya.
II. The management was tasked to demonstrate that the training of the two directors in Dar-es-Salaam was of high need.

1.2 Employees Above the Age of Sixty (60) Years

Audit of the payroll for the year ended 30 June, 2018 indicated that the Authority engaged two (2) employees on 1 January, 2016 and on 16 March, 2018 on three (3) year contracts. However, the two employees were above the mandatory retirement age of sixty (60). This is contrary to Paragraph D.81 of the Human Resource Policies and Procedures Manual for the Public Service, 2016 which provides that all officers shall retire from the Service on attaining the mandatory retirement age of 60 years, 65 years for persons with disabilities or as may be prescribed by the government from time to time.

Consequently, the Management was in breach of the law.

Management Response

In a letter dated 03rd October 2018 Ref: KMA/ADM/8/1/1 to the PS, Ministry of State for Public Service indicate that among other issues, the unavailability of the specialized skilled workers in the labour market led the Authority to employee the staff above the age of 60 years.

The Authority initiated a mentorship and coaching initiative that replaced one of the contracted employees with a junior employee.

Supporting Documents

i. Letter Ref: KMA/AEM/6/1/1

Committee observation

The Committee observed that the officers who had attained the mandatory retirement age, were still working due to unavailability of skilled labor in the market, noted that the management had made effort to close the skills gap by partnering with JKUAT to train officers.

1.4 Irregular Procurement of Training Services

Included in the expenditure of Kshs.19,048,181 in respect of staff training was an amount of Kshs.4,315,146 not included in the procurement plan of the Authority. This is contrary to Regulation 51(2) of the Public Finance Management (National Government) Regulations, 2015 which states that the Accounting Officer should make an expenditure commitment only against the procurement plan approved for that entity in accordance with the Public Procurement and Asset Disposal Act, 2015 and the Regulations made thereunder.

Consequently, the Authority contravened the provisions of the Public Procurement and Asset Disposal Act, 2015 and the propriety of staff training costs of Kshs.4,315,146 could not be ascertained.

Management Response

Different institutions had varying training calendars and matching with training plans for each employee became a challenge.

The Authority had been sending its employees to the Kenya School of Government (KSG), Kenya School of Monetary Studies and other Government training institutions as a first priority, where such training is not provided by the Government institutions, the Authority seeks such services through the procurement process for in-house training.

Committee observations

i. The Committee observed the irregular procurement of training services was due to the unpredictability of the sector KMA were working in.
ii. The Committee tasked the National Treasury and Inspectorate of State Corporations to come up with regulations that allows parastatals with unpredictable operations to spend money then regularize later.

1.4 Employees with Net Salaries Less than One Third of Basic Salary

Audit of the payroll for the year ended 30 June, 2020 revealed that the net pay for four (4) employees totaling to Kshs.663,710 was less than a third of their corresponding basic pay of Kshs.1,160,817 contrary to Section 19(3) of the Employment Act, 2007 which states that the total amount of all deductions made by an employer from the wages of his employee at any one time, shall not exceed two-thirds of such wages.

Consequently, the Management was in breach of the Law.

Management Response

Currently the Authority has upgraded the ERP system that is used for processing the payroll and the module does not allow deductions beyond a third of the basic salary.

Supporting Documents

13. Third Rule Report April 2022

Committee Observation

The management notified the Committee that the anomaly occurred during the migration from manual system to the ERP.

The Committee resolved to make a recommendation on the query during report writing.

8. General Office Expenditure

As disclosed in Note 17 to the financial statements, the statement of financial performance reflects an amount of Kshs.873,947,883 under general office expenditure. The following observations were made:

8.1 Irregular Procurement of Motor Vehicles and Boat Insurance

The general office expenditure includes insurance expenses of Kshs.7,710,389 out of which an amount of Kshs.5,003,748 is in respect of motor vehicles and boat insurance. However, the following anomalies were noted:

i. Requests for quotations provided for audit review did not specify the risks to be covered and limits of cover. Further, review of documents submitted by bidders revealed that each bidder quoted for different cover limits and risks, hence the bid prices were not comparable.
ii. Audit review of tender evaluation minutes revealed that no technical evaluation of the bids was done.
iii. Audit review of the quotations revealed that only two (2) bidders responded out of the six (6) invited. However, the quotations were evaluated, contrary to Section 104 (6)(d) of the Public Procurement and Asset Disposal Act, 2015 which requires the Accounting Officer to ensure that at least three (3) persons shall submit their quotations prior to evaluation.
iv. The Authority used requests for quotations procurement method. However, a list of the insurance providers and details on how the bidders were identified were not provided for audit verification.

In the circumstances, the Management was in breach of the Law and the validity, regularity and propriety of the expenditure on motor vehicles and boat insurance services amounting to Kshs.5,003,748 could not be confirmed.

Management Response

The Authority didn't have the requisite expertise to develop the risks to be covered and the cover limits.

The procurement section also had manpower challenges.

The Authority noted the oversights and subsequently ensured the risks to be covered are specified and limits of cover indicated in the request for quotations. Provisions of Section 104 (e)(4) of the Public Procurement and Asset Disposal Act, 2015 have also been adhered over the existing period.

Committee observations

The response provided by the management was inadequate, as it didn't answer the specifics raised by the Auditor.

Committee resolution

The Committee resolved to make their recommendations during report writing.

5.5 Goods Supplied Beyond the Validity Period - Office Uniforms and Clothing

The general office expenditure also included an amount of Kshs.815, 880 in respect of office uniforms and clothing. However, included in this amount is Kshs.670,880 in respect of goods procured through Purchase Orders (POs) raised in the month of April, 2016 but delivered in November, 2016, about six (6) months after the validity period of the POs had lapsed. This is contrary to Regulation 38 of the Public Finance Management (National Government) Regulations, 2015 which provides that the validity period of Local Purchase Order is thirty (30) days.

Consequently, the Management was in breach of the Law in respect of the expenditure.

Management Response

The work was awarded under AGPO reserved group. The office uniforms and clothing for staff were being tailor-made. The process of taking measurements of staff spread out throughout the country, and time taken to tailor the uniform to the required standards took longer than initially anticipated. The suppliers having already committed their funds to the supply of the uniforms and showed commitment to delivery, the Authority saw it fit to allow more time for delivery.

Committee observation

The Committee noted the firm contracted to supply the goods was under AGPO, and they had challenges in supplying the goods within the specified timeframe. However, they finally supplied all the goods as per the contract nonetheless the management broke Public Finance Management Regulations.

The Committee also noted that the timeframe of a Local Purchase Order could be extended if request was made by the procuring entity.

6. Loans to Members of Staff Beyond Approved Limit

During the year under review, two (2) employees of the Authority were provided with car loan benefits through a scheme administered by a bank on behalf of the Authority. However, scrutiny of the loan beneficiaries revealed that car loans were advanced to two (2) employees in excess of the approved Salaries and Remuneration Commission limits as summarized below:

Kenya Maritime Authority Job Group	Civil Service Job Group	Maximum Loan Limit (Kshs.)	Principal Loan Amount Advanced (Kshs.)	Excess Loan Advanced (Kshs.)
6	D	[illegible]	[illegible]	[illegible]
7	E	[illegible]	[illegible]	[illegible]
Total		**[illegible]**	**[illegible]**	**[illegible]**

The excess car loan of Kshs 1,185,804 is contrary to Salaries and Remuneration Commission Circular No. SRC/025/12/2014 of 17 December, 2014 which provides the thresholds for car loan and Mortgage Scheme benefits for various cadres of public officers in the Public Service.

In the circumstances, the Management was in breach of the Law.

Management Response

In the spirit of the circular by the SRC of Ref. No: SRC/ADM/CIR/1/18 Vol. III (100) dated 17th December, 2014;

"It is expected that implementation of the benefits will motivate public officers and immensely contribute towards attraction and retention of requisite skills in the public service with the constitutional principle under Article 230 (3) of the constitution".

The Authority facilitated its employees to access the car loans for motivation and retention purposes. In the same spirit the Authority ensured that the officer's deduction will not exceed two thirds of their monthly emoluments.

Notwithstanding the above, the Authority is aware of the current market rates for vehicles that are authorized entry into the Kenyan market. This has made it difficult for staff in the lower cadre to access the car loan scheme because of the given limits against the market rates.

Committee Observations

I. The Committee sought to know if the management were aware of the SRC circular and the loan approval process. The management owned up to breaching the law.
II. The management observed that the approval process involved the following officers; the Director General, the Finance Manager and Human Resource Manager.

Committee Resolution

The Committee directed the Management of KMA to table the three names of the beneficiaries of the loan beyond limit.

6. Cash and Cash Equivalents

National Bank of Kenya -Dollar Account

The cash and cash equivalents balance of Kshs 407,457,400 also includes an amount of Kshs 8,801,460 in the National Bank of Kenya Current Account (USD) and whose bank reconciliation statement for the month of June, 2010 reflects a bank statement balance of USD 116,000.00. However, the certificate of bank confirmation as at 30 June, 2010 reflects an amount of USD 117,000.00, thus resulting in an unreconciled variance of USD 709.50.

Consequently, the accuracy and completeness of cash and cash equivalents balance of Kshs 407,457,400 as at 30 June, 2010 could not be confirmed.

Management Response

The variance of USD 709.50 was due to a deposit of cheque number 011371 from Bale Shipping on 29/06/2010, which was to mature on 2nd July 2010 (value date). The National Bank of Kenya provided the cleared balance of USD 117,000.00 as the certified amount instead of the book balance of USD 116,000.00.

A reconciliation statement was provided on the same.

Supporting Documents

8.1 Reconciliation Statement
8.2 Bank Statement
8.3 Certificate of Balance
Bank Reconciliation Statement as at 30/06/2010

Committee observation

The Committee noted that the account had been reconciled and the OAG confirmed.

2. **General Office Expenditure**

As disclosed in Note 17 to the financial statements, the statement of financial performance reflects an amount of Kshs.806,444,730 under general office expenditure. The following observations were made:

2.1 Irregular Procurement of Branded Promotional Items

Included in the general office expenditure of Kshs.806,444,730 is an amount of Kshs.51,280,950 in respect of publicity and awareness. The latter balance includes an amount of Kshs.5,880,500 in respect of branded promotional items including water bottles, umbrellas, notepads, brochures and booklets procured through restricted tendering. The Management sent tender invitations to eight (8) firms from the prequalified list of fifty- three (53) suppliers. This was contrary to Regulation 36(2) of the Public Procurement and Disposals Regulations, 2006 which requires a procuring entity to invite tenders from at least ten persons selected from the prequalified list maintained for restricted tendering method. Further, the tender was not advertised in the Kenya Maritime Authority website as per Regulation 34 (3)(d) of the Public Procurement and Disposal Regulations, 2006.

In addition, the use of the restricted tendering method for the supply of branded promotional items and brochures was not justified as the goods and services procured were readily available and not of a complex nature. This was done contrary to Section 102(1) of the Public Procurement and Asset Disposal Act, 2015 which prescribes conditions for the use of restricted tendering including (a) competition for contract,

because of the complex or specialised nature of the goods, works and (b) if there is evidence to the effect that there are only a few known suppliers of the whole market of the goods, works or services.

The Management was in breach of the law.

Management Response

Use of Restricted tendering was indicated by Section 108 (1)(b) of the PPADA, 2015 where an accounting officer may use restricted tendering if (b) the time and cost required to examine and evaluate a large number of tenders would be disproportionate to the value.

The Authority however notes concerns raised and has endeavored to comply with PPADA, 2015 and PPADR, 2020.

Committee observation

The Committee observed that the management breached the law on the procurement, and the management response provided was inadequate.

Committee Resolutions

The Committee resolved as follows;

i. The management was tasked to provide documentation to demonstrate the urgency from the user department that necessitated restricted tendering.
ii. The management to demonstrate the total cost of procurement process in the case of open tendering, which necessitated the management to opt for restricted tendering.

e Long Outstanding Creditors

The statement of Financial position reflects a balance of Kshs.116,740,010 under trade and other payables from exchange transactions which, as disclosed in Note 19 to the financial statements, includes an amount of Kshs.8,181,841 in respect of suppliers for various goods and services supplied more than two (2) years ago. The Management has not provided an explanation on why the amounts had not been paid. This is contrary to Section 136(4)(d) of the Public Finance Management Act, 2012 which states that an Accounting Officer engages in improper conduct if the officer fails without reasonable cause to pay eligible and approved bills promptly in circumstances where funds are provided for. It is also contrary to Authority's terms and condition (5) of Local Purchase Orders and Local Service Orders which states that, 'provided the conditions of purchase have been fulfilled, payment will be made within 45 days from date of invoice.

The Management was in breach of the law.

Management Response

The explanations on why the amounts had not been paid have been provided in the attached annexures provided.

Committee observation

The committee observed that there was need to remove the long outstanding creditors from the organization's books.

Committee resolutions

The Committee resolved as follows;

I. The management was tasked to table before the Committee a schedule of all creditors that had been cleared and those still pending.
II. The management to also table evidence of payment and bank statements showing proof of payment.

FY 2020/21

7 Unconfirmed Revenue from Non-Exchange Transactions - Levies

The statement of financial performance reflects levies amount of Kshs.1,010,200,774 under revenue from non-exchange transactions. As disclosed in Note 6 to the financial statements, the amount comprises merchant shipping levies of Kshs.1,007,014,110 and collection cost (KRA commission) of Kshs.50,740,850. However, monthly and annual reports on imports, exports and fees collected were not provided for audit, contrary to Appendix II to the Kenya Maritime Authority Act, 2006, which requires Kenya Revenue Authority (KRA) to submit to Kenya Maritime Authority (KMA) monthly and annual reports on imports, exports and fees collected.

Further, the agreement between these two agencies provides that, KRA shall give KMA access to their custom system, limited to viewing and direct download of cargo manifests and declaration data for further statistical analysis and to two (2) designated persons only whose identity shall be disclosed to both KMA and KRA. However, KMA did not have access to KRA custom system, contrary to the agreement.

In addition, despite having fully-fledged Commercial Shipping and Finance Departments, KMA still relied on KRA to compute, collect and remit maritime shipping levies. Further, no documentary evidence in form of reconciliation or computation of the expected and actual collections of maritime shipping levies as per manifests received from KRA was provided for audit verification.

As a result, the accuracy and completeness of the revenue arising from the levies of Kshs.1,010,200,774 could not be confirmed.

Management Response

The Management put in place a framework for reconciling MS fees collected by KRA using Cargo Manifests data availed through KRA's Simba system and submitted Bank Transactions. During the period under review, the Authority managed to do reconciliations using data from cargo manifests received from both KRA and Bernrode. Copies of the reconciliation reports for the period under review are attached for any further perusal.

KRA's upgrade from Simba system to Integrated Customs Management System in phase approach generated a few challenges in the established framework for data transmission. Submission of the manifest data was interrupted during the implementation of the system upgrade. The Authority initiated the following measures to sustain data transmission for reconciliation of MS fees:

i. Engagement of KRA to provide system credentials to facilitate online extraction of reports of entries done on the ICMS system. KRA was requested to create a platform for sharing of manifest information from the newly launched ICMS system.
ii. Formal request to Kentrade for direct system to system relay of declaration data to which a positive response was received and a team set up to oversee the successful relay of the data, the engagement of which is at a very advanced stage.
iii. The Head of Finance shared a format with KRA on extraction and relay of bank transactions to KMA.
iv. The Authority has enhanced the tool for MS fees calculation and reporting in the ongoing ERP upgrade, set to go live within the month of March 2022.

Supporting Documents

8.1 Email on Information on Cargo Manifest on 10th Aug 2021

8.2 Letter to KRA Ref: KMA/22/1/3/10 dated 13th July 2022

8.3 Email on Format on Cargo Manifest dated 14th May 2021

Committee observations

The Committee noted that KMA had no access to KRA's ICMS, therefore the annual figure of collected revenue could not be verified.

The Committee noted that the management relied on data from Kentrade and daily bank statements.

Committee resolution

The Committee resolved to organize for a roundtable meeting between the offices of the OAG, KRA and KMA to discuss on the revenue accountability of KMA.

6 **Unsupported Duty Travel Allowances – Domestic and Foreign**

The statement of financial performance reflects general office expenditure balance of Kshs 256,740,359 which, as disclosed in Note 11 to the financial statements, includes an amount of Kshs 47,573,021 spent on duty travel allowances – domestic and foreign. However, this latter amount includes Kshs 6,600,000 for which, boarding passes, air and bus tickets and approved annual activity plans were not provided for audit verification.

In the circumstances, the validity and propriety of the duty travel allowances – domestic and foreign of Kshs 6,600,000 could not be confirmed.

Management Response

Follow up had been done for the officers to avail the boarding passes.

Committee Observations

The committee noted that the response provided by the management was not sufficient.

Committee Resolutions

I. The Committee directed the management of KMA and the OAG to each submit to the Parliament, list of names of persons who travelled corresponding to ksh. 6.6M spent.
II. The management to provide the current position of the above affected persons.

9 Property, Plant and Equipment

9.1 Unconfirmed Alteration in the Conditions of Leasehold Land

The balance includes an amount of Kshs 810,907,800 in respect of leasehold land for a plot in Mbaraki, Mombasa. Review of the certificate of lease indicates that the property is held on a ninety-nine (99) years lease from Kenya Railways starting from 1 January, 1971 with an annual rent of Kshs 8,000.

Further, the certificate indicates that the leasehold interest is subject to the agreement and other matters contained in the registered lease. However, among the conditions outlined in the lease is condition 1(g) which requires that the land be used only for the purposes of residence which shall include servant quarters and condition 1(l) which requires that no trade or business of any description should be conducted on the land or buildings.

Audit inspection revealed that the Authority had constructed an office block on the said leasehold land. However, no evidence was provided to show that the Kenya Railways Management had agreed to the alteration of the conditions of the lease quoted above before putting up an office block which may be a source of rental income to the Authority.

In the circumstances, the Authority contravened the conditions of the lease certificate in force.

Management Response

The area is zoned as commercial land and the County Government approved the plan of the building in view of the zoning.

Committee observation

The committee noted that the response provided by the management was not sufficient.

Committee resolutions

The committee directed the management of KMA to provide the following documents.

i. Table a document showing the approval change of user of the land.
ii. Table the Gazette notice of Zoning, from the County Government of Mombasa

9.2Capital Work in Progress – Irregular Variation of Site Instructions to Builder's Works

The balance also includes capital work in progress amount of Kshs 1,716,669,860; being cumulative cost of works on Kenya Maritime Authority Headquarters project being constructed on the plot at Mbaraki, Mombasa. The contract had been awarded at a total cost of Kshs 1,710,170,416 and the works commenced

of main building works, electrical, plumbing and drainage, air conditioning and elevator installation works.

A scrutiny of the approved Project Appraisal Report No. 9 revealed introduction of three (3) new project activities under Element No. 7 - Site Instructions to Builders Work of Kshs.3,678,167 that were not factored in the contracted Bill of Quantities. However, documentary evidence of approval of the same by Contract Implementation Team as provided for under Section 131(1)(b) of the Public Procurement and Asset Disposal Act, 2015 was not provided for audit verification.

In the circumstances, value for money of the expenditure of Kshs.3,704,668,980 could not be confirmed.

Management Response

The site instructions were being approved by the Project Manager (Works Secretary).

Committee observations

The committee noted that the response provided by the management was not sufficient.

Committee resolution

The Committee granted the management until 31st May 2023 to provide a proper explanation of using the extra ksh. 3,678,167 in the projects.

9 Board Members Expenses

9.1 Irregular Payment of Sitting Allowance to Non-Board Members

The statement of financial performance and as disclosed in Note 11 to the financial statements reflects employee costs balance of Kshs.403,959,894 which includes an expenditure on recruitment of Kshs.3,035,711. However, this latter amount includes Kshs.780,000 paid to the parent Ministry's staff, who were not gazetted Board members, as sitting allowances during a recruitment exercise conducted by the Board Members. This was contrary to the State Corporations Advisory Committee Circular Ref No. OP/SCAC.9/1/1/(18) on the Implementation of Executive Order No. 7 - Mwongozo - Code of Governance for State Corporations, which requires persons or officers nominated to represent other substantive Members/Directors to only attend Board/Committee meetings after being gazetted by same and issued with appointment letters by the appointing authority.

In the circumstances, Management was in breach of the Mwongozo - Code of Governance for State Corporations.

Management Response

The ministry staff were offering technical assistance to the Board in the recruitment exercise.

Supporting Documents

6. Letter of appointment from the Ministry

Committee resolutions

I. The Committee directed the legal office of Parliament to examine the contents of the letter from the Permanent Secretary.
II. The Management of KMA was tasked to submit the list of the three people who were paid the Sh. 749,000.

0.8 Board of Directors' Costs

The statement of financial performance reflects Board of Directors costs of Kshs.51,805,186 as disclosed in Note 18 to the financial statements. However, the expenditure exceeded the approved expenditure capping of Kshs.10,000,000 by Kshs.1,805,186 in contravention of the Circular No. OP/CAB.6/1A of 11 March, 2020 which provides that Board expenses for a financial year shall be capped at Kshs.80 million or 5% of the operations and maintenance budget of the State Corporation, whichever is less and that any exceeding budgets shall require approval of the Cabinet Secretary for The National Treasury. Further, the approval of the Cabinet Secretary for The National Treasury was not provided for audit review.

In addition, available records indicated that the Board exceeded the approved number of meetings as analyzed below:

Committee	Approved No. of Meetings	Actual No. of Meetings	Excess No. of Meetings
Full Board	6	23	17
Human Resource Committee	6	23	30
Totals	**18**	**39**	**47**

This was contrary to Paragraph A (6) of Circular No. OP/CAB.6/1A of March 11, 2020 which restricts Board meetings to a minimum of four (4) meetings in a financial year, as provided for in Section 6(1)(a) of the State Corporations Act, and a maximum six (6) meetings.

In the circumstances, Management was in breach of the Law.

Management Response

The Authority notes that all the expenditure was approved and overall exceeded the budget by 0.8%, which is within the allowable variation of 10%.

Committee Observation

The Committee observed that the organization held board meetings exceeding the guidance that was contained in the Circular by Head of public Service.

Committee Resolution

The management was directed to submit the following documents.

I. Provide the names of the Board Members who attended the 17 excess meetings of the full board and the amount each one received in those meetings.
II. Provide the names of persons who attended the Human Resource Committee 30 excess meetings and the amount each was paid in those extra meetings.

III. Provide documentation authorizing the pay for the extra board meeting from the Cabinet Secretary.
IV. Table documentation showing approval of expenditure and the person that gave the approval.

10 General Office Expenditure

The statement of financial performance reflects general office expenditure balance of Kshs.878,746,599. The following unsatisfactory matters were observed.

10.1 Irregular Provision of Airtime

The balance includes communication costs of Kshs.10,611,307 on officers' airtime, which includes Kshs.8,946,000 paid to thirty-three (33) officers in EMA Grades 2,3 and 4 at monthly rates higher than the rates provided in the guidelines given in Circular Ref. OP/CAB/ 10 dated 15 March, 2010 on economic utilization and efficient delivery of telephone services in the public service. As a result, the officers were overpaid by Kshs.1,893,000.

In the circumstances, the regularity of the expenditure of Kshs.1,893,000 could not be confirmed.

Management Response

The Authority was using its approved airtime structure.

Supporting Document

i. Approved Airtime Structure

Committee observation

The Committee noted the response provided was not satisfactory and the management requested for more time to provide a proper explanation and account for the Ksh. 1.6M spent on airtime.

Committee Resolution

The Committee granted the management one week to provide a satisfactory response on how ksh. 1.6M was spent.

10.4 Payment for Undelivered Consultancy Service

The balance includes professional and consultancy fees of Kshs.7,791,894. Examination of contract records revealed that the Authority entered into an agreement for consultancy services at a contract price of Kshs.8,300,800 and a contract period of twenty-one (21) days with Kenya School of Government on 10 June, 2021. The special conditions of the contract indicated that the Authority was to pay the consultant 80% of the contract sum at the presentation of the inception report and that the contract was to automatically terminate twenty-one days after the commencement of the service. However, as at the time of audit in the month of January, 2022, the Authority had spent an amount of Kshs.811,600 or 10% of the contract sum but the consultant had not delivered the inception report.

In the circumstances, the propriety of the expenditure of Kshs.811,600 could not be confirmed.

Management Response

The consultancy report was issued to the Authority

Supporting Document

8.1 Culture Change Report

8.2 KMA Culture Change Board Presentation 04.10.2019

8.3 Contract Between KMA and KPG

Committee resolution

The Committee was satisfied with the evidence adduced on this query and the Auditors confirmed.

11 Staff Establishment

The Authority's staff in post stood at one hundred and eleven (111) against an approved establishment of two hundred and forty-two (242), indicating an under-establishment of one hundred and thirty-two (132). The Authority had not filled critical positions to sustain a high performing public service and ensure uninterrupted delivery of services and programmes.

As a result, the Authority may not efficiently and effectively deliver on its mandate.

Management Response

The Government had put a freeze on employment which was lifted in October 2020.

The Authority is planning to embark on a recruitment exercise to fill in the vacant positions in phases.

Evidence:

10.1 Unfreezing Circular
10.2 Human Resource Plan

Committee observation

The Committee was notified that critical positions to be filled by July 2021.

Committee resolutions

I. The query on staff establishment to remain open until the entity recruits the required personnel.
II. The management of KMA was granted one week (14/10/2021) to submit all the documents requested by the Committee

MIN.NO.NA/PIC-CA&E/2021/0161: ANY OTHER BUSINESS (AOB)

1. The Inspectorate of State Corporations was tasked to do a brief to the appointing authority on the need to have substantive heads in government parastatals

II. The National Treasury Liaison officer to the Committee to pass a message to the Principal Secretary on the need to have a substantive Managing director at EMA.

III. The OAG liaison officer to submit the Terms of Reference used while conducting the audits of the Parastatals by 10/05/2023.

MIN.NO.NA/PIC-CAKE/2022/0188: ADJOURNMENT

There being no other business to discuss, the meeting was adjourned at 6.00 p.m. the next meeting will be held on notice.

Signature .....

HON. DAVID PKOSING, CBS, M.P.
(CHAIRPERSON)

Date 27/6/2023

MINUTES OF THE 24TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE ON COMMERCIAL AFFAIRS & ENERGY HELD ON WEDNESDAY, 7TH JUNE 2023 AT 4TH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10:00 A.M.

PRESENT

1. Hon. David Pkosing, CBS, MP - **Chairperson**
2. Hon. James Opiyo Wandayi, MGH, MP
3. Hon. Sarah Paulata Korere, MP
4. Hon. Babu Owino Paul Ongili, MP
5. Hon. Charo Kazungu Tungule, MP
6. Hon. John Machua Waithaka, MP
7. Hon. Peter Irungu Kihungi, MP
8. Hon. Marianne Jebet Kitany, MP
9. Hon. Ronald Tsimwiko Karauri, MP
10. Hon. Yussuf Mohamed Farah, MP

APOLOGIES

1. Hon. Dr. Lilian Achieng Gogo, MP - **Vice Chairperson**
2. Hon. Dr. Adan Wehliye Keynan, CBS, MP
3. Hon. Mwangi Kiunjuri, EGH, MP
4. Hon. Beatrice Kahai Adagala, MP
5. Hon. Paul Kahindi Katana, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Ahmad Golye - Clerk Assistant II
2. Mr. Lenayo Meritat - Clerk Assistant III
3. Mr. Andrew Ejechamba - Clerk Assistant III
4. Mr. Sidney Lagaga - Legal Counsel
5. Ms. Gladwell Amimo - Research Officer III
6. Ms. Judith Kiprop - Fiscal Analyst
7. Ms. Sheila Chelatibia - Sergeant at Arms
8. Ms. Mercy Bereibo - Audio Officer

OFFICE OF THE AUDITOR-GENERAL

1. Mr. Njoroge Waithima - Director Audit
2. Mr. Henry Maregesa - Committee Liaison

NATIONAL TREASURY

1. Mr. Henry Mutwiri - Director

INSPECTORATE OF STATE CORPORATIONS

Mr. Isaac Odek - Inspector

MIN. NO. NA/PIC-CA&E/2023/0179: PRELIMINARIES

The meeting was called to order at 10:20 a.m. with a prayer said by the Chairperson. Thereafter, introductions were made.

MIN. NO. NA/PIC-CA&E/2023/0178: COMMUNICATION FROM THE CHAIR

The Chairperson welcomed members and the sector auditors to the meeting. The agenda was adopted as outlined in the notice of meeting.

MIN.NO NA/PIC-CA&E/2023/0180: CONFIRMATION OF MINUTES

This agenda item was deferred to the next meeting.

MIN.NO.NA/PIC-CA&E/2023/0181: CONSIDERATION OF ADDITIONAL INFORMATION BY THE BY KENYA RAILWAYS CORPORATION (KRC)

The office of the Auditor General submitted the following to the Committee in respect of additional information requested from the Kenya Railways Corporation to address various audit queries.

1. **Confirmation of samples of original leases with respect to leases on plot No. 7886/7 in Limuru**

Leases issued to Limuru Posho Mills and subsequent leases issued to various lessees including the current lease holders (Limuru Cooperative Dairy Society Limited) were confirmed to be genuine and original.

Committee observation

Members were satisfied by the confirmation from the OAG.

2. **Confirmation of samples of original leases with respect to leases on plot No KYU/TOWN/180.**

Members were informed that leases issued to Kyanguo Co Limited were genuine & original. Subsequent leases to various parties including Mbaru Gethinji lease was confirmed to be original. However, further leases issued to United Haren Largate Limited and Refined Resources Limited were not supported by the Managing Director's consents to the Commissioner of Land.

Committee Observation

Members were satisfied by the confirmation from the OAG.

5. **Evidence that the said parcels of land belong to KRC**

The Committee was informed that the Legal Notice No 29-Kenya Railway Corporation (Vesting of land) order 1986 dated 02 February 1986 repealed The Kenya (Vesting of land) regulations 1963.The legal notice vested all the East African Railways Corporation parcels of land to Kenya Railway Corporation.

This was further supported by various approved part development plans for various towns.

Committee observation;

The Committee was satisfied with the evidence provided which confirmed that the land belonged to Kenya Railways Corporation.

6. **Consent of the Corporation leasing the parcels of land in question to the lessees-Limuru Plot No 7892/7 (The plot was later amalgamated with Plot No 7892/8).**

It was reported that the lease was currently issued to Limuru Cooperative dairy Society Limited from the original owner Limuru Posho Mills. The Consent to the Commissioner of land to grant the lease to Limuru Cooperative Society Limited from V Thakrar was availed.

Committee observation;

Members were satisfied by the confirmation from the OAG.

7. **Consent of the corporation leasing the parcels of land in question to the lessees-Kibuyu Plot No KYU/TOWN/180.**

There were various leases in regards to different entities from whom the property was first registered under Kyungo Co Ltd up to the current owner-Refined Resources Limited.
However, from green card report obtained from the Commissioner of lands in the files at KRC office, it was noted that on 30th November 2006, the property was transferred to United Karen Langata Limited (However, consent from the MD-KRC was not seen in the file).
On 07/11/2016, from the green card report availed by the management from the Commissioner of Land, the lease was issued to Refined Resources Limited and the consent from the MD-KRC was not availed for audit verification.

Committee Observation;

The Committee directed that a letter be written to the Managing Director, Kenya Railways Corporation (KRC) to avail the consent to facilitate audit verification by Monday, 12th June 2023.

8. **Evidence of payment of the land leases to the Corporation**

It was reported that the payment of land leases was confirmed for Limuru Plot No 7892/7 registered under Limuru Dairy Cooperative Society Limited.

Payment of land leases was confirmed on Kikuyu Plot No KYU/TOWN/180 registered under Mburu Githinji.

Committee observation;

Members were satisfied by the confirmation from the OAG.

7. **A comprehensive inventory position with complete stock take sheets and reports (In absence of stock take sheets**

It was reported to the Committee that the Stock sheets and report for the period ended 14 October 2022 were availed and it was reported that they were reconciled to 30 June 2022 and the following were the conclusions after verification of the stock taking report;

Conclusion
The auditors could not make an opinion on the stock balances as reported in the Navision (ERP) and the physical counts as at 30 June 2022 and 14th October 2022 when the stock take was done. The unreconciled difference of Kshs 1,218,921,927 made it difficult to confirm that the internal control systems in place were strong enough to safe guard the Corporation's inventories.

Committee observation;

The Committee noted that ERC needed to align its stock taking with the audit period to avoid any ambiguity as reported by the Auditor.

8. **Copies of identification documents (IDS) KRA Pin certificates and title deeds surrenders from NLC.**

It was reported to the Committee that documents were not availed for audit verifications

Committee Observation;

The Committee noted the submission of the Auditor General on the matter and resolved to make an appropriate recommendation during the report-writing retreat.

MIN.NO.NA/PIC-CA&E/2023/0188: ADJOURNMENT

The meeting was adjourned at 11.05 a.m. the next meeting will be held 12.00 p.m. on the same date and venue

Signature .....

HON. DAVID PKOSING, CBS, M.P.
(CHAIRPERSON)

Date 7/6/2023

MINUTES OF THE 16TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE ON COMMERCIAL AFFAIRS & ENERGY HELD ON THURSDAY, 29TH JUNE 2023 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10:00 A.M.

PRESENT

1. Hon. David Pkosing, CBS, MP - **Chairperson**
2. Hon. Dr. Lilian Achieng Gogo, MP - Vice Chairperson
3. Hon. Dr. Adan Wehliye Keynan, CBS, MP
4. Hon. Sarah Paulata Korere, MP
5. Hon. Baba Owino Paul Ongili, MP
6. Hon. Beatrice Kahai Adagala, MP
7. Hon. Paul Kahindi Rattara, MP
8. Hon. Charo Kazungu Tungule, MP
9. Hon. Mariamo Jebet Kitany, MP
10. Hon. Peter Irungu Kihungi, MP
11. Hon. John Machua Waithaka, MP

APOLOGIES

1. Hon. James Ojiyo Wandayi, MGH, MP
2. Hon. Mwangi Kiunjuri, EGH, MP
3. Hon. Benald Kamwiko Karauri, MP
4. Hon. Yusuf Mohamed Farah, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Ahmad Guliye - Clerk Assistant II
2. Mr. Letaya Mointat - Clerk Assistant III
3. Mr. Andrew Kipchumba - Clerk Assistant III
4. Ms. Angela Musau - Legal Counsel
5. Ms. Judy Riprop - Fiscal Analyst III
6. Ms. Sheila Chebotibin - Serjeant at Arms
7. Ms. Gladwell Amimo - Research Officer III
8. Mr. Amos Tindi - Hansard officer III
9. Ms. Mercy Kerubo - Audio Officer
10. Ms. Edith Chepngeno - Media Relations Officer III

OFFICE OF THE AUDITOR-GENERAL

1. Mr. Samwel Nyaranda - Principal Auditor
2. Mr. Henry Manegene - Parliamentary Liaison
3. Ms. Mary Mathew - Auditor

NATIONAL TREASURY

1. Ms. Cheryl Majwa - Senior Investments Officer
2. Mr. Rodrick Sosme - Economist

INSPECTORATE OF STATE CORPORATION

1. Mr. Michael Muturi - Inspector

INFORMATION COMMUNICATION AND TECHNOLOGY AUTHORITY

1. Mr Stanley Kamangaya - Chief Executive Officer
2. Mr. Sylvanus Mariria - Chairperson
3. Mr. Thomas Odhiambo - Ag. Director
4. Mr. Oliver Pyoko - Ag. Director Corporate Services

MIN. NO. NA/PIC-CA&E/2022/0198: PRELIMINARIES

The meeting was called to order at 9:34 a.m. with a prayer said by the Chairperson, and introductions made thereafter.

MIN. NO. NA/PIC-CA&E/2022/0199: COMMUNICATION FROM THE CHAIR

The Chairperson welcomed members and the witnesses present to the meeting. He further informed the Members that the meeting was a follow up meeting with ICT Authority to examine the supplementary submissions on the audit queries that were examined on the 25th sitting of the Committee.

MIN.NO.NA/PIC-CA&E/2022/0200: CONFIRMATION OF MINUTES

This agenda item was deferred to the next meeting.

MIN.NO.NA/PIC-CA&E/2022/0201: EXAMINATION OF THE AUDITED ACCOUNTS OF INFORMATION AND COMMUNICATION TECHNOLOGY AUTHORITY FOR THE FY 2018/2019 TO FY 2020/2021 (SUPPLEMENTARY SUBMISSIONS)

The management of Information and Communication Technology Authority led by Chief Executive Officer Mr. Stanley Kamangaya appeared before the Committee to present the supplementary evidence on the audited accounts of the Authority for the FY 2018/2019 to FY 2020/2021.

1. **Unsupported Rent and Parking**

As disclosed under Note 13 to the financial statements, the statement of financial performance reflects general expenses of Kshs.82,587,748, which includes rent and parking of Kshs.36,181,156, out of which expenses amounting to Kshs.1,116,716 was not supported by a signed lease agreement.

Consequently, the accuracy and validity of rent and parking expenses balance of Kshs 1,116,716 for the year ended 30 June, 2019 could not be confirmed.

Management Response

The Authority had been cleared of any further obligations on the 9th floor premises at Teleposta Towers. Copy of discharge letter submitted.

Committee Observation

The Committee noted that the management had provided a discharge letter from Tycoon Limited dated 13/09/2019, ref no. **KM/TELPOSTA/EN**, which cleared the Authority of any obligation on the subject premises.

Committee Resolution

The Committee was satisfied with the response provided by the ICTA management and cleared the management of the audited query.

2. **Unsupported Transparency and Communication Infrastructure Project, TCIP Expenses**

As disclosed under Note 16 to the financial statements, the statement of financial performance reflects Transparency and Communication Infrastructure Project, TCIP expenses amount of Kshs.55,902,008. It was noted that the Authority used part of the proceeds of TCIP Project funds financed by the World Bank for the supply, installation, configuration and commissioning of a Resource Management System (RMS). The budgetary allocation as per TCIP procurement plan was Kshs.7.1 The supplier was awarded the contract at a contract price of Kshs.62,814,632.00 and the contract was signed on 15 April, 2016. The implementation period was agreed to be three (3) months upon submission of an agreed project plan. However, during the audit review, three (3) years after the contract was signed, the operational usage of the system was at only 0.7 % with

human resource module not signed-off completely. Total amount of Kshs.30,302,582.04 had already been paid to the supplier with an outstanding balance of Kshs. 12,100,600.06 as at 16 February, 2018. The Management has explained that the system had not been handed over and the issues noted had not been resolved at the time of audit.

Further, the amount includes payment to seven (7) consultants working on Integrated Financial Management Information System (IFMIS) and information security system. However, the Management did not provide, for audit review the consultants' contract and pre-agreed performance indicators. Further, documents availed for audit indicate that TCIP project came to an end on 31 December, 2016 with a grace period of four (4) months to ensure closure and continuity.

Under the circumstances, it was not possible to confirm the value for money in respect of TCIP expenses totaling Kshs.33,969,008 for the year ended 30 June, 2019.

Management Response

The Ministry of ICT appeared before the National Assembly Committee to respond to the Auditor General on the Financial Statements for the year ended 30th June 2017. The query on the Enterprise Resource Planning Software (ERP) was responded to on **page 8** of the report dated 7th October 2018 (**Annex 1**).

In addition:

1. Hardware's were delivered on 13th September 2016 and received by ICTA on 14th September 2016.Copy of the delivery note attached (**Annex 2**).
2. Software Installations were completed on 21st March 2019 as per the attached email correspondences (**Annex 3**).
3. Trainings were conducted in August 2016 as per the attached sample user training schedules and sign off (**Annex 4**).
4. Annex 2, Annex 3, Annex 4 also form part of the milestones that were to be paid as per the contract payment schedule.
5. The system has not been handed over, however, ICTA is in communication with the vendor on closure and handover the system and integrate it with other existing systems (**Annex 5**).

Committee observations

I. The Committee was concerned that given the long duration it had taken to complete the ERP system there was a risk of the system being obsolete, whereby the management informed the Committee that the system that will be handed over will be an upgraded version.

II. The Committee was concerned that the letter provided by the management ref no. **ICTA/ADMIN/2023/03/Vol 1-(66)** had no clear timelines on the hand over date of the system.

III. The Committee was informed that the completion and hand over of the system was to be carried out within a week from the date of the meeting

Committee resolution

The Committee directed the office the Auditor General to liaise with ICTA management to confirm completion and hand over of the ERP system and report back to the Committee within a week.

3. Long Outstanding Pasha Loans

The statement of financial position reflects Pasha Fund balance of Kshs 43,198,880. The balance which has been outstanding since the year 2017, represents loans advanced to entrepreneurs to set up information hubs with a condition of repayment within 9 years. However, during the year under review and in the prior years, no repayment had been received from the borrowers.

Although the loans have remained outstanding for a long period and its recovery was doubtful, Management has not made an impairment provision for the loan amount. Further, interest chargeable on the loans was not included in the financial statements

In the circumstances, the accuracy and completeness of the Pasha Fund balance of Kshs 43,198,880 could not be confirmed.

Management Response

From the contract between ICTA (then Konza Information Communication Technology Board) and the Bank, under the scope of work, the Bank was in charge of managing the disbursement of funds. This included accountability of the disbursed funds by establishing a loan repayment system, among other measures. The specific tasks included but not limited to loan follow ups and

recovery. ***Refer to page 48 and 49*** of the contract between KICTB and the Bank attached (**Annex 6**).

However, the Bank vide letters dated 03rd February 2017 and 21st June 2018 informed the Authority that the Entrepreneur loan accounts with outstanding balances were in the loss category on account of default and that further recovery of the loans was impossible. The Bank has listed the defaulters with CRB. Copies of correspondences, sample CRB reports and loan statements have been availed (**Annex 7**).

As per the contract between KICTB and the Bank, there was no collateral/security required to secure the loans, except for the project capital assets (***Refer to page 49 of the contract***.) In view of the above and noting that the funds loaned to the citizens are not recoverable, the ICT Authority proposes to institute a write-off process in line with Section 69 of the PFM Act 2018.

Committee Observation

I. The Members were concerned by the management response of planning to write off the loans, as it would lead to loss of taxpayers' money, moreover the ICTA and Family Bank had not exhausted all mechanisms to recover the money from the defaulters.

II. The Committee observed that the list provided of the beneficiaries of the PASHA Loans did not cover the entire country, and that other mechanism of disbursement should have been used e.g. CDF to ensure proper geographical coverage.

III. The Committee inquired to know who drafted the contract of Pasha Loan between ICTA and the Family Bank Limited, given that clauses on security and recoverability of the amount disbursed was omitted.

IV. The Committee sought to know the measures the Authority had instituted against Family Bank in order to recover the money.

Committee resolution

The Committee resolved to invite the Chief Executive Officer of Family Bank Limited to appear before the Committee to expound on the nature of the contract between the Bank and the then Kenya Information Communication Technology Board (KICTB) (predecessor of ICTA) and the non-recoverability of PASHA Loans.

MIN.NO.NA/PIC-CA&E/2023/0200: ANY OTHER BUSINESS (AOB)

The Chairperson informed the members that a retreat on report writing will be held from 17th - 22nd July 2023.

MIN.NO.NA/PIC-CA&E/2023/0200: ADJOURNMENT

There being no other business to discuss, the meeting was adjourned at 11.00 a.m. the next meeting will be held on notice.

Signature .....

HON. DAVID PKOSING, CBS, M.P.
(CHAIRPERSON)

Date..... 28/9/2023

MINUTES OF THE 39TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE ON COMMERCIAL AFFAIRS & ENERGY HELD ON TUESDAY, 4TH JULY 2023 AT COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10:00 A.M.

PRESENT

1. Hon. David Pkosing, CBS, MP - **Chairperson**
2. Hon. Dr. Lillian Achieng Gogo, MP - **Vice Chairperson**
3. Hon. Dr. Adan Wehliye Keynan, CBS, MP
4. Hon. Mwangi Kiunjuri, EGH, MP
5. Hon. Baba Owino Paul Ongili, MP
6. Hon. Beatrice Kahai Adagala, MP
7. Hon. Paul Kahindi Katana, MP
8. Hon. Charo Karonge Tungale, MP
9. Hon. John Machua Waithaka, MP
10. Hon. Marianne Jebet Kitany, MP
11. Hon. Ronald Kamwiko Karauri, MP
12. Hon. Yussuf Mohamed Farah, MP

APOLOGIES

1. Hon. James Opiyo Wandayi, MGH, MP
2. Hon. Sarah Paulata Korere, MP
3. Hon. Peter Irungu Kihungi, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Ms. Wanjiru Mwaura	-	Principal Clerk Assistant II
2. Mr. Ahmad Golye	-	Clerk Assistant II
3. Mr. Letaya Moriatat	-	Clerk Assistant III
4. Mr. Andrew Kipchumba	-	Clerk Assistant III
5. Mr. Sidney Lugaga	-	Senior Legal Counsel
6. Ms. Angela Mutua	-	Legal Counsel II
7. Ms. Gladwell Anzimi	-	Research Officer III
8. Ms. Judith Kipsop	-	Fiscal Analyst III
9. Mr. Amos Tindi	-	Hansard Officer III
10. Ms. Edith Chepng'eno	-	Media Relations Officer III
11. Mr. Yeni Jillo	-	Sergeant at Arms
12. Mr. Mercy Kerubo	-	Audio Officer

OFFICE OF THE AUDITOR-GENERAL

1. Mr. Samuel M Mburu	-	Deputy Director Audit
2. Mr. Henry Manegene	-	Committee Liaison

INSPECTORATE OF STATE CORPORATIONS

Mr. Festus Marungu - Inspector

KENYA MARITIME AUTHORITY (KMA)

1. Mr. John Omingo - Director General
2. Mr. Edwin Were - Finance Manager
3. Mr. Alphonse Kioko - ICT Manager
4. Ms. Bevaline Londa - Head of Supply Chain Management

MIN. NO. NA/PIC-CA&E/2023/0804: PRELIMINARIES

The meeting was called to order at 10:25 a.m. with a prayer said by the Chairperson. Thereafter, introductions were made.

MIN. NO. NA/PIC-CA&E/2023/0805: COMMUNICATION FROM THE CHAIR

The Chairperson welcomed Members and the witnesses present. He gave a brief summary of the years under which the Committee would examine the audited accounts of the Kenya Maritime Authority and informed the Members that the was a follow up meeting.

MIN.NO.NA/PIC-CA&E/2023/0806: CONFIRMATION OF MINUTES

This agenda item was deferred to the next meeting.

MIN.NO.NA/PIC-CA&E/2023/0807: EXAMINATION OF THE REPORTS OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF THE KENYA MARITIME AUTHORITY FOR THE FY 2018/2019 TO FY 2020/2021

1. **Domestic Air Travel and Local Duty Travel Allowances**

The statement of financial performance reflects an amount of Kshs.873,447,225 under general office expenditure which, as disclosed in Note 17 to the financial statements, includes domestic and overseas air travel costs of Kshs.26,070,000 and duty travel allowances - domestic and foreign of Kshs.44,432,668, all totaling Kshs.64,525,587. However, the expenditure included Kshs.787,810 spent on domestic air travel and Kshs.1,282,232 spent on local duty travel allowances, all totaling to Kshs.2,070,032 for staff of the State Department for Shipping and Maritime Affairs. However, the Management did not provide explanations why Kenya Maritime Authority incurred the expenditure on behalf of the State Department which has its own budget.

Consequently, the propriety and validity of domestic and overseas air travel and duty travel allowances of Kshs.2,070,032 could not be confirmed.

Management Response

It was reported that the airfare was incurred during travels in furtherance of the Authority's mandate. The officers attended the International Maritime Organization Council, Seafarers wage council and blue economy meetings to champion the government policies in regards to the subject matters. Further, 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.

To ensure the activities are clearly identified, the Authority has since created a collaboration vote which caters for expenditures with other parties/agencies which would aid in the furtherance of Authority's mandate.

Committee Observations;

I. The Committee was concerned whether KMA had factored the expenditure in its annual budget plans.

II. Members noted that the authority for KMA to spend money without the requisite budgetary allocation was missing.

Committee resolutions;

I. KMA should table the approval authorizing the creation of the collaboration vote by the end of the meeting to the OAG and the office of the clerk for verification.

II. KMA should also provide the budget outlines for the collaboration vote to the committee by the end of the meeting, today.

4. Trade and Other Receivables from Exchange Transactions

The statement of financial position and Note 21 to the financial statements reflect trade and other receivables from exchange transactions balance of Kshs.83,495,420. However, the following observations were made:

Trade Receivables

As previously reported, included in the trade receivables from exchange transactions balance of Kshs.83,495,420 is an amount of Kshs.13,692,000 in respect of trade receivables, out of which Kshs.6,909,812 had been outstanding since 1 July, 2015. The Management did not provide satisfactory explanations why these debts had not been collected and no evidence was provided to indicate that the matter had been referred to an agency for collection as provided in the credit policy. The policy provides that any amount outstanding for over forty-five (45) days should be referred to an agency to ensure follow up and subsequent settlement.

Consequently, the recoverability and validity of trade debtors balance of Kshs 6,016,812 could not be confirmed.

Management Response

KMA reported that, majority of the long outstanding debtors were small vessel owners most of whom were no longer in business and not traceable. Through enhanced multiagency safety awareness campaigns collection efforts have improved over the period.

Although the credit policy stipulates that the long outstanding debts should be handed over to debt collection agency, the cost of engaging the agency outweighs the debts involved.

To address the problem the Authority has preferred booking of inspections through making prepayments based on proforma invoices.

Committee observation;

The Committee inquired whether KMA board have recommended for a write off in strict compliance to the PFM Act

Committee resolution;

Given that the response provided did not satisfy members, a decision will be made as the committee retreats to write a report.

8. Other Non-Trade Receivables

Supply, Review and Installation of Enterprise Resource Planning

The trade receivables also include an amount of Kshs 32,301,705 in respect of other non-trade receivables, out of which an amount of Kshs 2,275,749 related to a claim from a supplier for non-performance of contractual obligations. The payment represented 20% of the contract sum of Kshs 11,378,745 which was payable after first project meeting, contract sign off and signing of the project charter. The contract for supply, review, upgrade, installation and support of the Enterprise Resource Planning (ERP) system and integration with the electronic data management system and other systems was signed on 13 December, 2010 for a contract period of twelve (12) weeks. Available records showed that the Project stalled before reaching the second milestone and the Management indicated that efforts to recover the claim was ongoing. However, as at the time of audit in the month of September, 2019, thirty-two (32) months after the expiry of the contract period, the service provider had not completed the work.

Consequently, the recoverability of other trade debtors of Kshs 2,275,749 could not be confirmed.

Management Response

The authority reported that the contract was for a duration of twelve (12) weeks. The Project had a Workplan, which was pegged on individual deliverables. The first deliverable entailed organizing meetings, contract charter sign off and project sign off.

The costs for the first deliverable at a total amount of Kshs. 2,273,749 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 20th June, 2018. The authority confirmed that no payments were made on the outstanding deliverables.

Committee observations

I. The committee observed that what was signed off for payment is different from the deliverables specified in the contract.

II. The Committee also noted that, given the supplier did not fulfil their contract obligations, they were therefore liable to refund any part payment for non-performance.

III. Members also questioned KMA's response which indicated that payment was made for a service provided while in actual essence the money was paid at the signing of the contract.

Committee resolution

The Committee resolved that the approver of the payment, all the signatories and the staff of ICT in KMA should be surcharged.

4. Advance Payment for Construction of Headquarters

Included in the other non-trade receivables balance of Kshs.52,561,795 is an amount of Kshs. 40,985,915 in respect to an advance payment to a contractor for construction of the Authority's Headquarters. However, the validity of the advance payment security lapsed on 31 January, 2018 and had not been renewed as at 30 June, 2018. Further, the Management provided a partial advance security of Kshs.11,369,858 issued by a Bank on 05 November, 2018 and valid up to 02 February, 2019. The balance of Kshs.29,516,291 or 72% of the advance payment was therefore not secured. The payment was therefore, contrary to Section 147(1) of the Public Procurement and Asset Disposal Act, 2015 which provides that under exceptional circumstances, advance payment may be granted and shall not exceed twenty per cent (20 %) of the price of the tender and shall be paid upon submission by the successful tenderer to the procuring entity of an advance payment security equivalent to the advance itself and that security shall be given by a reputable bank or any authorized financial institution issued by a corresponding bank in Kenya recognized by the Central Bank of Kenya, in case the successful tenderer is a foreigner.

In the circumstances, the validity, regularity and recoverability of other non-trade receivables balance of Kshs 28,810,281 could not be confirmed.

At the time of payment, the advance payment Guarantee issued on February 01, 2017 covered the advance of Kshs 182,523,894.

Management Response

The authority informed the committee that at the time of payment, the advance payment Guarantee issued on February 01, 2017 covered the advance of Kshs 182,523,894 and at the time of notification of the anomaly a further Kshs 28,810,340.10 had been recovered through IPC No. 14 in December 2020 and the Advance Payment Guarantee of Kshs 11,000,000 sufficiently covered the balance.

Committee Observations

The committee noted that KMA provided adequate documentary evidence requested and the matter now stands resolved with the concurrence of the office of the Auditor General.

5. Capital Work in Progress

As disclosed in Note 27 to the financial statements, the property, plant and equipment balance of Kshs 1,572,225,187 includes an amount of Kshs 1,253,292,101 in respect of capital work in progress being the cumulative cost of the ongoing works on Kenya Maritime Authority Headquarters Project at a total cost of Kshs 1,716,176,416. The works consists of main building works, electrical, plumbing and drainage, air conditioning and elevator installation works. The following observations were made:

Payment of General Preliminaries

As previously reported, the capital work in progress balance of Kshs 1,253,292,101 includes an amount of Kshs.589,411,010, being payments for interim certificate numbers 2, 3 and 4. Audit review of the interim certificates indicated that, the payments were made by the Authority for particular preliminaries included in the Bill of Quantities, at a cost of Kshs.8,300,000 which was paid in full plus 15% or Kshs.323,000 profit for groundbreaking ceremony. The preliminaries, being provisional amounts, are reimbursed on production of evidence of actual costs incurred. However, the Authority paid the contractor the full amount without evidence of actual cost incurred.

Consequently, the propriety and validity of ground-breaking ceremony cost of Kshs.8,300,000 could not be confirmed.

Management Response

The ground-breaking ceremony cost of Kshs.8,300,000 was recovered from Interim Payment Certificate 14.

Committee resolution;

With KMA having provided the Interim Payment Certificate to the OAG, the matter was resolved and the audit query cleared.

5.1 Construction of Headquarters Subcontracts

Included in the contract sum of Kshs 1,748,170,418 for construction of Kenya Maritime Authority Headquarters, are prime costs and provisional sums amounting to Kshs 390,432,000 or 22.6%, contrary to the guidelines provided by the Public Procurement Oversight Authority, which provides under Section VII Bills of Quantities Paragraph 5.0.6(ii) that 'Provisional Sums to cover specialised 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'.

Consequently, the Authority contravened the Law and the validity and propriety of prime costs and provisional sums amounting to Kshs 390,432,000 could not be confirmed.

Management Response

The authority informed the committee that the documents used to procure the works were sourced from standard PPOA issued documentation. Therein participation of specialized contractors is well captured and applied with specialized work also tendered at the same time as the main contractor. Provision of Provisional Cost and Prime Cost sums were allowed for in the main document as captured from the consultants and client. Subsequently, the specialized works were tendered and evaluated as standalone contracts, but with agreements with the main contractor as they share site and site coordination.

Committee Observation;

The Committee noted that the management provided the required documentation as requested.

Committee resolution;

The Committee resolved to clear the management of the audit query.

5.2 Electrical Works Sub- Contract

The Authority evaluated sub-contractors to carry out works listed in provisional sums and prime costs under the supervision of the main works contractor. However, review of the procurement of the electrical works contractor revealed that the lowest evaluated bidder had quoted Kshs 113,976,870 which was corrected to Kshs 224,592,870 at evaluation stage, contrary to Section 66 of the Public Procurement and Asset Disposal Act, 2015 which states that 'the tender

sum as submitted and read out during the tender opening shall be absolute and final and shall not be the subject of correction, adjustment or amendment in any way by any person or entity.

Further, records provided for audit indicated that the Authority disengaged from the subcontract on 5 November, 2019 and the subcontractor acknowledged the disengagement on 19 November, 2019. However, based on the professional advice by the Solicitor-General on 1 November, 2019, the Kenya Maritime Authority has no contractual relationship with the subcontractor, but the main contractor. Therefore, the subcontractor may seek legal redress and be awarded damages.

Consequently, the Management was in breach of the Law. Further, the validity and regularity of the electrical contract price of Kshs.224 , 492,870 could not be confirmed.

Management Response

The authority informed the committee that, the contractor declined to revert back to the read-out amounts as all others had done through an addendum dated 30th July, 2018, under these circumstances, the project manager advised the Authority to disengage from the contract because it was not legally enforceable. The matter saw the Authority seek Legal advisory from the Attorney General twice.

Committee Observation.

The Management observed that in the management response, an analysis of the quotation to support award of contract and the quotation by other bidders was not provided.

Committee resolution

The management were directed to provide an analysis of the contract, before the committee retreats to write a report.

7. **Training in Foreign Country Organized by Local Organization**

The staff training expenditure also included accommodation allowances of Kshs.894,179 paid to two (2) Directors of the Authority that attended a training on corporate governance organized by Strathmore Business School, in Dar-es-Salaam, Tanzania. It was not clear why the Management allowed the two Directors to be trained in a foreign country by an Institution based in Kenya, contrary to Paragraph 9.2.1 of the Guidelines on Managing Training in the Public Service of February, 2017 which provided that an approval to train in foreign based institutions will be granted only in instances where the course applied for was not available in any local institution.

In the circumstances, the Management was in breach of the Law and the regularity and propriety of the expenditure amounting to Kshs.894,179 on training could not be confirmed.

Management Response

As provided by the Guidelines on Managing Training in the Public Service of February 2017, Strathmore Business School is Kenyan training institution and were offering the course the Directors attended.

The training offered by Strathmore Business School was scheduled to take place in Dar-es-Salaam and not within the country. During that time the two (2) Board Members had the opportunity to be trained while they were not engaged in Board matters.

Committee observation

The Committee observed that the training was a scheduled regional symposium organized by Strathmore Business School and not tailor made. Inquired to know whether the training was regional or was only meant for the KMA directors.

Committee resolutions

With KMA having provided prove that the training was a regional symposium the matter was resolved and the audit query cleared.

6. Loans to Members of Staff Beyond Approved Limit

During the year under review, two (2) employees of the Authority were provided with car loan benefits through a scheme administered by a bank on behalf of the Authority. However, scrutiny of the loan beneficiaries revealed that car loans were advanced to two (2) employees in excess of the approved Salaries and Remuneration Commission limits as summarized below

Kenya Maritime Authority Job Group	Civil Service Job Group	Maximum Loan Limit (Kshs.)	Principal Loan Amount Advanced (Kshs.)	Excess Loan Advanced (Kshs.)
8	H	600,000	1,249,034	249,034
9	R	2,000,000	2,375,000	375,000
Total		2,600,000	3,925,034	1,125,034

The excess car loan of Kshs 1,125,034 is contrary to Salaries and Remuneration Commission Circular No. SRC/128/12/2014 of 17 December, 2014 which provides the thresholds for car loan and Mortgage Scheme benefits for various cadres of public officers in the Public Service.

In the circumstances, the Management was in breach of the Law.

Management Response

In the spirit of the circular by the SRC of Ref. No. SRC/ADM/CIR/1/18 Vol. III (128) dated 17th December, 2014,

"It is expected that implementation of the benefits will motivate public officers and immensely contribute towards attraction and retention of requisite skills in the public service with the constitutional principle under Article 250 (3) of the constitution".

The Authority facilitated its employees to access the car loans for motivation and retention purposes. In the same spirit the Authority ensured that the officer's deduction will not exceed two thirds of their monthly emoluments.

Notwithstanding the above, the Authority is aware of the current market rates for vehicles that are authorized entry into the Kenyan market. This has made it difficult for staff in the lower cadre to access the car loan scheme because of the given limits against the market rates.

Committee Observations

Members noted that there was no loss incurred by KMA and the affected staff had settled their loan extended in full.

Committee Resolution

The Committee directed the Management of KMA to align its policies with the law.

FY 2019/20

9 General Office Expenditure

As disclosed in Note 17 to the financial statements, the statement of financial performance reflects an amount of Kshs.100,444,750 under general office expenditure. The following observations were made:

10. Irregular Procurement of Branded Promotional Items

Included in the general office expenditure of Kshs.100,444,750 is an amount of Kshs.51,200,980 in respect of publicity and awareness. The latter balance includes an amount of Kshs.3,980,500 in respect of branded promotional items including water bottles, umbrellas, notepads, brochures and booklets procured through restricted tendering. The Management sent tender invitations to eight (8) firms from the prequalified list of fifty- three (53) suppliers. This was contrary to Regulation 54(3) of the Public Procurement and Disposals Regulations, 2009 which requires a procuring entity to invite tenders from at least ten persons selected from the prequalified list maintained for restricted tendering method. Further, the tender was not advertised in the Kenya Maritime Authority website as per Regulation 54 (3)(4) of the Public Procurement and Disposal Regulations, 2006.

In addition, the use of the restricted tendering method for the supply of branded promotional items and brochures was not justified as the goods and services procured were readily available and not of a complex nature. This was done contrary to Section 102(1) of the Public Procurement and Asset Disposal Act, 2015 which prescribes conditions for the use of restricted tendering

including (a) competition for contract, because of the complex or specialized nature of the goods, works and (b) if there is evidence to the effect that there are only a few known suppliers of the whole market of the goods, works or services.

The Management was in breach of the law

Management Response

Use of Restricted tendering was informed by Section 102 (1)(b) of the PPADA, 2015 where an accounting officer may use restricted tendering if (b) the time and cost required to examine and evaluate a large number of tenders would be disproportionate to the value

The Authority however notes concerns raised and has endavoured to comply with PPADA, 2015 and PPADR, 2020.

Committee observations

I. The Committee observed that the management did not provide the documents relating to the procurement process and they didn't demonstrate the urgency of using restricted tendering
II. The Committee noted the management owned up to breaking the law as they didn't demonstrate any measures they had taken to rectify the issue

Committee Resolutions

The Committee resolved to make recommendation relating to the audit query in its report.

11. Long Outstanding Creditors

The statement of financial position reflects a balance of Kshs.116,740,600 under trade and other payables from exchange transactions which, as disclosed in Note 28 to the financial statements, includes an amount is Kshs.8,181,941 in respect of suppliers for various goods and services supplied more than two (2) years ago. The Management has not provided an explanation on why the amounts had not been paid. This is contrary to Section 148(4)(d) of the Public Finance Management Act, 2012 which states that an Accounting Officer engages in improper conduct if the officer fails without reasonable cause to pay eligible and approved bills promptly in circumstances where funds are provided for. It is also contrary to Authority's terms and condition (5) of Local Purchase Orders and Local Service Orders which states that, 'provided the conditions of purchase have been fulfilled, payment will be made within 45 days from date of invoice.

The Management was in breach of the law

Management Response

The explanations on why the amounts had not been paid have been provided in the attached appendix 13 in the attached annexures provided.

Committee observation

The committee observed the management provided a schedule of long outstanding creditors and proof of payment in annex 18.

Committee resolutions

The Committee directed the office of the Auditor General to examine the schedule and payment vouchers and report back to the Committee.

FY 2020/2021

12. Unconfirmed Revenue from Non-Exchange Transactions - Levies

The statement of financial performance reflects levies amount of Kshs.1,096,896,774 under revenue from non-exchange transactions. As disclosed in Note 6 to the financial statements, the amount comprises merchant shipping levies of Kshs.1,047,614,136 and collection cost (KRA commission) of Kshs.39,782,638. However, monthly and annual reports on imports, exports and fees collected were not provided for audit, contrary to Appendix B to the Kenya Maritime Authority Act, 2006, which requires Kenya Revenue Authority (KRA) to submit to Kenya Maritime Authority (KMA) monthly and annual reports on imports, exports and fees collected.

Further, the agreement between these two agencies provides that, KRA shall give KMA access to their custom system, limited to viewing and direct download of cargo manifests and declaration data for further statistical analysis and to two (2) designated persons only whose identity shall be disclosed to both KMA and KRA. However, KMA did not have access to KRA custom system, contrary to the agreement.

In addition, despite having fully-fledged Commercial Shipping and Finance Departments, KMA still relied on KRA to compute, collect and remit maritime shipping levies. Further, no documentary evidence in form of reconciliation or computation of the expected and actual collections of maritime shipping levies as per manifests received from KRA was provided for audit verification.

As a result, the accuracy and completeness of the revenue arising from the levies of Kshs.1,096,896,774 could not be confirmed.

Management Response

The Management put in place a framework for reconciling MS fees collected by KRA using Cargo Manifests data availed through KRA's Simba system and submitted Bank Transactions. During the period under review, the Authority managed to do reconciliations using data from cargo manifests received from both KRA and Kentrade. Copies of the reconciliation reports for the period under review are attached for any further perusal.

KRA's upgrade from Sordia system to Integrated Customs Management System in phased approach generated a few challenges in the established framework for data transmission. Submission of the manifest data was interrupted during the implementation of the system upgrade. The Authority initiated the following measures to sustain data transmission for reconciliation of MS fees:

i. Engagement of KRA to provide system credentials to facilitate online extraction of reports of entries done on the ICMS system. KRA was requested to create a platform for sharing of manifest information from the newly launched ICMS system.

ii. Formal request to Kentrade for direct system to system relay of declaration data to which a positive response was received and a team set up to oversee the successful relay of the data, the engagement of which is at a very advanced stage.

iii. The Head of Finance shared a format with KRA on extraction and relay of bank transactions to KMA.

iv. The Authority has enhanced the tool for MS fees calculation and reporting in the ongoing ERP upgrade, set to go live within the month of March 2022.

Supporting Documents

8.1 Email on Information on Cargo Manifest on 12th Aug 2021

8.2 Letter to KRA Ref: KMA/22/2/5/01 dated 10th July 2022

8.3 Email on Format on Cargo Manifest dated 14th May 2021

Committee observations

The Committee observed that there were engagements between management of KMA and KRA to link the system of KMA to the Integrated Customs Management System of KRA. The management further notified the Committee the linking of the system would be completed by 14th July 2022.

13. Unsupported Duty Travel Allowances – Domestic and Foreign

The statement of financial performance reflects general office expenditure balance of Kshs.278,740,520 which, as disclosed in Note 13 to the financial statements, includes an amount of Kshs.97,278,851 spent on duty travel allowances - domestic and foreign. However, this latter amount includes Kshs.8,808,223 for which, boarding passes, air and bus tickets and approved annual activity plans were not provided for audit verification.

In the circumstances, the validity and propriety of the duty travel allowances – domestic and foreign of Kshs.8,808,223 could not be confirmed.

Management Response

The management reconciled all the records and the officers who had not provided supporting documents the communication has been done to the Accounting officer.

Supporting Documents

AD1: Letter to the PS requesting for the travel documents

Committee Observations

The committee noted that the management had written to the Principal Secretary in the letter Ref. KMA/FIN/1/7 seeking intervention in recovery of travel documents and further written to all the affected persons to provide the travel documents.

Committee Resolutions

The Committee resolved that if no evidence of travel documents were provided by the time of report writing, then the persons involved would be surcharged.

14. Property, Plant and Equipment

14.1 Unconfirmed Alteration in the Conditions of Leasehold Land

The balance includes an amount of Kshs 203,097,900 in respect of leasehold land for a plot in Mbaraki, Mombasa. Review of the certificate of lease indicates that the property is held on a ninety-nine (99) years lease from Kenya Railways starting from 1 January, 1971 with an annual rent of Kshs 6,600.

Further, the certificate indicates that the leasehold interest is subject to the agreement and other matters contained in the registered lease. However, among the conditions outlined in the lease is condition 1(g) which requires that the land be used only for the purposes of residence which shall include servant quarters and condition 1(l) which requires that no trade or business of any description should be conducted on the land or buildings.

Audit inspection revealed that the Authority had constructed an office block on the said leasehold land. However, no evidence was provided to show that the Kenya Railways Management had agreed to the alteration of the conditions of the lease quoted above before putting up an office block which may be a source of rental income to the Authority.

In the circumstances, the Authority contravened the conditions of the lease certificate in force.

Management Response

The area is zoned as commercial land and the County Government approved the plan of the building in view of the zoning.

Committee observation

The committee noted the management provided a change of user document **(annex AD8)** but did not provide a gazette notice of easing from Mombasa County Government.

Committee resolution

The committee directed the OAG to examine documents provided to ascertain if the audit query was sufficiently answered.

14.2Capital Work in Progress – Irregular Variation of Site Instructions to Builder's Works

The balance also includes capital work in progress amount of Kshs.1,764,493,893, being cumulative cost of works on Kenya Maritime Authority Headquarters project being constructed on the plot at Mbaraki, Mombasa. The contract had been awarded at a total cost of Kshs.1,728,176,818 and the works consisted of main building works, electrical, plumbing and drainage, air conditioning and elevator installation works.

A scrutiny of the approved Project Appraisal Report No. 9 revealed introduction of three (3) new project activities under Element No. 7 - Site Instructions to Builders Work of Kshs.5,478,147 that were not factored in the contracted Bill of Quantities. However, documentary evidence of approval of the same by Contract Implementation Team as provided for under Section 111(2)(e) of the Public Procurement and Asset Disposal Act, 2015 was not provided for audit verification.

In the circumstances, value for money of the expenditure of Kshs.1,764,493,960 could not be confirmed.

Management Response

The site instructions were being approved by the Project Manager (Works Secretary).

Committee observations

I. The Committee noted that the response provided by the management was not sufficient.
II. The Members informed the management that the law on variation of contracts was clear is that any variation above 30% necessitated for a floating of a new tender.
III. The Committee observed that the management had provided a list of items that were paid as per the contract, but it was difficult to establish the varied items paid totaling to Ksh. 5,478,147.

Committee resolution

The Committee to make recommendation on the audit query given that the management could not provide a proper explanation.

15 Board Members Expenses

15.1Irregular Payment of Sitting Allowance to Non-Board Members

The statement of financial performance and as disclosed in Note 11 to the financial statements reflects employee costs balance of Kshs 403,925,004 which includes an expenditure on recruitment of Kshs 3,025,711. However, this latter amount includes Kshs 790,000 paid to the parent Ministry's staff, who were not gazetted Board members, as sitting allowances during a recruitment exercise conducted by the Board Members. This was contrary to the State Corporations Advisory Committee Circular Ref No. OP/SCAC/9/1/1/(23) on the Implementation of Executive Order No. 7 - Mwongozo - Code of Governance for State Corporations, which requires persons or officers nominated to represent other substantive Members/Directors to only attend Board/Committee meetings after being gazetted by name and issued with appointment letters by the appointing authority.

In the circumstances, Management was in breach of the Mwongozo - Code of Governance for State Corporations.

Management Response

The ministry staff were offering technical assistance to the Board in the recruitment exercise.

Supporting Documents

6.1Letter of appointment from the Ministry
6.2List of officers who were paid

Committee Observations

I. The Committee noted the management of KMA had provided a letter MOT&I/C/MSA/1/16 VOL.V(04) seconding the officers to assist in the recruitment of Director General, and the letter provided guidelines on the nature payments to be done.
II. The Committee observed that the staff seconded from the ministry were paid Board sitting allowances.

Committee Resolution

The Committee directed the OAG;

i. To confirm if the seconded staff received daily subsistence allowance and sitting allowance at the same time.
ii. To examine the letter from the Permanent Secretary, the Memoranda and MWONGOZO Code and give feedback to the Committee before commencement of report writing.

The Management of KMA to provide payment vouchers detailing the board sitting allowance each seconded staff was paid.

13.2 **Board of Directors' Costs**

The statement of financial performance reflects Board of Directors costs of Kshs.51,863,186 as disclosed in Note 14 to the financial statements. However, the expenditure exceeded the approved expenditure capping of Kshs.30,000,000 by Kshs.1,863,186 in contravention of the Circular No. OP/CAB.8/1A of 11 March, 2020 which provides that Board expenses for a financial year shall be capped at Kshs.30 million or 3% of the operations and maintenance budget of the State Corporation, whichever is less and that any exceeding budgets shall require approval of the Cabinet Secretary for The National Treasury. Further, the approval of the Cabinet Secretary for The National Treasury was not provided for audit review.

In addition, available records indicated that the Board exceeded the approved number of meetings as analyzed below:

Committee	Approved No. of Meetings	Actual No. of Meetings	Excess No. of Meetings
Full Board	6	33	27
Human Resource Committee	6	20	20
Totals	**18**	**39**	**47**

This was contrary to Paragraph A (2) of Circular No. OP/CAB.8/1A of March 11, 2020 which restricts Board meetings to a minimum of four (4) meetings in a financial year, as provided for in Section 8(1)(a) of the State Corporations Act, and a maximum six (6) meetings.

In the circumstances, Management was in breach of the Law.

Management Response

The Authority notes that all the expenditure was approved and overall extended the budget by 0.3%, which is within the allowable variation of 10%.

Committee Observation

The Committee observed the management provided a list of members who attended the excess Full Board meetings and Human Resource Committee meetings.

The Committee noted that the management did not provide documentation authorising the pay for the extra board meetings and also approval of expenditure and the person who gave the approval.

10. General Office Expenditure

The statement of financial performance reflects general office expenditure balance of Kshs.278,740,520. The following unsatisfactory matters were observed.

10.1 Irregular Provision of Airtime

The balance includes communication costs of Kshs. 10,631,107 on officers' airtime, which includes Kshs.8,568,000 paid to thirty-three (33) officers in KMA Grades 2,3 and 4 at monthly rates higher than the rates provided in the guidelines given in Circular Ref. OP/CAB/11 dated 15 March, 2010 on economic utilization and efficient delivery of telephone services in the public service. As a result, the officers were overpaid by Kshs 1,032,000.

In the circumstances, the regularity of the expenditure of Kshs 1,032,000 could not be confirmed.

Management Response

The Authority was using its approved airtime structure.

Supporting Document

7.1Approved Airtime Structure

7.2KMA salary and allowances

Committee observation

The Committee was satisfied with the response provided by the management and the OAG confirmed the reconciliation was satisfactorily done.

MIN.NO.NA/PIC-CA&E/2021/0000: ADJOURNMENT

There being no other business to discuss, the meeting was adjourned at 1.05 p.m. The next meeting will be held on notice.

Signature .....

HON. DAVID PKOSING, CBS, M.P.
(CHAIRPERSON)

Date 28/9/2021

MINUTES OF THE 80TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE ON COMMERCIAL AFFAIRS & ENERGY HELD ON THURSDAY, 6TH JULY 2022 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS, AT 10:00 A.M.

PRESENT

1. Hon. David Pkosing, CBS, MP - **Chairperson**
2. Hon. Dr. Lilian Achieng Gogo, MP - **Vice Chairperson**
3. Hon. James Opiyo Wandayi, MGH, MP
4. Hon. Dr. Adan Wehliye Keynan, CBS, MP
5. Hon. Babu Owino Paul Ongili, MP
6. Hon. Charo Katungo Tungule, MP

APOLOGIES

1. Hon. Yusuf Mohamed Farah, MP
2. Hon. Mwangi Kiunjuri, EGH, MP
3. Hon. Sarah Paulata Korere, MP
4. Hon. Beatrice Kahai Adagala, MP
5. Hon. Paul Kahindi Katana, MP
6. Hon. John Machua Waithaka, MP
7. Hon. Marianne Jebet Kitany, MP
8. Hon. Peter Irungu Kihungi, MP
9. Hon. Ronald Kamwilio Karauri, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Ms. Wanjiru Mwaura - Principal Clerk Assistant II
2. Mr. Ahmad Guliye - Clerk Assistant II
3. Mr. Letaya Morintat - Clerk Assistant III
4. Mr. Andrew Kipchumba - Clerk Assistant III
5. Ms. Angela Mawa - Legal Counsel
6. Ms. Sheila Chebotibit - Serjeant at Arms
7. Ms. Judy Kiprop - Fiscal Analyst III
8. Ms. Gladwell Amimo - Research Officer III
9. Mr. Amos Tiok - Hansard officer III
10. Ms. Mercy Seralo - Audio Officer

OFFICE OF THE AUDITOR-GENERAL

1. Mr. Samuel Nyamamba - Deputy Director Audit
2. Mr. Henry Masegere - Parliamentary Liaison
3. Ms. Mary Mutheu - Senior Auditor

NATIONAL TREASURY

1. Ms. Cheryl Majwa - Senior Investments Officer
2. Mr. Rodrick Bonne - Economist

FAMILY BANK

1. Ms. Rebecca Mbithi – CEO
2. Mr. Eric Marai – Chief Legal Officer
3. Mr. Jeremiah Mwangi – Head of Credit Analysis
4. Ms. Nancy Njau – Chief Officer
5. Ms. Veronica Muthara – Chief Credit Officer
6. Mr. Edwin Mwimi – Internal Auditor
7. Mr. Stanely Kamargaya – MD ICTA
8. Mr. Oliver Pyoke – Ag. Director DCS
9. Mr. Vincent Kamwoto – ICTA

MIN. NO. NA/PIC-CA&E/2023/0009: PRELIMINARIES

The meeting was called to order at 10:10 a.m. with a prayer said by the Chairperson. Thereafter, introductions were made.

MIN. NO. NA/PIC-CA&E/2023/0010: COMMUNICATION FROM THE CHAIR

The Chairperson welcomed members and the witnesses present to the meeting. He outlined the reason for inviting Family Bank which was to shed more light to the Committee on the non-recovery of outstanding Pasha loans owed to ICTA.

MIN.NO.NA/PIC-CA&E/2023/0011: CONFIRMATION OF MINUTES

This agenda item was deferred to the next meeting.

MIN.NO.NA/PIC-CA&E/2023/0012: FAMILY BANK ACCOUNT ON NON-RECOVERY OF OUTSTANDING PASHA LOANS OWED TO ICTA

The Family Bank Limited (hereinafter referred to as "the Bank") entered into an agreement with the Kenya Information and Communication Technology Board (Succeeded by the ICT Authority and hereinafter referred to as "the Authority") for the provision of financial management services vide the contract dated 3rd November 2010. The terms of the contract were to the effect that the Bank would manage disbursement of funds, which included ensuring accountability for the disbursement of loans and performing tasks such as loan follow-up and recovery. Further, Part III (E) of the contract, under the subtitle headed 'LOAN RECOVERIES', indicated that the Bank would recover the loans from the entrepreneurs' bank accounts through a check-off system monthly. On the strength of the said contract, a principal - agent relationship was created between the Bank and the Authority where the Bank acted as its agent regarding administration of the Digital Villages Revolving Fund (hereinafter referred to as "the Fund").

The Bank diligently and dutifully discharged its duties and obligations under the contract until termination of the same vide a letter from the Authority dated 23rd January 2017. Upon receipt of the letter terminating the contract, we proceeded to remit the sum of Kes. 82,884,004.00 being the net amount with outstanding loan balances of Kes. 45,103,888.00 from the total amount accumulated at the time i.e. Kes. 128,007,892.00 before closing the account. This was acknowledged by the Authority's vide its letter dated 28th April 2017.

The Bank continued with recoveries from the borrowers' accounts as provided in the contract, and as at the time of closure of the Fund account, a total of Kes. 45,105,888.00 was outstanding as unrecovered loans. Despite best efforts by the Bank to recover the funds, including listing the defaulters with CRB, no further recoveries were made from the Pasha loans. We wish to point out that the loans were unsecured and recovery of such loans is usually difficult.

Committee observations

i. Members noted that it was not clear if there was competitive bidding prior to the award of the contract to Family Bank Limited since the management could not disclose the same to the Committee.
ii. The Committee noted that the contract was prematurely terminated while Kes 45,103,369 was still outstanding.
iii. Members were concerned with the non-recovery of the loan from the beneficiaries since vetting of the same was done by the Bank.
iv. The Committee was concerned with the pre-requisite requirements considered by the Bank for the potential beneficiaries to fulfill prior to the awarding of the loan.
v. The Committee noted that the management of Bank was not adequately prepared to sufficiently respond to the concerns of the members.

Committee resolutions

i. The Committee directed the management of Family Bank to liaise with the management of the ICT Authority to conclusively address the audit query on non-recovery of outstanding pasha loans.
ii. The Committee directed the Management of the Bank to provide their policy on issuance of unsecured loans.
iii. The Management of the Bank was directed to appear before the Committee with sufficient responses on its concerns in two (2) weeks' time from the date of the meeting.

MIN.NO.NA/PIC-CA&E/0043/0015 ADJOURNMENT

There being no other business to discuss, the meeting was adjourned at 10.55 a.m. the next meeting will be held on notice

Signature .....

HON. DAVID PKOSING, CBS, M.P.
(CHAIRPERSON)

Date 28/1/2023

MINUTES OF THE 40TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE ON COMMERCIAL AFFAIRS & ENERGY HELD ON TUESDAY, 25TH JULY 2023 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS, AT 10:00 A.M.

PRESENT

1. Hon. David Pkosing, CBS, MP - **Chairperson**
2. Hon. Dr. Lilian Achieng Gogo, MP - **Vice Chairperson**
3. Hon. Dr. Adan Wohliye Keynan, CBS, MP
4. Hon. Mwangi Kiunjuri, EGH, MP
5. Hon. Beatrice Kalui Adagala, MP
6. Hon. Paul Rukindi Katana, MP
7. Hon. Charo Kazungu Tsanguo, MP
8. Hon. Marianne Jebet Kitany, MP

APOLOGIES

1. Hon. James Opiyo Wandayi, MGH, MP
2. Hon. Sarah Paulata Korere, MP
3. Hon. Babu Owino Paul Ongili, MP
4. Hon. John Machua Waithaka, MP
5. Hon. Peter Irungu Kihungi, MP
6. Hon. Ronald Kamwilo Karauri, MP
7. Hon. Yussuf Mohamed Farah, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Ms. Wanjiru Mwaura	-	Principal Clerk Assistant II
2. Mr. Andrew Ilpichumba	-	Clerk Assistant III
3. Ms. Angela Mutua	-	Legal Counsel II
4. Ms. Gladwell Anakwa	-	Research Officer III
5. Ms. Judith Kipsop	-	Fiscal Analyst III
6. Mr. Amos Tindi	-	Hansard Officer III
7. Mr. Murimi Mwangi	-	Media Relations Officer III
8. Mr. Yezil Jillo	-	Sergeant at Arms
9. Mr. Merry Kerubo	-	Audio Officer
10. Mr. Samuel Karani	-	Intern

OFFICE OF THE AUDITOR-GENERAL

1. Mr. Samwel Nyamamba	-	Principal Auditor
2. Mr. Henry Manegene	-	Committee Liaison
3. Ms. Mary Muthee	-	Senior Auditor

NATIONAL TREASURY

1. Ms. Cheri Majwa	-	Senior Investments Officer
2. Mr. Bedrick Koome	-	Investments officer

INSPECTORATE OF STATE CORPORATION

1. Mr. James Wangombe – Deputy Inspector

FAMILY BANK

1. Ms. Rebecca Mbithi – Chief Executive Officer
2. Mr. Eric K. Murai – Chief Legal Officer
3. Mr. Jeremiah M. Mwangi – Credit Manager
4. Ms. Nancy Njau – Public Sector Manager

INFORMATION COMMUNICATION AND TECHNOLOGY AUTHORITY

1. Mr. Stanley Kamanguya – Chief executive Officer
2. Mr. Thomas Odhiambo – Director Planning
3. Ms. Pauline Kimotho – Director legal Services
4. Ms. Maciine Onyiego – Assistant Director Finance

MIN. NO. NA/PIC-CA&E/2022/0210: PRELIMINARIES

The meeting was called to order at 10:40 a.m. with a prayer said by the Chairperson. Thereafter, introductions were made.

MIN. NO. NA/PIC-CA&E/2022/0220: COMMUNICATION FROM THE CHAIR

The Chairperson welcomed the Members and the witnesses present. He informed the committee that this was a follow up meeting with Family Bank on the non-recovery of outstanding Pasha Loans owed to Information Communication and Technology Authority (ICTA).

MIN.NO.NA/PIC-CA&E/2022/0221: CONFIRMATION OF MINUTES

This agenda item was deferred to the next meeting.

MIN.NO.NA/PIC-CA&E/2022/0222: MEETING WITH CHIEF EXECUTIVE OFFICER FAMILY BANK ON THE NON RECOVERY OF OUTSTANDING PASHA LOANS OWED TO ICTA.

The management of Family bank led by the CEO Ms. Rebecca Mbithi appeared before the Committee to present the banks position on the non-recovery of outstanding Pasha Loans and presented as follow;

The terms of the contract were to the effect that the Bank would manage the Digital Villages Revolving Fund *(the Fund)* which was meant to fund the establishment of ICT centers, known as *Pasha Centers*, across the country. The Bank's responsibility was to manage disbursement of funds, follow-up and recovery. These loans were referred to as 'Pasha Loans'.

EVIDENCE THAT THERE WAS COMPETITIVE BIDDING PRIOR TO THE AWARD OF THE CONTRACT TO FAMILY BANK

There was a formal process to identify and request for the services required by the Authority which allowed potential providers including Family Bank to review the request and submit bids.

Vide a Request For Proposal (RFP) dated 24th August 2010, the Authority sent out an invitation to banks and microfinance institutions (Equity Bank, Family Bank, Faulu Kenya, Kenya Women Finance Trust and SMEP) to manage the Fund.

Family Bank submitted its proposal on 21st September 2010, and the Authority invited the Bank to negotiate the terms of the said project. This culminated in a joint meeting of the two parties held on 30th September 2010 where they discussed several issues around the management of the fund. Having successfully negotiated the contract, the parties executed the contract (number KICTB/KTCIP/RFP/09/2010-2011) in October 2010.

THE BANK'S POLICY ON ISSUANCE OF NON-SECURED LOANS AND MEASURES THE BANK WOULD DEPLOY IN THE EVENT THAT BENEFICIARIES DEFAULT ON REPAYMENT OF NON-SECURED LOANS

FBL's Lending Process

As a financial institution regulated by the Central Bank of Kenya under the Prudential Guidelines and other enabling statutes, the Bank had developed a detailed lending process.

The table below compared the Bank's process flow and that followed for Pasha Loans. The differences were highlighted in italics and were as negotiated in the contract.

Loans Process Flow

APPLICATION STAGE	Responsibility:	PARTICULARS – NORMAL UNSECURED LOANS	PARTICULARS – PASHA LOANS
CUSTOMER APPLICATION	Customer/ Guarantors/	• Visits the branch and puts forth a loan request as per the financial needs. • Provides loan application requirements i.e. - Loan application - Valid documents supporting loan purpose. - Bank statements, financial statements - KYC documentation - Copy of National ID & KRA pin certificate - Business permits	• Submits online application on KICTB website. • Visits the branch and puts forth a loan request as per the financial needs. • Provides loan application requirements i.e. - Loan application forms - *Documents supporting loan purpose i.e., business plan, quotation for assets being*

		- Guarantor details - List of chattels - Evidence of business existence for at least 2 years	*financial Lease Agreement for the Pasha Centre.* - *Maps location for Home @ Proposed Pasha Centre* - *Minimum Education Level Form Four (KCSE) confirmation* - *Open to start-ups* - KYC documentation *(No existing account required)*
INITIAL REVIEW	Business Banker	• Receive and verify documents collected. • Conduct a call back to authenticate the application and external documents. • Conduct home and business site visits. • Prepare a Credit File folder for the customer. • Assess financial and non-financial information relating to the customer as provided. • Check against the eligibility criteria set out for this particular product. • Recommend application for consideration to the Branch Credit committee. • Process the application and	• Receive and verify documents collected. • Conduct a call back to authenticate the application and external documents. • Conduct home an... business site visits *(existing/startup Business / and Proposed Pasha Centre)* • Prepare a Credit File folder for the customer. • Asses financial and non-financial information relating to the customer as provided by the customer. • *Check against the eligibility criteria set out*

		prepare a template ordinarily incorporating a full Credit Analysis in the standard format laid down by the Bank (i.e., Credit Request template)	*for the Banks product.* • Recommend application for consideration to the Branch Credit Committee. • Process the application and prepare a template ordinarily incorporating a full Credit Analysis in the standard format laid down by the Bank (i.e., Credit Request template)
CREDIT APPRAISAL Branch Credit Committee Review	BCC members comprising of: Branch Manager/ Branch Operations Manager/ Business Bankers	• Reviews loan applications presented by the Business Banker. • Assesses the facility and where appropriate issues a Decline, Deferral (re-work) or an Approval (Branch Limits). • Recommends further reviews to H/O Credit Analysis Team for loans above delegated limits.	• Reviews loan applications presented by the Business Banker. • Assesses the facility and where appropriate issues a Decline, Deferral (re-work) or *recommends to H/O Credit Analysis Team for all recommended loans (No Branch Limits).*
HO Credit Committee Review	Credit Analysts	• Receives applications from Branches. • Performs a further evaluation of the borrowers of the enterprise based on the loan application documents. • The Head Office Credit Committee may recommend a re-work, reject or approve the application.	• Receives applications from Branches. • Performs a further evaluation of the borrower's enterprise based on the loan application documents. • The Head Office Credit Committee may recommend a re-work, reject or recommend

		• If approved, issues a signed credit approval memo for the loan granted and forwarded to Branch Credit Committee. • The Head Office Credit Approval Grid shall apply for ALL the credit requests received.	the application for approval to *the Grants Committee.* • *Issuance of a registration number and subsequent update on online registry managed by ICT Board.* • *Forwards the recommended applications to the KICTB Grants Committee for further review and Fit ' Approval.* • *Issues an approval memo advising the Branch Credit Committee on Approved cases and the conditions thereof.*
SECURITY PERFECTION	Business Banker and Branch Manager	• Generate letter of offer • Note: LOO must be clear on disbursements as advised by the Analyst. • Call customer to sign offer letter. • Prepare a Collateral File for the customer. • Proceed to register chattels mortgage over the proposed household, stock & business assets. • Register guarantee and indemnity from guarantors.	• Generate letter of offer • Note: LOO must be clear on disbursements as advised by the Analyst. • Call customer to si offer letter. • Prepare a Collateral File for the customer. • *Register chattels mortgage over all the business assets in the Pesha Centre.* • *No guarantee and indemnity from guarantors*

DISBURSEMENT	Business Banker and Branch Manager	• Book the facility in the system and release funds into the customer's account. • Recover Processing fee and any other charge for the entire approved amount. • Insurance amount recovered and remitted to Bancassurance dept. • Conduct a call over to ensure the booking is correctly done.	• 10% customer's minimum contribution. • Book the facility in the system and release funds into the customer's account. • Recover Processing fee and any other charge for the entire approved amount. • Insurance amount recovered and remitted to Bancassurance dept. • Conduct a call over to ensure the booking is correctly done.

THE NATURE OF THE CONTRACT BETWEEN FAMILY BANK AND KICTB

Obligations of the Authority under the contract

a. Availing the funds to the Bank for lending.

b. Developing the evaluation criteria for Pasha Loans jointly with the Bank and offering requisite assistance to actualize the Fund.

c. Reviewing and giving final approval for disbursement on respective applications.

Notably, the Authority had conducted training of potential entrepreneurs prior to the establishment of the Fund, and was to encourage those already trained to apply for the funds with a view to establish their own cyber businesses as start-ups, the Pasha Centres.

Obligations of the Bank under the contract

The Bank's obligations were to manage the Fund, offering its expertise on onboarding and appraisal of applicants, disbursement and recovery of the loans. Specifically, the Bank was supposed to do the following:

a. Receiving and vetting business plans

b. Presenting the vetted applications to the Authority for approval

c. Disbursing Pasha Loans duly approved by the Authority

d. Collection, follow up and recovery of Pasha Loans

e. Providing quarterly status reports to the Authority

CIRCUMSTANCES UNDER WHICH THE BANK FAILED TO RECOVER THE LOANS FROM THE BENEFICIARIES

Follow up and monitoring of loans disbursed.

Pursuant to Part III (E) of the contract, under the subtitle headed *'LOAN RECOVERIES'*, the Bank was to recover the loans from the bank accounts of the borrowers through a check-off system monthly. The borrowers were required to maintain accounts at Family Bank for ease of recovery through check-off.

The Bank's follow up process involves monitoring of the loans to ensure performance through various strategies such as SMS alerts on installment due dates, periodic client visits, and weekly branch meetings to discuss portfolio performance, requisite actions and daily reports on portfolio performance.

Recovery efforts taken by the Bank

As stipulated in the contract, the Bank had the responsibility of recovering the loans in default. Herein below is the Bank's process flow for the microloans in arrears which was applied to the Pasha Loans portfolio as well.

Micro Loan & Pasha Loan Recovery Process Flow

	MICRO LOAN RECOVERY PROCESS FLOW	PASHA LOAN RECOVERY PROCESS FLOW
Activity	Details/action	Details/action
	The Relationship Officer at the branch	
Arrears 1-day plus	• The branch follows up on all arrears through phone calls so that the accounts in arrears are regularized as soon as possible.	• The branch follows up on all arrears through phone calls so that the accounts in arrears are regularized as soon as possible.

Arrears 14 days' plus	• The branch prepares a seven (7) days' Demand Letter for ALL accounts outstanding. The Demand letter should be hand delivered or sent via registered mail to any known postal address, emailed to the customer's verified number/email account by the Relationship Officer and an acknowledged copy is filed in the customer's file	• The branch prepares a seven (7) days' Demand Letter for ALL accounts outstanding. The Demand letter should be hand delivered or sent via registered mail to any known postal address, emailed to the customer's verified number/email account by the Relationship Officer and acknowledged copy is filed in the customer's file
Arrears 30 days' plus	• Relationship Officer prepares a second demand letter copied Guarantor giving the customer 14days default notice which is hand delivered to the customer/ Guarantor who should acknowledge receipt	• Relationship Officer prepares a second demand letter giving the customer 14days default notice which is hand delivered to the customer who should acknowledge receipt (no guarantor requirement for Pasha Loans)
	• If the arrears are not cleared by 88th day the file is forwarded to Head Office Collections and recoveries	• If the arrears are not cleared by 88th day the file is forwarded to Head Office Collections and recoveries
	Collections & Recoveries Officer-Head Office	
Arrears 90 days' plus	• On the 90th day the customer is automatically negatively listed with CRB	• On the 90th day the customer is automatically negatively listed with CRB
	• DRU to issue instructions to the Auctioneers who proclaims the securities (Chattels)	• DRU to issue instructions to the Auctioneer who proclaims the business assets
	• The Auctioneer now repossesses and stores the chattels in a secured and insured yard for 7 days.	• The Auctioneer now repossesses and stores the business assets in a secured and insured yard for 7 days.
	• The Auctioneer advertises the Chattels in any of the major Dailies in preparation for sale.	• The Auctioneer advertises the business assets in any of the major Dailies in preparation for sale (7days)
	(7days)	
	• The Auctioneer conducts the auction with highest bidder paying and the proceeds deposited in the Defaulter's	• The Auctioneer conducts the auction with highest bidder paying and the proceeds deposited in the Defaulter's

account and transferred to the loan account. The Branch must send a representative who prepares a report on the same.

- Where full recoveries have not been made after disposal of the chattels, follow-up demands are made to the customer for a period of 6 months.
- If no payments have been received the loan is recommended for write-off as per the banks credit policy as stipulated by the CBK Prudential Guidelines of 2013, Article 5.5 on write-offs which states:
- An institution should write off a loan or a portion of a loan from its balance sheet when the institution loses control of the contractual rights over the loan or when all or part of a loan is deemed uncollectible or there is no realistic prospect of recovery. This normally evident at a stage where:

Write off of facilities classified as loss should be done within 180 days of their being classified as loss if there are no recoveries within this period.

account and transferred to the loan account. The Branch must send a representative who prepares a report on the same.

- Where full recoveries have not been made after disposal of the chattels, follow-up demands are made to the customer for a period of 6 months.
- If no payments have been received the loan is recommended for write-off as per the bank's credit policy as stipulated by the CBK Prudential Guidelines of 2013, Article 5.5
- **For Pasha Loans, set-off is to be done against the funds upon termination of the contract by ICT (Ref: Clause 8.0.5 of the Contract)**

Summary of Defaulted Loans

The Bank received Kes. 109,893,790.00 from the Authority which was being disbursed as a revolving fund. Interest earned on the Fund as at January 2017 was Kes. 20,123,829.

Out of the total amount of Kes. 53,892,501.00 disbursed to applicants from the Fund, the Bank collected Kes. 30,017,491.00 through check-off. The Bank applied the above mechanisms to the Pasha Loans where upon default, the Bank contacted the borrowers through phone calls, issue of demand letters and debt collection through auctioneers.

As of 31st January 2017, an amount of Kes. 43,193,310.00 was outstanding from the borrowers.

TERMINATION OF THE CONTRACT

On 25th January 2017, the Authority wrote to the Bank terminating the contract. The letter indicated the reasons for terminating the contract as below:

- That the Kenya ICT Board had since been dissolved and a new state corporation, The Information and Communications Technology Authority (ICTA)' created as per legal notice number 168 of 10th August 2013.

- Resolution by the ICTA Board on 24th November 2016 to close the Fund.

- That the Fund had remained inactive for a period exceeding 2 years hence the resolution to close the Fund.

Upon receipt of the letter terminating the contract, the parties carried out a joint reconciliation process upon which they agreed that the Bank would remit the sum of Kes. 82,894,004.00 being the net amount with outstanding loan balances of Kes. 45,105,995.00. Thereafter the account was closed.

Contractual Provisions on Outstanding Balances

Being a Fund Administration arrangement, the contract provided as follows:

2.6.3 Upon termination of this Contract pursuant to Clauses GC 2.6.1 or 2.6.2, IDICTB shall make the following payments to the FI:

(a) Payment of any advances still outstanding for loans made pursuant to clause GC 4 related to services satisfactorily carried out prior to the effective date of termination;

With the contract terminated, the Bank has no legal standing empowering it to collect from the borrowers since the Principal-Agency relationship came to an end. However, the Bank during the period 2010 and 2017 when it was managing the Fund aggressively pursued recovery efforts as evidenced above.

CONCLUSION

The Bank hereby submits its final remarks as follows;

The Pasha Centers being start-ups could not access funding from banks or other financial institution. It is well documented that funding start-ups is very risky and collection of such debts is very difficult.

Despite our best efforts, we did not manage to recover the outstanding amount of Kes. 45,105,995 due to various factors including:

1. The customers in default closed their businesses and had no alternative sources of income to pay off the loans.

2. Some of the borrowers could not be traced despite our aggressive efforts via our debt recovery team and external service providers.

3. The Bank also received a request from a representative of the borrowers under the **Pasha Association of Kenya** to delist the borrowers from CRB as there were ongoing discussions with the Authority to write off the loans. However, in the absence of formal instructions from the Authority, the said request was not granted.

Committee Observations

I. The Committee noted that the Bank was on boarded through an Expression of Interest advertised in Daily Nation on 30th July 2009 and a further Request for Proposal from the five shortlisted banks dated 24th August 2010.

II. The Members were concerned how Family Bank was chosen, given that there were other banks with wider geographical presence, whereby the management of ICTA informed the Members that an expression of interest was carried out inviting all banks.

III. The Committee was informed of the policy on recovery of unsecured loans, where a breakdown of the process based on the timelines and action to be taken at each stage was demonstrated. The timelines of arrears are; 1-day plus, 14-days plus, 30-days plus and 90 days plus. In the case of Pasha Loans the policy was applied.

IV. The Committee noted that Family bank had demonstrated the effort they had carried out to recover the money which is sequenced as follows; issuance of first and second demand letters, follow up phone calls, listing at the Credit Reference Bureau and auctioning of property.

V. The Committee was informed the Pasha Loan was set up to assist startups come up with digital villages in the country, however the risk factor associated with them was factored thus waiving the need of having guarantors for ease of access of the funds by the startups.

VI. The Members were concerned given that guarantors were not needed to secure the funds, why didn't the bank use the ICT equipment as collateral for the loans, however the equipment were insured against fire and burglary but not for defaulting the loan.

VII. The Committee observed Family bank was chosen based on their excellent track record of dealing effectively with high risk but low collateral loans which they had a score of 80%, however Members noted the recovery of Pasha Loans were at 42%.

VIII. The Committee was informed that a total of 54 startups borrowed the loan and sixteen (16) fully repaid and others partially repaid and these startups were spread across twenty six (26) counties out of the total fourth seven (47).

IX. The Members inquired to know the exit of the contract between ICTA and Family Bank, where they were informed the Board of ICTA deliberated on the matter due to non-payment of outstanding balance for over two years and resolved to terminate the contract by writing to the CEO of Family Bank. Thereafter reconciliation was carried out and repaid, accrued interest and undisbursed amount were remitted to ICTA.

X. The Committee inquired from National Treasury on the repayment status of funds loaned to State Corporations and private banks for social protection projects, where they were informed the rate of default among State Corporations was high and request of write off or conversion to equity was the norm, whereas for private banks the repayment was high.

XI. The Committee sought to know from the management of ICTA if they had carried out an impact assessment of the Digital Villages at the closure of the fund to gauge its impact in the country, and the management confirmed that no impact assessment was conducted but continuous assessment was done during implementation.

Way forward

I. The management of ICTA requested the Committee to provide guidance on the way forward on this audit query given that it had recurred over the years in their financial records as bad debt, and the fund manager had exhausted the recovery efforts as per the bank policy and the terms of the contract.

II. The management of ICTA further informed the Committee that the cost of following up on the defaulters would be high and the equipment are obsolete in case of repossession thus the chance of recovering the money was minimal.

III. The members proposed that in future projects involving government loaning out money to start ups, there needs to be insurance to cushion the government from losses and further contracts should be clearly structured to show the entity that will bear responsibility in case of non-recovery of the loan.

IV. The National Treasury are in the process of doing a paper on money loaned to state corporations for social projects, and they are considering giving out the funds as grants, rather than loan, they also support the idea of insuring the funds.

V. The National Treasury inquired to know incase a defaulter listed in Credit Reference Bureau repays the money where will it be credited, and the Fund Manager clarified that it will be remitted to ICTA and thus there is need for an addendum to address recovery after termination of the Pasha Loan contract.

VI. The Committee noted that the government needs more projects to empower startups and further to adopt the Credit Guarantee Scheme to kick in the case where beneficiaries are unable to honor repayments.

VII. The Inspectorate of state corporations to propose amendments to legal framework to cater for future similar ventures.

MIN.NO.NA/PIC-CA&E/2023/0423: ADJOURNMENT

The meeting was adjourned at 1.05 p.m. The next meeting will be held on notice.

Signature .....

HON. DAVID PKOSING, CBS, M.P.
(CHAIRPERSON)

Date.....25/7/2023.....

MINUTES OF THE 49TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE ON COMMERCIAL AFFAIRS & ENERGY HELD ON WEDNESDAY, 30TH AUGUST 2023 IN BAOBAB CONFERENCE HALL, SERENA BEACH HOTEL, MOMBASA COUNTY, AT 10:00 A.M.

PRESENT

1. Hon. David Pkosing, CBS, MP - **Chairperson**
2. Hon. Dr. Adan Wehliye Keynan, CBS, MP
3. Hon. Mwangi Kiunjuri, EGH, MP
4. Hon. Balu Owino Paul Ongili, MP
5. Hon. Paul Kahindi Katana, MP
6. Hon. Charo Karonga Tungule, MP
7. Hon. John Machua Waithaka, MP
8. Hon. Marianne Jebet Kitany, MP
9. Hon. Peter Irungu Kihungi, MP
10. Hon. Ronald Kenwiko Karauri, MP

APOLOGIES

1. Hon. Dr. Lilian Achieng Gogo, MP - **Vice Chairperson**
2. Hon. James Opiyo Wandayi, MGH, MP
3. Hon. Sarah Paulata Korere, MP
4. Hon. Beatrice Bahati Adagala, MP
5. Hon. Yussuf Mohamed Farah, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1.	Mr. Ahmad Guliye	-	Clerk Assistant II
2.	Mr. Letayo Moriatat	-	Clerk Assistant III
3.	Mr. Andrew Kipchumba	-	Clerk Assistant III
4.	Ms. Sheila Chebotibin	-	Serjeant at Arms
5.	Ms. Angela Muasa	-	Legal Counsel
6.	Ms. Gladwell Amimo	-	Research Officer III
7.	Mr. Amos Tindi	-	Hansard officer III
8.	Ms. Mercy Kerubo	-	Audio Officer

OFFICE OF THE AUDITOR-GENERAL

1.	Mr. Paul K. Nzioka	-	Deputy Director Audit
2.	Mr. Samuel M. Mburu	-	Deputy Director Audit
3.	Mr. Henry Maregesi	-	Parliamentary Liaison Officer

OFFICE OF THE INSPECTORATE OF STATE CORPORATIONS

1.	Mr. Michael Muturi	-	Inspector

COAST WATER WORKS DEVELOPMENT AUTHORITY

1. Eng. Martin Tsuma – Ag. Chief executive Officer
2. Mr. Stanslas Jira – Manager, Supply Chain
3. Mr. Stephen Kivatu – Manager, Finance

MIN. NO. NA/PIC-CA&E/2021/0234: PRELIMINARIES

The meeting was called to order at 10:40 a.m. with a prayer said by the Chairperson.

MIN. NO. NA/PIC-CA&E/2021/0235: COMMUNICATION FROM THE CHAIR

The Chairperson welcomed Members and the witnesses present and gave a preview of the audited accounts of Coast Water Works Development Authority. He informed the Members that three years under review were (FY 2018/2018, 2019/2020 and 2020/21) and given that the queries were recurring across the three years the Committee will examine the FY 2020/21.

MIN.NO.NA/PIC-CA&E/2021/0236: CONFIRMATION OF MINUTES

This agenda item was deferred to the next meeting.

MIN.NO.NA/PIC-CA&E/2021/0237: EXAMINATION OF THE AUDITED ACCOUNTS OF COAST WATER WORKS DEVELOPMENT AGENCY FOR THE FY 2018/19 TO FY 2020/2021.

The management of CWWDA led by the Ag. Chief Executive Officer Eng. Martin Tsuma appeared before the Committee to present evidence on the queries raised by the Office of the Auditor General and presented as follows.

FY 2020/2021

1. **Land**

In the Agency's asset register a plot valued at Ksh 130,000 listed in the statement of financial position was missing.

On planned transfer to the Agency of Assets and liabilities from National Water Conservation and Pipeline Corporation and Ministry of Water and Irrigation indicated that the Agency was in possession of Sixty-one 61 parcels of land with buildings in the Counties of KDE, Mombasa, Malindi, Kwale and Taita Taveta and all the listed parcels registered as property of National Water Conservation and Pipeline Corporation and the Government of Kenya. In addition, their actual, locations and the nature of buildings therein were not disclosed in the report.

Management Response

The land valued at ksh.130,000 is owned by the Agency. However, no ownership documents were in place and the Agency was in the process of acquiring titles for all properties

CWWDA inherited assets from National Water Conservation and Pipeline Corporation and the Ministry of Water. There were no ownership documents for the Inherited properties. As part of the process of transition, a joint team was constituted to confirm the location, size and the terms of land tenure.

Most of the Authority's lands have been grabbed, in Mombasa county out of 60 parcels of land 16 have been grabbed and the trend covers the all Coast region, the management have sought the help of EACC to recover the grabbed plots.

Committee Observations

I. The Committee observed that the stated land valued at kshs. 180,000 was acquired as a wayleave for constructing the water pipeline, and the management was in the process of acquiring a lease for the land.
II. The Committee was concerned with the status of the Agency's assets especially land given that most of it had not been transferred from the Ministry of Water and the National Water Harvesting and Storage Authority (*formerly* National Water Conservation and Pipeline Corporation) and the Transitional Instruments in place had no provision of handover between Government to Government Agencies.
III. The committee urged the authority to protect its assets and to recover the grabbed lands.

Committee Recommendations

The Committee directed the Office of the Auditor General to conduct a site visit on all CWWDA land and ascertain the structures in the plots, the status of ownership and their locations and report back to the Committee.

2. Trade and Other Receivables

The trade and other receivable include Kshs.8,400,887,880 due from Water Service Providers. However, the accounting records of the indented Water Service Providers reflected debts totaling Kshs.4,334,918,146 as owed to the Agency resulting to unexplained variances totaling Kshs.104,908,725 between the Agency's and the debtors' records. The analysis on the ages of the debts was not provided for audit review.

Management Response

There has been challenges in sitting with the WSPs to undertake the reconciliation. Recently the matter was picked up by the Senate. The Agency had now engaged all the WSPs to work closely to harmonize the figures with a completion date of 15 September 2023. The Aging analysis for the debt was available and was provided during the review.

Committee Observations

I. The Committee observed that the matter was still outstanding until the reconciliation is done and evidence submitted to the Committee.
II. The Committee was informed that reconciliation was ongoing and to be concluded by 30th September 2023.

8. **World Bank Loan**

The statement of financial position reflects a long-term loan balance totaling Kshs.15,811,990,800 owed to the World Bank as at 30 June,2021. As previously reported, the Government of Kenya entered into a financing agreement with the Bank in the year 2008 to finance water and sanitization services in the Coast region through Coast Water Works Development Agency. The Bank lent the Government US dollars 65,203,780 under credit No.IDA-4170-KE. The loan amount was equivalent to Kshs 4,570,109,584.87. and was replacable in 13 (thirteen)years with effect from 30 March ,2018 at an interest rate of 1.5% per annum. The annual repayment of US $4,906,630 entailed a principal sum of US$3,168,030 and interest of US$1,734,606.

However, records on repayment of the loan were not provided for audit verification. In addition, the repayment of US $4,906,626 due annually was not disclosed separately under other current liabilities in the statement of financial position as at 30 June,2021.

Further, contrary to paragraph 27 of the International Public Sector Accounting Standard IPSAS 4- The Effects of Changes in Foreign Exchange Rates- which requires foreign currency monetary items being translated using the closing exchange rates, the loan balance totaling 15,811,990,800b as at 30 June, 2021 was translated to Kenya Shillings based on the exchange rate on the transaction date. As a result, the foreign exchange gain or loss was not disclosed in the financial statements. Further, the accounting policy applied by the Agency in translating foreign denominated transactions and balances was not disclosed in the notes to the financial statements as required by the accounting standard.

Management Response

Loan repayment had never been effected on grounds of water tariff not being reflective of the operational costs related to water production.

New water tariff had been Gazetted and will be effective from October 2022 with a loan repayment component. Once implemented, the will set aside the component of loan repayment.

Committee Observations

I. The Committee was informed that currently the CWWDA was not making any repayment towards the World Bank Loan and the National Treasury was the one repaying.

II. The loan was used to develop Ruriche Water works, Mzima springs expansion, Tiwi boreholes among other water works projects, and the tariff for the water to be supplied was not set on cost recovery model to repay the loan.

III. The Committee observed the Agency had gazette a new tariff in place which would raise their revenues from kshs. 739M to kshs. 1.4B per year.

Committee Recommendation

The Committee directed that the National Treasury to be invited to shed more light on the World Bank loan in its next meeting with the Agency.

6. Loan Interest

The statement of financial position reflects trade and other payables balance totaling Kshs.1,839,900,040, as further disclosed in Note 21 to the financial statements. The balance includes general creditors totaling Kshs.1,816,786,740, out of which Kshs.1,013,304,800 relates to unpaid loan interest owed to the National Treasury since 2013.However Management did not explain the failure to pay the interest over the years.

Management Response

Loan interest repayment had never been effected on grounds of water tariff not being reflective of the operational costs related to water production.

New water tariff had been Gazetted and would be effective from October 2023 with a loan repayment component. Once implemented, the Agency will set aside the component of loan repayment.

Committee Observation

The Committee noted that the Agency would be in position to start paying for the loan once they effect new tariff rates from October, 2023.

7. Total Assets and Liabilities

The statement of financial position reflects aggregate liabilities totaling Kshs.15,063,887,849 and net assets totaling Kshs. 2,891,727,339 which translate to net assets totaling Kshs.18,800,156,833. However, the statement reflects net assets and liabilities totaling Kshs.2,961,727,584. As a result, the accuracy and validity total net assets and liabilities balance could not be confirmed.

Management Response

The presentation is as per the Approved Reporting manual.

Committee Observation

The Committee observed the reconciliation of the accounts had been done and confirmed by the Office of the Auditor General and the matter was resolved.

8. Budgetary Control and Performance.

The statement of comparison of budget and actual amounts indicates that the Agency realized revenue totaling Kshs.1,809,668,801 against a budget of Kshs.1,921,093,000, resulting in a revenue shortfall of Kshs.106,416,700 or 11% of the budget. Management attributed the shortfall

to unrealized government grants totaling Kshs.331,018,685 equivalent to 31% of the budgeted amount Kshs.1,076,000,000.

The statement indicates that expenditure incurred during the year totaled Kshs.1,582,389,823 which exceeded the budget of Kshs.1,575,950,420 by Kshs.7,040,203 or 0.4%.

Management Response

As noted, the expenditure for the year under review was more than what was budgeted for. This was due to expenditure for projects being carried forward from previous year. Exchequer releases for the previous year were made towards the close of the financial year hence it was not possible to carry out / clear all payments in the previous year.

All expenditures were within the approved budget

Committee Observations

I. The Committee noted the agency expenditure was more than approved budget due to projects referred from the National Government.
II. The OAG informed the Committee the paragraph was mainly to show the direction the institution was taking in their Budgetary controls.

Committee Recommendation

The matter was resolved based on the explanation provided by the management.

7. Previous Year Issues

The audit report for the year ended 30 June, 2020 raised several issues relating to balances reflected in the financial statements, lawfulness and effectiveness in use of public funds, and effectiveness of internal control, risk management and governance.

Committee Observation

The Committee noted the previous issues still pending are the status of Agency properties (land) and the World Bank Loan and this was confirmed by the OAG.

8. Incomplete Water Project Works

Expenditure records indicated payments totaling Kshs.5,814,700 made in respect of Mbulia pipeline extension in Voi, Taita Taveta County. The respective construction contract valued at Kshs.8,408,181 was signed in July, 2020 and entailed construction of three water kiosks at a total cost of Kshs. 1,202,700. However the water kiosks were not connected as prescribed in the Bill of Quantities, thus value for money may not be realized.

Management Response

The contract was signed on 20th July 2020 at a contract price of Ksh. 8,408,181.00 as stated in the report. The contract works moved on very well and the targeted completion date was June 2021. However, the Contractor quit the site after 1st payment, works were never completed.

The contract was terminated and awarded to another contractor to finalize the remaining works and is complete as per attached completion certificate

Committee Observation

The Committee noted that completion certificate of the water works project was in place, however the matter will be cleared once the Auditor conducts a site visit of the project to confirm its status

Committee Recommendation

The Committee directed the OAG to visit the water project to confirm its completion and report back to the Committee.

MIN.NO.NA/PIC-CA&E/2023/0238: ANY OTHER BUSINESS (A.O.B)

i. The Chairperson informed the Members that a retreat of joint Audit Committees organized by the Head of Public Service and with other relevant stakeholders themed *"Consultative meeting on corruption"* will be held in Mombasa from 7th to 9th September 2023.

ii. The Chair further informed the Members that the Committee would retreat to write a report in Naivasha beginning the week of 10th September 2023.

MIN.NO.NA/PIC-CA&E/2023/0239: ADJOURNMENT

There being no other business the meeting was adjourned at 2.30 p.m. the next meeting will be held on notice.

Signature .....

HON. DAVID PKOSING, CBS, M.P.
(CHAIRPERSON)

Date..... 25/9/2023

MINUTES OF THE 50TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE ON COMMERCIAL AFFAIRS & ENERGY HELD ON THURSDAY, 26TH SEPTEMBER 2013 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10:00 A.M.

PRESENT

1. Hon. David Pkosing, CBS, MP - **Chairperson**
2. Hon. Dr. Lilian Achieng Gogo, MP - **Vice Chairperson**
3. Hon. Dr. Adan Wehliye Keynan, CBS, MP
4. Hon. Babu Owino Paul Ongili, MP
5. Hon. Beatrice Kalui Adagala, MP
6. Hon. Paul Kahindi Katana, MP
7. Hon. Charo Karonge Tungule, MP
8. Hon. John Machua Wathaka, MP
9. Hon. Marianne Jelet Kitany, MP
10. Hon. Peter Irungu Kihangi, MP
11. Hon. Ronald Rarowko Kamuri, MP
12. Hon. Yussuf Mohamed Farah, MP

APOLOGIES

1. Hon. James Opiyo Wandayi, MGH, MP
2. Hon. Mwangi Kiunjuri, EGH, MP
3. Hon. Sarah Paulata Korere, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Ms. Wanjiru Mwaura	-	Principal Clerk Assistant II
2. Mr. Ahmad Guliye	-	Clerk Assistant II
3. Mr. Letaya Morintat	-	Clerk Assistant III
4. Mr. Andrew Kipchumba	-	Clerk Assistant III
5. Ms. Angela Musau	-	Legal Counsel
6. Mr. Anass Timli	-	Hansard officer III
7. Ms. Mercy Kerubo	-	Audio Officer
8. Mr. Yevil Jillo	-	Serjeant at Arms

OFFICE OF THE AUDITOR-GENERAL

1. Mr. Geoffrey Irungu	-	Deputy Director Audit
2. Mr. Andrew Katala	-	Principal Auditor
3. Mr. Henry Masegete	-	Parliamentary Liaison

THE NATIONAL TREASURY

1. Ms. Cheryl Majwa – Assistant Director Investments

OFFICE OF THE INSPECTORATE OF STATE CORPORATIONS

1. Ms. Grace Mwaniki – Inspector
2. Ms. Noreen Nthiga – Inspector

KENYA REVENUE AUTHORITY

1. Eng. John K. Mahia – Ag. CEO NWHSA
2. Mr. Patrick Ataro – General Manager Finance
3. Ms. Margaret Kithinu – Manager Finance & Administration
4. Mr. Eric Karagu Muchiri – Principal Accountant

MIN. NO. NA/PIC-CA&E/2023/200: PRELIMINARIES

The meeting was called to order at 10.10 a.m. with a prayer said by the Chairperson. Thereafter, introductions were made.

MIN. NO. NA/PIC-CA&E/2023/201: COMMUNICATION FROM THE CHAIR

The Chairperson welcomed Members and the witnesses present to the meeting. He outlined the agenda of the meeting which was to examine the audited accounts of the National Water Harvesting and Storage Authority for the period between the financial years 2016/19 to 2020/21.

MIN.NO NA/PIC-CA&E/2023/202: CONFIRMATION OF MINUTES

I. The Minutes of the 17th sitting held on 27th June 2023 were confirmed as a true record of the Committee's proceedings after being proposed and seconded by Hon. Babu Owino Paul Ongili, MP, and Hon. Peter Irungu Kihungi, MP respectively.

II. The Minutes of the 18th sitting held on 29th June 2023 were confirmed as a true record of the Committee's proceedings after being proposed and seconded by Hon. Babu Owino Paul Ongili, MP, and Hon. John Muchiu Waithaka, MP respectively.

III. The Minutes of the 19th sitting held on 4th July 2023 were confirmed as a true record of the Committee's proceedings after being proposed and seconded by Hon. Beatrice Kahai Adagala, MP and Hon. Yusuf Farah Mohammed, MP respectively.

IV. The Minutes of the 20th sitting held on 6th July 2023 were confirmed as a true record of the Committee's proceedings after being proposed and seconded by Hon. Babu Owino Paul Ongili, MP, and Hon. Charo Kazungu Tungule, MP respectively.

V. The Minutes of the 21st sitting held on 13th July 2023 were confirmed as a true record of the Committee's proceedings after being proposed and seconded by Hon. Ronald Kamwiko Karauri, MP and Hon. Beatrice Kahai Adagala, MP respectively.

VI. The Minutes of the 42nd sitting held on 25th July 2023 were confirmed as a true record of the Committee's proceedings after being proposed and seconded by Hon. Lilian Achieng Gogo, MP and Hon. Paul Kahindi Katana, MP respectively.

VII. The Minutes of the 43rd sitting held on 27th July 2023 were confirmed as a true deliberation of the Committee's proceedings after being proposed and seconded by Hon. Ronald Kamuri Kamwilo, MP and Hon. Sarah Paulata Korere, MP respectively.

VIII. The Minutes of the 44th sitting held on 8th August 2023 were confirmed as a true deliberation of the Committee's proceedings after being proposed and seconded by Hon. Yusuf Farah Mohamed, MP, and Hon. Charo Karungo Tungule, MP respectively.

IX. The Minutes of the 45th sitting held on 9th August 2023 were confirmed as a true record of the Committee's proceedings after being proposed and seconded by Hon. Charo Karungo Tungule, MP and Hon. Paul Kahindi Katana, MP respectively.

X. The Minutes of the 46th sitting held on 9th August 2023 were confirmed as a true record of the Committee's proceedings after being proposed and seconded by Hon. Babu Owino Paul Ongili, MP, and Hon. Peter Irungu Kihungi, MP respectively.

XI. The Minutes of the 47th sitting held on 23rd August 2023 were confirmed as a true record of the Committee's proceedings after being proposed and seconded by Hon. Paul Kahindi Katana, MP, and Hon. Peter Irungu Kihungi, MP respectively.

XII. The Minutes of the 48th sitting held on 23rd August 2023 were confirmed as a true record of the Committee's proceedings after being proposed and seconded by Hon. Babu Owino Paul Ongili, MP, and Hon. Peter Irungu Kihungi, MP respectively.

XIII. The Minutes of the 49th sitting held on 30th August 2023 were confirmed as a true deliberation of the Committee's proceedings after being proposed and seconded by Hon. Paul Kahindi Katana, MP, and Hon. John Machua Waithaka, MP respectively.

MIN.NO.NA/PIC-CA&E/2022/2023: EXAMINATION OF THE AUDITED ACCOUNTS OF NATIONAL WATER HARVESTINNG AND STORAGE AUTHORITY FOR THE FY 2018/2019 TO 2020/2021

1. Unsupported and Offsetting of Trade and Other Payables from Exchange Transactions

The statement of financial position reflects trade and other payables from exchange transactions balance of Kshs 1,158,402,761. However, as previously reported, the balance included debit balances totaling Kshs.444,233,333 for which supporting schedules were not provided and which were offset against the payables contrary to the provisions of Paragraph 46 of IPSAS 1 — Presentation of Financial Statements - which prohibits offsetting of assets and liabilities, revenue and expenses.

In addition, included in the balance of Kshs. 1,158,402,761 were trade payables of Kshs. 393,015,253 which had been outstanding for more than one year and for which

Management did not provide detailed supplier ledgers and supporting documents for audit verification.

In view of the foregoing, it was not possible to confirm the accuracy, validity and completeness of the trade and other payables from exchange transactions balance of Kshs. 1,134,402,781.

Management Response

The agency reported that, the management presented financial statements whereby the trade receivables were offset against the trade payables as rightly stated in the audit report, Paragraph 46 of IPSAS 1 which prohibits such netting off. The anomaly has since been addressed in the audited Financial Statements for the period ended 30 June 2022, with a restatement being done for the audited financial statements for the period ended 30th June 2021.

Committee Observation;

The Committee concurred with the Auditor General that the matter was resolved by the restatement of the audited financial statements for the period ended 30th June 2021.

Committee Recommendation;

The matter stands resolved and the entity cleared of the audit query.

2. Long Outstanding Unreconciled Items in Cash and Cash Equivalents

The statement financial position reflects cash and cash equivalents amount of Kshs. 256,191,108. However, as previously reported the balance excluded Kshs. 31,800,430 relating to unposted items reflected in the bank reconciliations, as detailed below:

Account Name	Account No.	Date First Reported	Amount (Kshs.)
Development A/c	1114890505	2009	24,871,140
Special Acc	1114879978	2006	2,153,290
Recurrent Acc	1114890489	2006	5,056,000
			31,800,430

The So these items have been outstanding for more than 10 years and it is not clear why Management has not investigated the unposted items to clear them from the reconciliation statements.

Further, as disclosed in Note 18 to the financial statements, a credit balance of Kshs.5,000 was offset against the reported cash and cash equivalents balance contrary to the provisions of Paragraph 46 of IPSAS 1 - Presentation of Financial Statements which prohibits offsetting of assets and liabilities, revenue and expenses.

In addition, the recurrent account bank reconciliation statement reflected a cashbook under cast of Kshs.1,956,997, a reconciling item which should have been adjusted in the cashbook before preparing the reconciliation.

Consequently, it was not possible to confirm the accuracy and completeness of the cash and cash equivalents balance of Kshs.230,191,104 as at 30 June, 2018.

Management Response

The Authority concurred with the Auditors observation that, the Recurrent, Special and Development accounts have various long outstanding unposted items and to address this, the Authority appointed a committee to establish the origin of the unreconciling items and propose remedies.

The team finalized its detailed report on the 6th of July 2023 which was adopted by management in its meeting of the 11th of July 2023.

The committee recommended that the unreconciling items be written off the books of the Authority after seeking the Board of Director's and the Cabinet Secretary of the National Treasury's approval as guided by the Public Finance Management Act 2015, Regulations. (144) and (157).

The basis of the recommendation was as follows:

i. The unreconciling items could be traced to opening balances posted in the Authority's cashbooks on 30th June 2000.
ii. No reconciliations prior to the year 2000 could be traced as all accounting records were destroyed in a fire that gutted the Authority's premises, and
iii. The Authority's bankers (KCB), through a letter dated 27th June 2023, could not provide information requested for the period dating back 14 years.

The management shall present the Management Report based on the Resolutions of the Management meeting where the Committee's report was deliberated to the Finance Committee of the Board in the 1st Quarter of the FY 2023-2024 upon approval of the board almanac by the Cabinet Secretary - Ministry of Water, Sanitation & Irrigation and thereafter the Auditors shall be appraised of the outcome of the write off process which is projected to be finalized by December, 2023.

The Authority further informed the Committee that, the credit balance of Kes.5,000 was carried within the cash and cash equivalents, unfortunately offsetting the assets. These were bank

charges on a dormant account held by the Authority at National Bank of Kenya. The account has since been closed by the bank with the negative balance being written off.

Committee Observations;

i. The Committee noted that the audit query has been partially resolved by closure of the account with bank charges amounting to Kshs 5,000 and writing off the bank charges.
ii. Members observed that, the matter was left unresolved for far too long casting doubt on the effectiveness of the recommendations of the recently constituted committee.
iii. The Committee also observed that, there was a high likelihood of loss of funds given that the audit query was first raised in 2006 and remains open to date.

Committee Recommendation;

- The agency should provide a clear way forward to resolve the audit query through the parent ministry without breaching the law.

3. Undisclosed Receivables from Exchange Transactions

The statement of financial position reflects receivables from exchange transactions amounting to Kshs.674,393,971. However, as previously reported, the balance excludes water supply debts of Kshs.1,377,865,698 and pre-payments totaling to Kshs. 734,400 transferred to Water Service Boards (currently Water Works Development Agencies) under various agreements between the Authority and the Water Service Boards in the financial year 2003/2009. However, the agreements had not been formalized and the legal status of the debts remained uncertain.

Consequently, the accuracy and completeness of the reported receivables balance could not be confirmed.

Management Response

The Authority initially operated under the Legal Notice No.270 of 1968 which gave the mandate to operate 46 water schemes in 7 regions namely Central, Southern, Nairobi, Coast, Rift Valley, Western and Nyanza. The Authority had assets in terms of property, Plant and Equipment in all these regions. In October 2004 the Cabinet memo defined new roles for the Authority in line with the Water Act 2002 and subsequently Legal notice No. 101 was issued.

Under the Water Act 2002, seven Water Service Boards were established namely Rift Valley, Tana, Athi, Northern, Coast, Lake Victoria North & Lake Victoria South as at 30th June 2009 which took over the mandate of the seven regions and all properties, plants and equipment of the Authority.

The Authority initiated the process of transferring these assets that is; water debtors of Kshs.1,377,865,698 and prepayments of Kshs.734,400 as per the transfer plan provided by the

Water Act 2002 as supported by legal notice No. 101 of 2005 where a road map under table 3 had indicated the completion dates of the transfer as 30th June 2006. However, none of the Water Service Boards signed the transfer agreements.

Since the signing of the transfer agreement has taken longer than the prescribed period and the receivables were due to the Water Service Boards it was prudent to exclude them from the book of accounts and the Authority has since communicated to various Water Service Boards and the Principal Secretary, State Department of Water (communication to various Boards).

The Authority had sought the intervention of the Principal Secretary Ministry of Water, Sanitation & Irrigation vide a letter dated 13 June 2022.

The management shall continue liaising with the Parent Ministry to conclude on this matter.

Committee Observation;

The Committee noted that, the agency did not provide signed legal agreements to transfer the assets and liabilities to the seven water boards created by the Water Act of 2002.

Committee Recommendations;

The Committee directed that the agency submits to the Committee and to the office of the Auditor General the following documents;

i. Inventory encompassing all the plant, property & equipment that were to be transferred to then established regional Water Service Boards (now Water Works Development Agencies). (this includes both assets and liabilities).
ii. The unsigned transfer agreements between the Authority and the regional Water Service Boards (now Water Works Development Agencies).
iii. Identify the office responsible by law to oversee the signing of the agreement and transfer & handover of plant, property & equipment.

The documents should reach the Office of the Clerk by close of business on Wednesday, 4th October, 2023.

4. Long Outstanding Receivables from Non-Exchange Transactions

The statement of financial position reflected receivables from exchange included balances of Kshs.25,977,406 and Kshs.191,880,940 in respect to rent receivable and net business unit debtors respectively. Further, review of the ageing analyses of the receivables revealed that Kshs.13,009,000 and Kshs.130,958,927 respectively had remained outstanding for more than 90 days and therefore casting doubt on their recoverability.

Although the Management provided for bad and doubtful debts of Kshs.10,009,846 and Kshs.112,501,843 as specific provisions for doubtful debts with respect to rent receivables and

net business unit debtors respectively, the provisions may be in adequate as the amounts had been outstanding for long.

Management Response

The management had embarked on an aggressive debt collection drive where some debtors had yielded and paid as can be verified from the receipts. This had helped reduce the Business Unit Debtors from Kes. 191,269,840 to Kes. 144,581,903 as at 30 June 2023.

To further address rent and business unit debtors, the management appointed a Working Party to reconcile and analyze the Business Unit Debtors and propose mechanisms of addressing the long outstanding ones. The committee is due to submit its final report on 15 August 2023 for due consideration by management and the Board.

Committee Observations

i. The Committee noted the query was still outstanding due to uncollected debt.
ii. The Committee observed the audit query was recurring across the three years under examination and the Committee considered the query in the FY 20/21.
iii. The Committee observed that five debtors had paid the owed amount in full. An amount of kes. 144,581, 903 was still outstanding and the management was in the process of engaging a debt collector.
iv. The Committee was of the view that there was a need of amending the law, whereby an agency with outstanding receivables, during budgeting process the amount should be netted off the allocated amount.

Committee Resolution

The Committee directed the management to submit a schedule of the twenty (20) debtors and the corresponding amounts owed to the Committee.

Long Outstanding Temporary Imprest

The statement of financial position reflected receivables from non-exchange transactions, included Kshs 46,070,014 respect of net temporary imprest to staff. These amounts had remained outstanding contrary to Paragraph 2.2 of The National Treasury Circular No. AG.1/68 No 1.7(30) of 07 May, 2021. Further, Management did not disclose, the basis for computing the specific provision for bad and doubtful debts relating to temporary imprest to staff amounting to Kshs 18,302,950.

Management Response

The management confirmed that some of the imprest had since been surrendered, while recovery of long outstanding imprests was ongoing. The current imprest position was Kes.36,141,564.26.

The long outstanding imprest related to deceased staff, staff who were dismissed and left the Authority without clearing their outstanding imprest. The cases had been brought to the

attention of the Authority's Board. At the 3rd Finance Committee of the Board held on 5th January, 2022 in the FY 2021/2022 the following resolutions were made; engaging of a debt collector and begin process of writing off debt for deceased staff.

Committee Observations

i. The Committee noted the query was recurring and the recovery process was ongoing, thus the audit query remains outstanding.
ii. They Committee advised the management to follow due process and seek the write off from the National Treasury, of the outstanding imprests from deceased persons amounting to Kshs. 18,202,616.

Committee Recommendation

The Committee directed the management of NWHSA to submit a monthly record detailing the recoveries made on the outstanding temporary imprests up to the current audited financial year.

4. Undisclosed and Long Outstanding Loans

As previously reported, the Authority has not disclosed in its financial statements an outstanding balance of Kshs. 2,460,874,697 relating to various loans. In addition, although the loan repayments were due, the Authority had not made any repayment nor recognized in the books of account the interest due, together with the related arrears. According to Management, the loans were supposed to have been passed over to the Water Works Development Agencies which took over the facilities constructed using the loans, and which were supposed to generate the revenue to repay the loans. However, no formal documentation was provided to support the explanation.

Further, although Management explained that the Authority had no capacity to repay the loans without financial support from The National Treasury and that they had sought the intervention of the Ministry of Water on the matter, the loans continued to attract interest and penalties and the lenders might invoke the terms of lending to the disadvantage of the Authority, the Water Works Development Agencies or The National Treasury.

Management Response

The Authority had obtained three loans through various subsidiary agreements with the Government of Kenya for various projects as shown below:

Loan from IDA
Loan No : Loan agreement dated 28th August, 1969
Project: Second Mombasa and Coastal Water Supply, Engineering and Rehabilitation project.
Loan amount: USD 17,400,000
Loan Period: 15 Years, instalments payable semi annually

Repayment start date: 15/11/1997
Principal amount outstanding after handing over (30/06/2006): USD 6,960,000
Interest: Accrued interest at the rate of 10.05% p.a as per agreement

Loan from KfW (Kreditanstalt Fur Wiederaufbau)
Loan No.: Loan agreement dated 5th July, 2001
Project: Sabaki Wellfield Rehabilitation project
Loan amount: DM 3,000,000
Loan Period: 15 Years, instalments payable semi annually
Repayment start date: 31/12/2005
Principal amount outstanding after handing over (30/06/2006): DM 4,006,666.67
Interest: Accrued interest at the rate of 6.3% p.a as per agreement

Loan from AFD (Agence Francaise De Developement)
Loan No.: Loan agreement dated 7th May, 1990
Project: Improvement of the Operational Conditions of Drinking Water Transmission and Distribution System
Loan amount: EUROS 8,148,981.88
Loan Period: 15 Years, instalments payable semi annually
Repayment start date: 30/06/2005
Principal amount outstanding after handing over (30/06/2006): EUROS 6,292,046.93
Interest: Accrued interest at the rate of 5.1% p.a as per agreement

The loans were to be serviced as per indicated repayment plans at the indicated interest rates. The proceeds obtained from water sales were to be partly used in defraying the same. However, the water tariffs were to be adjusted to accommodate the repayment but this was never done.

On 18th August 2005, the then Minister for Water and Irrigation gazetted (Legal Notice No. 101 in the Kenya Gazette Supplement No. 84) the water (plan of transfer of water services) rules, 2005 to guide on the enactment of the Water Act 2002. The Notice required that the Authority finalizes the transfer of certain roles relating to sale of water to Water Service Boards in their jurisdictions. The deadline for such execution of transfer agreements was 30th June 2006. The transfer was to be in the form of signed transfer agreements. Though drafted, the transfer agreements were not signed. However, the Water Service Boards assumed the assets but did not take the ensuing liabilities.

Severally, the National Treasury has continued to claim from the Authority, and the Authority has written to the Ministry of Water seeking their intervention for both the signing of the transfer agreements and assistance on repayment of the loan due before handing over. Through several letters, with the latest dated 15th June 2012, the Authority sought the intervention of the Parent Ministry to help regularize the transfer of assets and associated liabilities. Instructively,

the matter is complicated by the fact that the Water Act 2002 has since been repealed by the Water Act of 2016.

The management submits that it has no capacity to service the loans as the sources of revenues where these loans were invested are now with the water works development agencies as shown hereunder:

a) **Coast Water Works Development Agencies**
   - Second Mombasa and Coastal Water Supply, Engineering and Rehabilitation project.
   - Sabaki Well field Rehabilitation project.

b) **Tana Water Works Development Agencies**
   - Improvement of the Operational Conditions of Drinking Water Transmission and Distribution System. (**Kandara and Kabuti Projects**)

c) **Lake Victoria South Water Works Development Agencies**
   - Improvement of the Operational Conditions of Drinking Water Transmission and Distribution System. (**Siaya Project**)
   - Improvement of the Operational Conditions of Drinking Water Transmission and Distribution System. (**Litein Project**)

Under the circumstances, the management proposes that the National Treasury, which was the guarantor of the Loans, takes up the debt which has accumulated interest to bring the outstanding amount as at 31 December 2022 at Kes.18.1 Billion. Alternatively, the specific Water Works Development Agencies adopt the loans and continue to service them from the proceeds of the projects that were financed using the loans.

Committee Observations

i. The Committee noted the query was still outstanding and related to the query on 'undisclosed receivables from exchange transactions' where assets and liabilities were to be transferred from NWHSA to the regional water bodies.
ii. The Committee observed that currently the loan was being serviced by the National Treasury and not the NWHSA and the Regional Water Service Boards.

Committee Recommendations

i. The Committee directed the management that all outstanding loans to be included in the inventory of assets and liabilities that are to be submitted to Parliament.
ii. The Committee further directed the National Treasury to come up with a concrete proposal on how to amend the Water Act, 2016 in order to introduce a component on loan repayment, and propose the most suitable collecting agent, preferably Kenya

Revenue Authority, and further advice the Committee on all the Acts that's were to be amended to realize the same.

MIN.NO.NA/PIC-CA&E/2023/0804: ADJOURNMENT

i. The Committee adjourned the meeting without concluding the agenda of the day on account of time.
ii. The Committee to resume examining of the pending queries at a later date to be advised.
iii. There being no other business to discuss, the meeting was adjourned at 2:00 p.m. the next meeting will be held on notice.

Signature .....

HON. DAVID PKOSING, CBS, M.P.
(CHAIRPERSON)

Date.....16/11/2023.....

MINUTES OF THE 51ST SITTING OF THE PUBLIC INVESTMENTS COMMITTEE ON COMMERCIAL AFFAIRS & ENERGY HELD ON THURSDAY, 18TH SEPTEMBER 2025 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS, AT 2.30 P.M.

PRESENT

1. Hon. David Pkosing, CBS, MP - **Chairperson**
2. Hon. Dr. Lilian Achieng Gogo, MP - **Vice Chairperson**
3. Hon. Dr. Adan Wehliye Keynan, CBS, MP
4. Hon. Beatrice Kobai Adagala, MP
5. Hon. Paul Kahindi Katana, MP
6. Hon. Charo Karonge Tungale, MP
7. Hon. Marianne Inlet Kitany, MP
8. Hon. John Machua Waithaka, MP
9. Hon. Peter Irungu Kihungi, MP
10. Hon. Ronald Kamwiko Karauri, MP
11. Hon. Yusuf Mohamed Farah, MP

APOLOGIES

1. Hon. James Opiyo Wandayi, MGH, MP
2. Hon. Mwaagi Kinajuri, EGH, MP
3. Hon. Sarah Paulata Korere, MP
4. Hon. Babu Owino Paul Ongili, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1.	Ms. Wanjira Mwaura	-	Principal Clerk Assistant I
2.	Mr. Ahmad Golliye	-	Clerk Assistant II
3.	Mr. Lenayo Moriatat	-	Clerk Assistant III
4.	Mr. Andrew Ripchumba	-	Clerk Assistant III
5.	Mr. Angela Musau	-	Legal Counsel
6.	Ms. Gladwell Amimo	-	Research Officer III
7.	Mr. Amos Tuoli	-	Hansard officer III
8.	Mr. Yeall Silit	-	Serjeant at Arms
9.	Ms. Mercy Kerubo	-	Audio Officer

OFFICE OF THE AUDITOR-GENERAL

1.	Mr. Fredrick Okoth	-	Deputy Director Audit
2.	Mr. Henry Manegene	-	Parliamentary Liaison Officer
3.	Ms. Debra Ngugi	-	Auditor

NATIONAL TREASURY

Ms. Cheryl Mujwa	-	Senior Investments Officer

INSPECTORATE OF STATE CORPORATION

1. Ms. Grace Mwaniki	-	Inspector
2. Ms. Noreen Nthiga	-	Inspector

GEOTHERMAL DEVELOPMENT COMPANY

1. Ms. Irene Onyambu	-	General Manager Human Resource
2. Mr. Stephen Bunkeni	-	General Manager Finance
3. Eng. Cornel Oliwoma	-	General Manager GRD
4. Ms. Martha Mburu	-	Ag. General Manager SHI
5. Mr. Reuben Ngeti	-	General Manager D&I

MIN. NO. NA/PIC-CA&E/2093/963: PRELIMINARIES

The meeting was called to order at 10:03 p.m. with a prayer said by the Chairperson. Thereafter, introductions were made.

MIN. NO. NA/PIC-CA&E/2022/200: COMMUNICATION FROM THE CHAIR

The Chairperson welcomed Members and the witnesses present to the meeting.

MIN.NO NA/PIC-CA&E/2022/207: CONFIRMATION OF MINUTES

This agenda item was deferred to the next meeting.

MIN.NO NA/PIC-CA&E/2022/208: EXAMINATION OF THE AUDITED ACCOUNTS OF GEOTHERMAL DEVELOPMENT COMPANY FOR THE FY 2017/18 TO FY 2020

The management of Geothermal Development Company appeared before the Committee led by General Manager, Human Resource Ms. Irene Onyambu and presented an apology from the Managing Director who had an abrupt engagement that hindered him from appearing before the Committee as scheduled. The Committee accepted the apology and postponed the meeting to a later date that will be communicated.

MIN.NO.NA/PIC-CA&E/2023/2025 ADJOURNMENT

There being no other business, the meeting was adjourned at 03.20 p.m. the next meeting will be held on notice.

Signature .....

HON. DAVID PROSING, CBS, M.P.
(CHAIRPERSON)

Date.....18/11/2027.....

MINUTES OF THE 57TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE ON COMMERCIAL AFFAIRS & ENERGY HELD ON TUESDAY, 31ST OCTOBER 2023 IN WALNUT 2 CONFERENCE HALL, PANARI HOTEL, MOMBASA RD AT 10:00 A.M.

PRESENT

1. Hon. David Pkosing, CBS, MP - **Chairperson**
2. Hon. Dr. Lilian Achieng Gogo, MP - **Vice Chairperson**
3. Hon. Sarah Paulata Korere, MP
4. Hon. Baba Owino Paul Ongili, MP
5. Hon. Beatrice Kahai Adagala, MP
6. Hon. Paul Kahindi Katana, MP
7. Hon. Marianne Jebet Kitany, MP
8. Hon. Peter Irungu Kihungi, MP
9. Hon. Ronald Kamwiko Karauri, MP
10. Hon. Yussuf Mohamed Farah, MP

APOLOGIES

1. Hon. James Opiyo Wandayi, MGH, MP
2. Hon. Dr. Adan Wehliye Keynan, CBS, MP
3. Hon. Mwangi Kiunjuri, EGH, MP
4. Hon. Charo Kazungu Tungule, MP
5. Hon. John Machua Waithaka, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1.	Ms. Wanjiru Mwaura	-	Principal Clerk Assistant I
2.	Mr. Ahmad Guliye	-	Clerk Assistant II
3.	Mr. Letayu Moriotat	-	Clerk Assistant III
4.	Mr. Andrew Kipchumba	-	Clerk Assistant III
5.	Ms. Angela Mutua	-	Legal Counsel
6.	Ms. Gladwel Antimo	-	Research Officer III
7.	Ms. Judith Kipruji	-	Fiscal Analyst
8.	Mr. Amos Tindi	-	Hansard officer III
9.	Ms. Mercy Kerubo	-	Audio Officer
10.	Mr. Yezil Jillo	-	Serjeant at Arms

OFFICE OF THE AUDITOR-GENERAL

1.	Mr. John M. Karigithi	-	Director
2.	Mr. Manasses Kuria	-	Deputy Director
3.	Mr. James Muriithi	-	Principal Auditor

6. Mr. Henry Manegese	-	Parliamentary Liaison Officer

THE NATIONAL TREASURY

1. Mr. Henry Murwiri	-	Deputy Director Investment

KENYA RAILWAYS CORPORATIPON

1. Mr. Philip Mainga	-	Managing Director
2. Ms. Jemima Mata	-	Finance Manager
3. Mr. Stanley Gitari	-	Ag. Company Secretary
4. Mr. Duncan Mwangi	-	Director Corporate Services

NATIONAL LAND COMMISSION

1. Ms. Kaluki Tache Arero	-	Chief Executive Officer
2. Mr. Benard Cheruiyoh	-	Director Finance and Corporate Planning

MIN. NO. NA/PIC-CA&E/2021/201: PRELIMINARIES

The meeting was called to order at 10:45 a.m. with a prayer said by the Chairperson and introductions were made thereafter.

MIN. NO. NA/PIC-CA&E/2021/208: COMMUNICATION FROM THE CHAIR

The Chairperson welcomed Members and the witnesses present to the meeting and outlined the agenda of the day which was to consider two pending audit queries where the Committee needed clarifications from the Kenya Railways Corporation and the National Land Commission to enable conclusion of the Committee's report.

MIN.NO.NA/PIC-CA&E/2021/207: CONFIRMATION OF MINUTES

This agenda item was deferred to the next meeting.

MIN.NO.NA/PIC-CA&E/2021/208: EXAMINATION OF THE AUDITED ACCOUNTS OF THE KENYA RAILWAYS CORPORATION FOR THE FINANCIAL YEAR 2018/19 TO 2020/21.

1. Irregular Land Compensation

The Capital Works-in-Progress balance of Ksh.873,297,818,370 includes a balance of Ksh. 12,000,000,000 being land compensation under SGR Phase 1. The supporting documents for compensations amounting to Ksh.1,048,889,807 to Project Affected Persons (PAPS), by way of beneficiary copies of National Identity Cards, Kenya Revenue Authority (KRA) Personal Identification Number (PIN) certificates and title deed surrenders from the National Land Commission were not provided.

Further, overpayments of Ksh.14,000,748 were made to Project Affected Persons (PAPS) who were paid Ksh15,732,800 instead of the entitlement Ksh.1,082,052. Although recovery of Ksh.5,698,770 has been subsequently made, a balance of Ksh.8,970,978 was outstanding as at 30 June, 2018.In the circumstances, the legality of the unsupported payments of Ksh.1,048,880,807 and full recovery of Ksh.8,970,978 on land compensation could not be ascertained.

Management response

The Corporation reported that the disbursement process to the Project Affected Persons (PAPS) began in December 2014. Kenya Railways (KR) received correspondence from the National Land Commission (NLC), which had compensations schedules with a list of PAPs, location and amount to be compensated for land and or developments. Based on the instructions of the NLC, the role of KR was limited to disbursement of funds, which was 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.

The controls deployed by KR in the disbursement process were to ensure that the PAPs names and amounts compensated for land and or developments acquired matched compensation schedules provided by NLC. KR also ensured that the wire transfers was to bank details provided by PAPs as per the filled forms. KR also worked closely with its main bankers KCB and other banks to ensure that compensation monies went to the rightful beneficiaries by confirming bank details name and account numbers in advance.

KR also followed a documented Standard Operating Procedure (SOP), which required NLC to approve all payments before KR released the same to PAPs bank accounts. This ensured that NLC had direct supervision over the disbursement in the land acquisition process.

Table 1: Details of outstanding erroneous payments

No.	Name	Amount not recovered	Date Paid	Comment
1	Salim Juma Mwakio	1,050,000	3rd Dec 2014	Letter from NLC dated 10th January 2018 to the PAP

2	Asinta Vanilla Peter	448,504	21st Jul 2015	Letter from NLC dated 15th January 2016 to the PAP, over payment was Kshs 448,504.50
3	Omar Malika and Deborah Karina Munachi	566,370	2nd Dec 2014	Letter from NLC dated 19th January 2016 to the PAP
4	Thomas Muayuki Musembi	620,710	9th Dec 2014	Letters to NLC for recovery, but not yet successful
5	Fidelis Muayuki Kyeva	75,600	9th Dec 2014	The matter was resolved. The payment was to one family
6	Silvester Bilika Malundo	770,058	13th Mar 2015	Letter dated 29th Sept 2015 to the PAP from NLC for recovery
7	Mwadzacha Mwachizoda Mwabila	541,800	20th Jan 2017	The issue was sorted as it was a family disputed as name was in original NLC list
8	Esuluta Springs Water Project	4,539,700	21st Jul 2015	Letter from NLC dated 20th May 2015 noted Esuluta as the beneficiary
	Total	8,103,108		

From the foregoing, Kenya Railways disbursed funds based on schedules received from NLC. The Commission instructed the Corporation to withhold funds for the said PAPs only after the funds were released. Efforts to recover through the bank were not successful by the time of funds hand over and disbursement function to NLC was done. The Corporation confirmed that it was yet to receive any refund from the erroneous payment made.

NLC Response

The National Land Commission (NLC) reported to the Committee that the initial compensation on compulsory acquisition of land for construction of SGR phase one was paid by the Corporation (KR) to the tune of **Kshs 10 billion** on behalf of the Commission. That the Amount queried by the Office of the Auditor General (OAG) formed part of the payment and therefore the payment

supporting documents were held by the Corporation (KR). Therefore, all queries related to the specific matters raised should be handled by the Kenya Railways Corporation.

Committee Observations:

i. The Committee noted that valuation, award, and acquisition of land was the mandate of NLC.

ii. The Committee observed that it was the responsibility of KRC to provide the funds for compensation once the necessary due diligence was completed by the NLC.

iii. The Committee observed that NLC delegated its authority to pay project affected persons (PAPs) to Kenya Railways (KR) without seeking an advisory opinion from the Attorney General's office whether it could delegate such an important role to an acquiring entity.

iv. The Committee observed that a compensation amount totaling to Kes 1,043,489,887 couldn't be accounted for with regards to provision of supporting documents.

Committee Recommendations:

i. The Committee directed that the NLC provide a master list with supporting documents of all the PAPs that received Kshs. 12 billion to the office of the Clerk by the 31st October 2023.

ii. The Committee further directed that upon receipt of the documents in (i) above, the office of the Clerk submits the above documents to KRC & OAG for reconciliation. The reconciled report to be submitted to the Committee by 15th November 2023.

2. Unsupported Balances – Other Receivables

Further, trade and other receivables balance of Kshs 5,808,803,053 constitutes an amount of Kes 10,000,000 and Kshs 194,865,459 owed by National Land Commission and Rift Valley Transition Revenue respectively, which had not been supported. Similarly, trade and other receivables balance includes an amount of Kshs 6,196,789,646 that has not been supported with a schedule to explain how the balances have been computed.

Item	Amount Kshs
Prepayment	2,509,551,044
Tax Receivables	3,396,208,609
Staff Debtors	53,980.04
Other Receivables	284,721,290
Total	**6,196,789,646**

Management response

The Management confirmed to the Committee that Kenya Railways deposited Kshs. 10,000,000.00 (Kenya Shillings Ten Million) on 9th February 2018 being a request for facilitation for acquisition of Standard Gauge Railway Line, Nairobi-Naivasha (Phase 2A). The National Lands Commission shared supporting documents for the Kshs. 10 Million for administration in acquisition of SGR Phase 2A Land. Therefore, the subject amount has fully been accounted for.

Committee Observations

i. The Committee observed that the audit query was partially resolved by NLC providing supporting documents for the Kshs 10,000,000 used for administration in the acquisition of SGR phase 2A land.

ii. The Committee noted that KRC didn't provide a response to the remaining part of the audit query amounting to Kshs 196,843,438 owed to KRC by Rift Valley Transition Revenue.

iii. The Committee was informed that the amount arose due to the termination of the RVR contract and the matter was at the Arbitration Court where the Attorney General was representing the interest of the Kenyan Government.

Committee Recommendation

The Committee directed Kenya Railways to submit their response to the OAG and the later submits their opinion to the Committee for the matter to be resolved.

MIN.NO.NA/PIC-CA&E/2022/209: ADJOURNMENT

There being no other business to discuss, the meeting was adjourned at 18.05 p.m. the next meeting will be held on notice.

Signature .....

HON. DAVID PKOSING, CBS, M.P.
(CHAIRPERSON)

Date.....16/11/2022.....

MINUTES OF THE 1ST SITTING OF THE PUBLIC INVESTMENTS COMMITTEE ON COMMERCIAL AFFAIRS & ENERGY HELD ON TUESDAY, 6TH FEBRUARY 2024 IN KENYA MARITIME HEADQUARTERS BUILDING, MOMBASA AT 10:00 A.M.

PRESENT

1. Hon. David Pkosing, CBS, MP - **Chairperson**
2. Hon. Dr. Adan Wehliye Keynan, CBS, MP
3. Hon. Mwangi Kiunjuri, EGH, MP
4. Hon. Dr. Beatrice Kahai Adagala, MP
5. Hon. Paul Kahindi Katana, MP
6. Hon. Charo Kazungu Tungale, MP
7. Hon. John Machoe Waithaka, MP
8. Hon. Marianne Jebet Kitany, MP
9. Hon. Peter Irungu Kihungi, MP
10. Hon. Yusuf Mohamed Farah, MP

APOLOGIES

1. Hon. Dr. Lilian Achieng Gogo, MP - **Vice Chairperson**
2. Hon. James Opiyo Wandayi, EGH, MP
3. Hon. Sarah Paulata Korere, MP
4. Hon. Dr. Babu Owino Paul Ongili, MP
5. Hon. Ronald Kamwilio Karauri, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Ahmad Guliye	-	Clerk Assistant II
2. Mr. Andrew Kipchumba	-	Clerk Assistant III
3. Ms. Angela Muraa	-	Legal Counsel II
4. Ms. Gladwell Amimo	-	Research Officer III
5. Mr. Mo'ini Mwangi	-	Media Relations officer III
6. Mr. Yessi Jillo	-	Serjeant at Arms
7. Ms. Mercyln Kerubo	-	Audio Officer

OFFICE OF THE AUDITOR-GENERAL

1. Mr. Samuel Mburu	-	Deputy Director Audit
2. Mr. Henry Masogese	-	Parliamentary Liaison Officer

THE NATIONAL TREASURY

Ms. Cherly Majova	-	Assistant Director Investments

INSPECTORATE OF STATE CORPORATION

Mr. John Karanja	-	Officer

KENYA MARITIME AUTHORITY

1. Eng. Martin D. Mungs	-	Director General
2. Qs. Peter N'jogu	-	Quantity Surveyor (Public Works)
3. Mr. Julius Korch	-	Director
4. Ms. Jessica Mbae	-	Corporation Secretary
5. Mr. Kiptanui Matna	-	Director Marine Sector
6. Mr. Alex Mbega	-	Director Internal Audit
7. Mr. Peter Mbega	-	Director Marine Sector
8. Mr. Edwin Were	-	Safety-ADKR
9. Mr. Alex Macharia	-	Consultant
10. Mr. Henry Mwagiri	-	Assistant Director HR and Administration
11. Ms. Michelle Wangu	-	Corporate Communication
12. Ms. Alex Mungu	-	Assistant Director
13. Mr. Jandesh Mulalya	-	Planning Officer
14. Ms. Bevaline Lunda	-	Assistant Director SCM
15. Ms. Lydia Muhambe	-	Secretary, office of the Director General

MIN. NO. NA/PIC-CA&E/2024/001: PRELIMINARIES

The meeting was called to order at 10.30 a.m. with a prayer said by the Chairperson. Thereafter, introductions were made.

MIN. NO. NA/PIC-CA&E/2024/002: COMMUNICATION FROM THE CHAIR

The Chairperson welcomed the Members and thanked the management of Kenya Maritime Authority (KMA) for the warm welcome to their headquarters. He informed the Members that the meeting was a site visit to the KMA headquarters building that was necessitated by the queries raised by the Office of the Auditor General. He further emphasized that the visit would enable the Members get the true picture of the issues raised in the Auditor General's report.

MIN.NO.NA/PIC-CA&E/2024/003: CONFIRMATION OF MINUTES

There were no minutes to be confirmed as the meeting was the inaugural meeting of the Third Session.

MIN.NO.NA/PIC-CA&E/2024/004: EXAMINATION OF THE AUDITED ACCOUNTS OF KENYA MARITIME AUTHORITY FOR THE FY 2018/19 TO FY 2020/21 (SITE VISIT TO KENYA

MARITIME HEADQUARTERS BUILDING)

The management of KMA led by the Director General Eng. Martin Munga appeared before the Committee to provide answers to audit queries raised regarding the construction of the KMA headquarters and take the Members to inspect the building.

Presentation by the Office Auditor General

The Auditor General took the Members through the audit queries raised regarding the construction of the headquarters and Listed as follows:

1. Advance payment for the construction headquarters
2. Capital works in progress
   - Payment of general preliminaries
   - Payment of rent
3. Construction of headquarters subcontracts
4. Electrical works sub-contract

Management Response

The management after taking an oath informed the Committee that the initial contract for the construction of the building was ksh. 1,728,170,400.00 but during the construction process there were variations and the final payment was ksh. 2,258,467,042.92, thus an increase of **ksh. 305,291,324.09**

The summary of the variation orders was provided in a document ref. KMA RFP/001/OFFICE tabulated with a column of additions and omissions (areas where the management made a saving from the contract).

Omissions

1. Preliminaries	- 10,682,029.09
2. Builders works	- 60,505,150.16
3. Mechanical works	- 10,202,853.27
4. Murals and artworks	- 11,969,030.36
5. Signage and Branding installation work	- 5,594,213.02
6. KPLC main power connection	- 3,340,246.03
7. Main Contractor profit and attendance	- 367,804.01
8. Adjustment to omitted provisional sums	- 35,000,000.00

TOTAL KSH. = 148,101,933.73

Additions

1. External works	- 1,548,739.89
2. Protective backfilling to retain wall	- 6,052,385.63

5. Approved site instructions - 114,255,809.80
6. Electrical works - 47,674,100.02
7. Clerk of Works additional expenses - 11,043,300.00
8. Contractual claims - 481,100,297.04
9. VAT adjustment - 7,873,684.91
10. Adjustment to underpayment in valuation no.8 - 3,301,556.28

TOTAL KSH = 835,183,600.07

The management further gave a breakdown of the *approved site instructions* varied which could be observed during the inspection of the building and listed the items as follows;

i. Relocation of power lines
ii. Protection of Reef apartments
iii. Piling works
iv. Soil stabilization
v. Sewerage treatment equipment
vi. Pile testing
vii. Borehole drilling
viii. Communication mast
ix. Sewage treatment
x. Waterproofing
xi. Centribon

Committee Observation

The Committee pointed out the areas where they would focus during the inspection of the building as follows;

i. The electrical works within the headquarters building
ii. The reef apartments bordering the headquarters building
iii. The items that were varied under the *approved site instructions* as listed above.

Committee Findings

I. The Committee established the quality of works in the building was done to standard, the building was complete and currently partly occupied by the Authority.
II. The Committee noted the building was fitted with electrical works and were properly functioning.
III. The Committee observed that the Reef apartments was adjacent to KMA building, and for safety of the tenants during the deep excavation of the foundation, it was justified to evacuate them and pay for the rent.
IV. The Members during the inspection of the building found that the items listed under the *approved site instructions* were all part of the building, however they noted some items could not be observed as they were part of the foundation.

MIN.NO.NA/PIC-CA&E/2024/065: ADJOURNMENT

There being no other business, the meeting was adjourned at 5.10 p.m. The next meeting will be held on Wednesday, 7th February 2024 at 10.00 a.m.

Signature .....

HON. DAVID PKOSING, CBS, M.P.
(CHAIRPERSON)

Date.....19/2/2024.....

MINUTES OF THE 11TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE ON COMMERCIAL AFFAIRS & ENERGY HELD ON TUESDAY, 19TH MARCH 2024 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10:00 A.M.

PRESENT

1. Hon. David Pkosing, CBS, MP - **Chairperson**
2. Hon. Dr. Lilian Achieng Gogo, MP - **Vice Chairperson**
3. Hon. James Opiyo Wandayi, EGH, MP
4. Hon. Dr. Adan Wehliye Keynan, CBS, MP
5. Hon. Mwangi Kiunjuri, EGH, MP
6. Hon. Dr. Babu Owino Paul Ongili, MP
7. Hon. Charo Kazungu Tsungale, MP
8. Hon. Peter Irungu Kihungi, MP
9. Hon. Ronald Kamwiko Karauri, MP
10. Hon. Yusuf Mohamed Farah, MP

APOLOGIES

1. Hon. Sarah Paulata Korere, MP
2. Hon. Dr. Beatrice Nabai Adagala, MP
3. Hon. Paul Kahindi Katana, MP
4. Hon. John Muchua Waithaka, MP
5. Hon. Marianne Jebet Kitany, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Ms. Wanjiru Mwaura	-	Principal Clerk Assistant II
2. Mr. Ahmad Guliye	-	Clerk Assistant I
3. Mr. Andrew Kipchumba	-	Clerk Assistant III
4. Ms. Angela Musau	-	Legal Counsel II
5. Ms. Gladwell Amimo	-	Research Officer III
6. Mr. Brian Gikunda Njeru	-	Fiscal Analyst III
7. Ms. Debora Mepasi	-	Media Relations Officer
8. Ms. Roslyan Ndegi	-	Serjeant at Arms
9. Mr. Amos Tiadi	-	Hansard Reporter III
10. Ms. Lillian Chevutich	-	Public Communications Officer
11. Ms. Kerubo Mercylo	-	Audio Officer
12. Ms. Alice Gichaba	-	Intern

OFFICE OF THE AUDITOR-GENERAL

1. Mr. Fredrick Okoth	-	Deputy Director Audit
2. Mr. Simon N. Nabutu	-	Director Audit
3. Ms. Debra Ngagi	-	Principal Auditor
4. Mr. Henry Maregesi	-	Parliamentary Liaison Officer

THE NATIONAL TREASURY

1. Mr. Bedrick Koome - Officer
2. Mr. Stephen Musyoki - Officer

INSPECTORATE OF STATE CORPORATIONS

Ms. Grace Mwendo - Inspector

GEOTHERMAL DEVELOPMENT COMPANY

1. Mr. Paul Ngagi - Chief Executive Officer
2. Mr. Stephen Ikuienei - General Manager Finance
3. Mr. Cornel Oberon - General Manager
4. Mr. Reuben Ngesi - Manager Drilling & Infrastructure
5. Mr. Godfrey Sikosana - Manager Internal Audit
6. Ms. Agnes Mutheng'i - Ag. Manager Legal
7. Ms. Jacklyne Wakhanga - Ag. Manager Finance
8. Mr. Patrick Rapio - Ag. Manager MSCM

MIN. NO. NA/PIC-CA&E/2084/051: PRELIMINARIES

The meeting was called to order at 10:10am with a prayer said by the Chairperson. Thereafter, introductions were made.

MIN. NO. NA/PIC-CA&E/2084/052: COMMUNICATION FROM THE CHAIR

I. The Chairperson welcomed the Members and stakeholders present to the meeting. He informed the Committee that four financial years were under review and most queries were cross cutting in all the financial years.

II. The Chairperson further informed the Members that the Committee's maiden report was listed in the Order Paper for the day and requested the Members to be present in the House to contribute to the report.

MIN.NO.NA/PIC-CA&E/2084/053: CONFIRMATION OF MINUTES

This agenda item was deferred to the next meeting.

MIN.NO.NA/PIC-CA&E/2084/054: MEETING WITH THE CHIEF EXECUTIVE OFFICER, GEOTHERMAL DEVELOPMENT COMPANY TO EXAMINE THE AUDITED ACCOUNTS OF THE COMPANY FOR THE FY 2017/2018 TO FY 2020/2021.

The management of Geothermal Development Company (GDC), led by the Chief Executive Officer Mr. Paul K Ngugi appeared before the Committee to adduce evidence on the audit queries that had been raised by the Auditor General for the FY 2017/18 to FY 2020/21.

FY 2017/18

Corporation Tax and related Penalties

The statement of financial position reflected a current tax liability of Ksh.5,200,276,000 (2017: 2,405,858,000), for the years ended 30 June 2015, 2016 and 2017 and quarterly instalments due as at 30 June 2018. Further, the financial statements reflected Other Payables amounting to Ksh.1,832,600,000, as detailed in Note 15. Included in this amount is Ksh.1,134,636,000 relating to interest and penalties (2017: 710,097,000), arising from non-payment of income taxes.

Management Response

The Government of Kenya vested fifty-nine (59) wells in Olkaria drilled using Government funding to GDC. The vested wells were to generate revenues for further development of geothermal resources in the country. The National Treasury and Economic Planning reviewed the matter and provided guidance on the treatment of steam charges as appropriation in aid. Based on the National Treasury's guidance, there had been engagements between parties to deliberate on the matter. KRA had further requested for additional information from the company which was being compiled for submission. The Company was awaiting KRA's conclusion and position on the matter.

Committee Observation

I. The Committee noted that the management of GDC had made efforts to resolve the query and had obtained an advisory from the Cabinet Secretary, the National Treasury informing KRA that the money generated from the 59 wells should be treated as appropriation in aid (AIA) and not revenue thus need not to be subjected to taxation.

II. The Committee noted that the intention of the 59 wells given to GDC was to generate revenue that was to be reinvested back in the company's development of renewable energy, however in the book of accounts GDC treated the amount as revenue hence being categorized as taxable income.

III. The Members observed the letter from National Treasury was for guidance and needed concurrence from the Kenya Revenue Authority and the relevant ministries for the taxes and related penalties owed by GDC to be waived.

IV. The Members proposed that there was need to convene a round-table meeting with the relevant stakeholders to deliberate on the matter with a view to resolving the tax matter and granting the Company the opportunity to develop the critical renewable green energy in the country.

Committee Recommendations

I. The Committee resolved to convene a two-day roundtable meeting within Nairobi comprising the following stakeholders to deliberate on GDC's corporate tax and related penalties;
   i. The Cabinet Secretary, the National Treasury & Economic Planning
   ii. The Cabinet Secretary, Ministry of Energy & Petroleum
   iii. The Kenya Revenue authority (KRA)
   iv. The Kenya Electricity Generating Company (KenGEN)
   v. The Kenya Power & Lighting Company
   vi. Directorate of Investments & Portfolio Management in the National Treasury
   vii. Department of Fiscal & Budget in the National Treasury
   viii. The Public Sector Accounting Standards Board
   ix. The Inspectorate of State Corporations
II. The Committee directed the management of GDC to submit the contract that was entered between GDC and KENGEN to Parliament by close of business on 12th March, 2024. Further the Legal Department of Parliament was tasked to analyze the contract.
III. The Office of the Auditor General were directed to submit the total amount that was generated and a schedule of projects where the money generated from the 30 wells were utilized.
IV. The Committee resolved that the roundtable meetings be held on 27th and 28th March 2024.

MIN.NO.NA/PIC-CA&E/2024/035: ANY OTHER BUSINESS (AOB)

I. The Committee to plan for an inspection visit to the Geothermal Development Company fields in order to acquaint itself with the operations and processes in the production of green energy, as well as verify the projects developed under the revenue generated by the 30 wells.
II. The Committee resolved to utilize the first week of the two-week upcoming short recess from 22nd March to 8th April, 2024 to continue with business and break the second week of the recess.

MIN.NO.NA/PIC-CA&E/2024/036: ADJOURNMENT

There being no other business to discuss, the meeting was adjourned at 12:01pm. The next meeting will be held on notice.

Signature .....

HON. DAVID PKOSING, CBS, M.P.
(CHAIRPERSON)

Date.....19/3/2024

MINUTES OF THE 14TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE ON COMMERCIAL AFFAIRS & ENERGY HELD ON TUESDAY, 16TH APRIL 2024 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10:00 A.M.

PRESENT

1. Hon. David Pkosing, CBS, MP - **Chairperson**
2. Hon. Dr. Adan Wehliye Keynan, CBS. MP
3. Hon. Mwangi Kiunjuri, EGH, MP
4. Hon. Sarah Paulata Korere, MP
5. Hon. Dr. Babu Owino Paul Ongili, MP
6. Hon. Dr. Beatrice Kahai Adagala, MP
7. Hon. Paul Kahindi Katana, MP
8. Hon. Charo Karungo Tungule, MP
9. Hon. John Machua Waithaka, MP
10. Hon. Marianne Jebet Kitany, MP
11. Hon. Peter Irungu Kihungi, MP
12. Hon. Yusuf Mohamed Farah, MP

APOLOGIES

1. Hon. Dr. Lilian Achieng Gogo, MP - Vice Chairperson
2. Hon. James Opiyo Wandayi, EGH, MP
3. Hon. Ronald Kamwiko Karauri, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Ms. Wanjiru Mwaura	-	Principal Clerk Assistant II
2. Mr. Ahmad Guliye	-	Clerk Assistant I
3. Mr. Andrew Ripchumba	-	Clerk Assistant III
4. Ms. Angela Muasa	-	Legal Counsel II
5. Ms. Gladwell Anzimo	-	Research Officer III
6. Ms. Debora Mepusi	-	Media Relations Officer
7. Mr. Amos Tiroli	-	Hansard Reporter III
8. Ms. Lillian Chevotich	-	Public Communications Officer
9. Ms. Kerubo Mercyln	-	Audio Officer
10. Ms. Alice Gicheha	-	Intern

OFFICE OF THE AUDITOR-GENERAL

1. Mr. Fredrick Obaoh	-	Deputy Director Audit
2. Mr. Simon N. Naibosu	-	Director Audit
3. Mr. Henry Musegere	-	Parliamentary Liaison Officer

THE NATIONAL TREASURY

1. Ms. Cherly Majiwa	-	Assistant Director Investments

INSPECTORATE OF STATE CORPORATIONS

Mr. Gerald M'Mutigi - Inspector

GEOTHERMAL DEVELOPMENT COMPANY

1. Mr. Paul Ngugi - Chief Executive Officer
2. Mr. Stephen Bauereti - General Manager Finance
3. Mr. Cornel Oduma - General Manager
4. Ms. Agnes Muthengi - Ag. Manager Legal
5. Ms. Jacklyne Wakhungu - Ag. Manager Finance
6. Ms. Irene Onyambu - General Manager Human Resource Administration

MIN. NO. NA/PIC-CA&E/2021/068: PRELIMINARIES

The meeting was called to order at 10:11am with a prayer said by the Chairperson. Thereafter, introductions were made.

MIN. NO. NA/PIC-CA&E/2021/069: COMMUNICATION FROM THE CHAIR

The Chairperson welcomed the Members and stakeholders present to the meeting. He informed that this was a follow up meeting with the Agency, further, he stated the planned roundtable with relevant stakeholders regarding *outstanding tax arrears* was on course.

MIN.NO.NA/PIC-CA&E/2021/070: CONFIRMATION OF MINUTES

This agenda item was deferred to the next meeting.

MIN.NO.NA/PIC-CA&E/2021/071: MEETING WITH THE CHIEF EXECUTIVE OFFICER, GEOTHERMAL DEVELOPMENT COMPANY TO EXAMINE THE AUDITED ACCOUNTS FOR THE FY 2017/2018 TO FY 2020/2021.

The management of Geothermal Development Company (GDC), led by the Chief Executive Officer Mr. Paul K. Ngugi appeared before the Committee to adduce evidence on the audit queries that had been raised by the Auditor General for the FY 2017/18 to FY 2020/21.

FY 2018/19

1.Unproductive and Abandoned Wells

The statements of profit or loss and other comprehensive income reflected Other Expenses amounting to Kshs 1,705,973,000 which constituted an amount of Kshs.917,002,000 (2018: Nil) which related to the cost of unproductive and abandoned wells, written off during the year under

review. According to Management in past responses, success rates for geothermal wells increase as more wells are drilled to provide surface information.

Management Response

The cost of unproductive and abandoned wells for the year comprised of the cost of well 28A of Ksh. 116,800,127 & Well 22B of Ksh. 400,383,679 respectively that turned out to have low permeability and low temperature. The costs related to labor costs, material costs and other overhead costs incurred during drilling. The drilling of the above wells was done by GDC staff. In effort to minimize drilling challenges and improve success rate, the company had entrenched collaborative efforts of GDC experts and external consultants. This had led to improvement in success rates.

Committee Observation

I. The Committee noted the management had developed a policy to guide on the unproductive and abandoned wells, however the treatment of funds used had not been captured.
II. The Committee sought to know the duration it takes to recoup the initial investment for developing geothermal wells, and the management informed that on average it takes between 10-15years to recover the investment.
III. The Committee raised concern that there was need for GDC to engage requisite expertise during the exploration phase to increase the probability of striking productive wells and reduce the risk of incurring heavy losses.
IV. The Committee noted that there was need to undertake a site visit to the geothermal fields in order to acquaint themselves with the nature of geothermal exploration and development.
V. The Committee advised the management to consider insuring the wells during exploration in order to minimize risks in case of unproductive wells.

Committee Recommendations

I. The Committee resolved to carry out an inspection visit during the May 2024, long recess to the Geothermal Development Company fields in order to acquaint itself with the exploration, operations and processes in the production of steam wells.
II. The Committee directed the management of GDC to provide evidence on the engagement of experts during the pre-feasibility study and exploration stage by close of business 17/04/2024.

2.Cost of Non-Productive Time (NPT)

The financial statement reflected other operating expenses of Kshs.1,703,973,000 which included an amount of Kshs.116,268,000 (2018: Kshs.40,087,000) being the cost of Non-Productive Time (NPT) during drilling activities, which was written off during the year under review. The Management has in the past committed to develop a formal policy on what should constitute

acceptable levels of NPT based on international best practices. However, by the time of concluding this audit, no such policy had been developed. Costs of NPT are voidable costs which increases the cost of drilling wells, and the costs ought not to have been incurred by the Company.

Management Response

Non-productive time was considered as time spent by the drilling crew outside the planned drilling time. This could be because of factors that are either avoidable or non-avoidable. These factors could lead to stoppages in drilling hence the down time. In line with the company policy and the Financial Reporting Standards, the labor (staff) costs incurred during drilling because of down time do not constitute the cost of the well and are thus expensed through the income statement. The company had put in place a policy to ensure that the non-productive time was effectively monitored, managed, and recognized.

Committee Observations

I. The Committee observed the management of GDC had come up with a policy on non-productive time however mitigation for occurrence in the future had not been expounded, and management was advised to include parameters to guide on non-productive time.
II. The management of GDC clarified the metrics of non-productive time costs was an internal mechanism that was developed to assist in gauging the productivity within the agency.
III. The management informed the committee that the operations around the drilling rigs were complex and it involved approximately 100 staff to operate one rig, therefore incase of downtime costs escalated rapidly.
IV. The Committee stressed there was need to mitigate the avoidable and unavoidable circumstances in order to reduce the costs associated.
V. The Committee noted that such costs had led to rise in electricity prices in the country and there was need to have a discussion that would be centered on steam generation and passing its benefits to the consumers

Committee Recommendations

I. The Committee directed the office of the Auditor General to keep the query in view by capturing it in the subsequent audit cycles.
II. The Committee directed the management of GDC to develop parameters and include in the company's human resource policy, these parameters to guide on payment with the corresponding performance of the rig.

2. Wasteful expenses

The statement of profit or loss and other comprehensive income reflects other operating expenses of Kshs.1,703,972,000 which constituted an amount of Kshs.830,888,000 (USD 9,838,177.88) which further included interest on unpaid invoices of Kshs.82,041,000 and arbitration costs of

Kshs.93,446,000, on account of a GDC vs Cluff Geothermal case. Further, as disclosed in Note 6 to the financial statements, the legal expenses balance of Kshs.118,000,000 includes an amount of Kshs.104,554,000 incurred on account of the above case, which brings the total expenses on account of the case to Kshs. 211,081,000. The case arose from alleged breach of contract by the Company, for non-payment of USD 20,177,945 relating to provision of top holing services by the contractor at Menengai field.

Management Response

There was need to drill wells at a faster rate to meet the steam/power development targets outlined in the ministry of energy 5000MW+ development plan.

GDC entered into contract with Cluff Geothermal, and other consortium members made up of, Cluff Geothermal, Great Rift Drilling, and Ardan Risk & Support Services (K) Limited for provision of Top Holing Drilling Services for Twenty (20) Geothermal Wells at Menengai Geothermal Project on 15th February 2013.

A total of fourteen (14) wells were top holed, the Contractor submitted invoices amounting to USD 24,551,214.00 for drilling. GDC paid the contractor in full for the said amount which constituted cost of all works done by the contractor. Due to financial challenges, the contractor suspended operations and de-mobilized the drilling crew. The contractor started charging stand by charges even when his personnel demobilized from site.

Cluff proceeded to declare a dispute and filed a notice of arbitration at the London Court of International Arbitration (LCIA) on 13th April 2017 seeking an amount of Ksh 2.7 billion (US Dollars 26,084,309.03) in unpaid invoices. The Office of the Attorney General and Department of Justice took over the conduct of the matter. The Attorney General and appointed a co-counsel and a forensic accounting and technical drilling expert.

The matter was heard at the London Court of International Arbitration rendered its award as follows. The Respondent (GDC) will pay the Claimants (Cluff) the sum of Ksh 232 million (US $2,250,000) in respect to invoices. The Respondent (GDC) will pay to the Claimants (Cluff) the sum of Ksh 81 million (US $788,497.52) in respect of interest and continuing thereafter at a rate of Ksh 48,500 (US $463.28) per day until such date as the Respondent pays.

The Solicitor General wrote a letter to the Head of Public Service informing him of the outcome. The matter was successfully arbitrated, and management had put in place a policy on management of its contracts

Committee Observations

1. The Committee observed there was a likelihood that the GDC did not make any saving from subcontracting the drilling of the top hole of the wells.

II. The Committee sought to know the tendering process that arrived at securing the services of Cluff Geothermal Consortium and further the details of ownership and their physical addresses and that of local partners.

III. The Committee was concerned as to why GDC agreed to enter into arbitration with Cluff Geothermal Consortium and paid the arbitrated amount in full yet the consortium had not completed the work they were contracted to do, the management of GDC informed the reason for decommissioning was on the agency not meeting their part of the contract. Moreover, the Committee sought to know the details of the contract entered between the two parties.

IV. The Committee inquired to know who the Managing Director was at the time and all the signatories of the contract.

V. The Committee was informed during the arbitration in London, the GDC was represented by the Office of the Attorney General and further two experts were appointed to assist in the arbitration.

Committee Recommendations

I. The Committee directed the Attorney General to be invited to appear before it, in order to shed more light on the arbitration process and further give his opinion on whether in an arbitration process the advice of the Attorney General was final.

II. The management of GDC were directed to provide information of how the two experts were procured and the amount of money they earned from the arbitration process, further the management of GDC to provide a justification why the experts were needed.

III. The management to provide the details of the Managing Director at the time the agreement was signed between the two parties and the signatories of the contract that was entered between the agency and the Cluff Geothermal Consortium by close of business 17/04/2024.

IV. The management of GDC to provide the documents of the tendering process that resulted in the engagement of Cluff Geothermal Consortium.

V. The management to provide the names of the Directors and the address of the Cluff Geothermal Company. Further to provide the CR12 and the address of the two local companies (Great Rift Drilling and Ardan Risk and Support Company) by close of business 17/04/2024.

FY 2019/20

4. Offsetting of Assets and Liabilities

The statement of financial position reflected cash and cash equivalents amounting to Kshs 24,681,000. *However*, according to the Note, a credit balance of Kshs 3,000 in one of the accounts held with Co-operative Bank of Kenya was offset against the debit balances. This was contrary to Paragraph 32 of the International Accounting Standards (IAS) 1 – Presentation of Financial Statements which prohibits offsetting of assets and liabilities.

Management Response

The account (dollar) was opened in line with the requirements of the development partner for Bogoria Silali project. The negative balance arose from bank charges on the Geothermal Risk Mitigation Fund project account as it awaited disbursement of funds. The error was corrected in financial year 2020/2021.

Committee Observations

The Committee observed the error had been corrected in the financial year 2020/21 and this was confirmed by the office of the Auditor General.

Committee Recommendations

The Committee resolved to clear the management of the audit query.

2.Late Submission of Financial Statements

The PFM Act requires these financial statements to be submitted to the Auditor- General for audit, not later than three months after the end of each financial year, which should be by 30 September, 2020 in respect of the year under review. However, the Management of Geothermal Development Company Limited did not submit signed financial statements of the Company to the Auditor-General on time as required by law. The financial statements were forwarded to the directors for signature by the appointed auditors, Deloitte & Touche, on 26 August, 2020 but were signed on 4th February, 2022 which was over 18 Months later.

Management Response

The audit of the financial statements commenced on 11th September 2020 by M/s Deloitte and Touche (on behalf of the Auditor General) after submission on 30th September 2020. The conclusion of the audit took longer than expected following the Board resolution on 14th January 2021 to revise the treatment of steam charge payments. The audit was concluded despite having taken longer than anticipated due to the changes in treatment of steam charges.

Committee Observations

The Committee was informed the delay was brought about due to auditing being done by M/s Deloitte and Touche and challenges brought about by the treatment of steam charges in the financial statements. However the financial statements were provided to the auditor and the auditing process was completed.

Committee Recommendations

The committee resolved to clear the management of the audit query.

MIN.NO.NA/PIC-CA&E/2014/070: AOB

I. The Committee directed the management of GDC to liaise with the representatives of the National Treasury and Inspectorate of state Corporation to discuss whether to write off or expense the cost of non-productive time.

II. The Committee Directed the National Treasury representative to convene a tripartite meeting with the management of GDC and the Inspectorate of State Corporation in order to reach a consensus on the accounting language.

III. A draft report on the deliberations agreed to be submitted to Parliament by 01/06/2018.

MIN.NO.NA/PIC-CAAE/#084/07.0: ADJOURNMENT

There being no other business to discuss, the meeting was adjourned at 1:40pm. The next meeting will be held on notice.

Signature .....

HON. DAVID PKOSING, CBS, M.P.
(CHAIRPERSON)

Date..... 19/6/18

MINUTES OF THE 15TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE ON COMMERCIAL AFFAIRS & ENERGY HELD ON WEDNESDAY, 17TH APRIL 2024 IN COMMITTEE ROOM, 4TH FLOOR CONTINENTAL HOUSE AT 10:00 A.M.

PRESENT

1. Hon. David Pkosing, CBS, MP - **Chairperson**
2. Hon. Mwangi Kiunjuri, EGH, MP
3. Hon. Sarah Paulata Korere, MP
4. Hon. Dr. Babu Owino Paul Ongili, MP
5. Hon. Paul Kahindi Katana, MP
6. Hon. Charo Karonge Tungale, MP
7. Hon. John Machua Waithaka, MP
8. Hon. Peter Irungu Kihangi, MP
9. Hon. Ronald Rutswiko Kururi, MP

APOLOGIES

1. Hon. Dr. Lilian Achieng Gogo, MP - Vice Chairperson
2. Hon. James Opiyo Wandayi, EGH, MP
3. Hon. Dr. Adan Wehliye Keynan, CBS, MP
4. Hon. Dr. Beatrice Kahai Adagala, MP
5. Hon. Marianne Jebet Kitany, MP
6. Hon. Yusuf Mohamed Farah, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Ms. Wanjiru Mwaura	-	Principal Clerk Assistant II
2. Mr. Ahmad Gullye	-	Clerk Assistant I
3. Mr. Andrew Kipchumba	-	Clerk Assistant III
4. Dr. Benjamin Ngumo	-	Senior Fiscal Analyst
5. Ms. Angela Musau	-	Legal Counsel II
6. Ms. Mercy Mayende	-	Media Relations Officer
7. Ms. Lillian Cheruiyot	-	Public Communications Officer
8. Ms. Kerubo Mercyla	-	Audio Officer
9. Mr. Yusil Jillo	-	Serjeant at Arms
10. Ms. Alice Gicheha	-	Intern

OFFICE OF THE AUDITOR-GENERAL

1. Mr. Kenneth Otieno	-	Deputy Director Audit
2. Mr. Andrew Katala	-	Principal Auditor
3. Mr. Henry Manegene	-	Parliamentary Liaison Officer

THE NATIONAL TREASURY

Ms. Cherly Majiwa - Assistant Director, Investments

INSPECTORATE OF STATE CORPORATIONS

Ms. Grace Mwaniki - Inspector

NATIONAL WATER HARVESTING AND STORAGE AUTHORITY

1. Mr. John K. Muhia - Ag. Chief Executive Officer
2. CPA Patrick Ataro - Manager Finance
3. CPA Erick K Gachiri - Principal Accountant
4. Mr. Mbiti Maindi Benson - Officer
5. Mr. Ronir K. Benson - Officer

MIN. NO. NA/PIC-CA&E/2024/074: PRELIMINARIES

The meeting was called to order at 10.30 a.m. with a prayer said by the Chairperson. Thereafter, introductions were made.

MIN. NO. NA/PIC-CA&E/2024/075: COMMUNICATION FROM THE CHAIR

The Chairperson welcomed the Members and stakeholders present to the meeting. He informed the Committee that this was a continuation of examination of the pending audit queries of the Authority.

MIN.NO.NA/PIC-CA&E/2024/076: CONFIRMATION OF MINUTES

This agenda item was deferred to the next meeting.

MIN.NO.NA/PIC-CA&E/2024/077: MEETING WITH THE CHIEF EXECUTIVE OFFICER, NATIONAL WATER HARVESTING AND STORAGE AUTHORITY TO EXAMINE THE AUDITED ACCOUNTS FOR THE FY 2018/2019 TO FY 2020/2021.

The management of National Water Harvesting and Storage Authority (NWHSA), led by the Ag. Chief Executive Officer Mr. John Muhia appeared before the Committee to adduce evidence on the pending audit queries that had been raised by the Auditor General for the FY 2018/19 to FY 2020/21.

The Committee had earlier examined the audit queries for the FY 2018/19 and FY 2019/2020.

FY 2020/21

1. Long Outstanding Retentions

The financial statement included a balance of Kshs.956,503,249 relating to retention monies held on behalf of suppliers out of which Kshs.392,870,020 related to amounts retained on or before 30 June, 2020 and whose respective defects liability period had lapsed. Although Management

indicated that Kshs.392,870,020 relates to retention for ongoing Muruny (Siyoi) dam project, the balance of Kshs 68,687,022 was unsupported. It was not clear under what circumstances the monies continued to be held by the Authority for years spanning to up to five (5) years.

Further, as disclosed in Note 19(b) to the financial statements, the retention bank account reflects a balance of Kshs 27,912,200 while the retentions included in the trade and other payables from exchange transaction reflects a balance of Kshs 456,564,249. The Management had not explained how the balance of Kshs 428,652,049 will be cleared when it falls due.

Management Response

The Authority submitted that it held a retention portfolio of Kes.456,564,249 as at 30 June 2021. As observed by the auditors, Kes.392,870,020 related to Muruny (Siyoi) Dam Water Supply Project. Contractually, retentions was only released upon lapse of the defects liability period and upon request by the contractor who was then required to update his payment details. These contracts have varying defects liability periods. In the instance, the Muruny (Siyoi) dam project has a 2 year defects liability period. However, retention money was withheld on all interim certificates and thus accumulated over the project life. Muruny (Siyoi) dam was commenced on 30th March 2015 and by the close of the financial year 2020-2021, had not reached substantial completion. Therefore, the retained money from the project was yet to fall due but had aged over 90 days. Thus, non release of the same by 30 June 2021 was not in breach of Regulation 25(2a) of the Public Finance Management (National Government) Regulations.

The retentions amounting to Kes.68,687,022 related to various projects whose defects liability period was 1 year and were therefore due for release. However, some of the retentions were aged 12 months as the contractors had not requested for release of their retained money.

The aforementioned scenarios led to the management opting to clear outstanding net payments to the contractors and payment of taxes with the available funds and as such delayed the transfer of the retention deductions to the retention holding account.

The Authority had however, planned its cashflows to ensure that there was sufficient money to pay out any retentions that fall due. This was informed by the projected retention release dates for various project.

Committee Observations

(i) The Committee observed the construction of Siyoi/Muruny dam had a completion period of three years. However, the project had extended to almost ten years and this had attracted interest and penalties, thus making the contract expensive.

(ii) The Committee raised concerns on how the supplier component of the project was fully paid and tested while its use was dependent on the dam which was incomplete.

(iii) The Committee further questioned how the water supply component was tested as the dam which was supposed to supply water was yet to be completed.

(iv) The Committee sought to know who approves claims and variations, and the management submitted that there was a Project Implementation Team in place that would scrutinizes the claims and advise the management.

Committee Recommendations

(i) The Committee directed the office of the Auditor General to conduct a special audit on the Siyoi/ Muruny dam Lot 1 and Lot 2 contracts. The Terms of Reference for the special audit were as follows:

a. To establish the causes of the inordinate delay in completion of the project as the project had a completion period schedule of three (3) years but it was yet to be completed almost ten (10) years later;

b. To establish variations (if any) and reasons thereof, the total amount of interests and penalties accrued and the amount of interests and penalties settled vis-à-vis the project total sum;

c. To establish who approves payment of claims as per law, and if there was any level of oversight in relation to approval of claims;

d. To establish the quality of works done in the construction of the dam and the water supply pipeline system. Further to report on how the water supply pipeline would be tested to check if there were any defects;

e. To establish the circumstances as to why the main contract was yet to be fully paid while the water supply component which was dependent on the main contract was fully paid;

f. Provide details of ownership of the two companies and the circumstances under which part of the monies due to one of the companies was settled in a foreign currency (US Dollar) as the project was fully funded by the Government of Kenya;

g. Submit a schedule of all the certificates raised vis-à-vis the payments made thus far for both companies; and

h. Establish if there was value for money in the entire Siyoi / Muruny dam project.

(ii) The Committee directed the management of NWHSA not to process any claim from the contractors during the period when the special audit would be ongoing.

(iii) The Committee directed the management of NWHSA to provide the contracts for lot 1 and lot 2 and the schedule of payments done so far for the two contractors.

(iv) The Office of the Auditor General was granted two weeks from the date of the meeting to carry out the special audit and report to the Committee. Thereafter the Committee to determine if there would be need to invite the two contractors or any other party that may be required to provide more information.

e. Material Uncertainty Related to Sustainability of Services

The statement of financial performance reflected deficit for the year amounting to Kshs.369,703,028 (2020: Kshs.193,848,537). The Authority recorded accumulated deficit amount

of Kshs.1,069,002,483 up from a deficit of Kshs.713,801,438 recorded in 2019/2020. Further, the current liabilities balance of Kshs.1,972,890,160 exceeded the current assets balance of Kshs.573,890,230 by Kshs.899,100,913 thereby, casting doubt on the Authority's capability to meet its immediate financial obligations as and when they fall due.

The Authority was therefore, not in a position to meet its current financial obligations as they fall due and depends on creditors and Governments grants to meet its day-to-day operations.

Management Response

The Authority was a non-income generating entity that was majorly reliant on government exchequer to achieve its mandate of water storage and flood control. Therefore, the target of A.I.A committed during the year to supplement the recurrent budget government exchequer release, though budgeted, was not achieved. Specifically, against a budgeted target of Kes.100Million, the Authority achieved an actual collection of Kes.34.97Million.

Committee Observation

The Committee advised the management to budget according to the funds they can generate and allocated by the National Treasury, as there was a risk of the Authority not meeting its financial obligations.

Committee Recommendation

The Committee directed the Office of the Auditor General to report on this query in the subsequent audit cycles.

Budget Deficit

The statement of comparison of budget and actual amounts reflects final budget and actual on comparable basis amounts of Kshs.493,000,000 and Kshs.127,808,170 respectively, resulting to overfunding amounting to Kshs.34,808,170 or 7%. However, the Authority spent an amount of Kshs.1,087,529,195 against budgeted expenditure amount of Kshs.493,000,000 resulting to an over expenditure of Kshs.604,520,301 or 122% of the budget. Management explained that the over-expenditure was caused by depreciation and amortization expense amount of Kshs.191,328,887, impairment loss of Kshs.125,012,089 and taxation of Kshs.135,411,004 all totaling Kshs.469,752,360.

Management Response

As correctly noted by the auditors, the recurrent expenditure was affected by inclusion of non-financial costs recorded in the year under review such as depreciation, amortization and increased provision on bad and doubtful debts on exchange transactions and the one-off tax payment after an assessment was done by the Kenya Revenue Authority for the period before 2016.

The auditor stated that the figure of Kes.134,770,833 was a budget over-expenditure. However, this amount consisted of an expense of Kes.101,744,004 reported as Expenses related to rendering of services. This was an expense incurred in order to generate Appropriations in Aid

(A.I.A.) which was a requirement to supplement the Recurrent Exchequer from GoK. The balance of Kes.83,032,431 was as a result of the accrual nature of reporting that was required of the Authority. The Authority was not over-funded by Kshs.54,919,170 as observed. This was a netting off effect between the deficit of Kes.82,750,000 on the Recurrent grant receipts

Therefore, there was an actual budget under-funding (and not an over-funding) which was mainly caused by the Authority's inability to raise A.I.A.

Committee Observation

The Committee observed that there was a mismatch in the interpretation of the financial accounts between the management of NWHSA and the office of the Auditor General.

Committee Recommendation

The Committee directed the management of NWHSA and the office of the Auditor General to have a meeting in order to streamline the books of account and have a consensus on the financial reporting, the report of their discussion to be presented in the next meeting with the Authority.

5. Top Management on Acting Appointments

Review of the organization structure of the Authority revealed that key Management positions lacked substantive holders during the year under review and hence casting doubt on the Authority's capability to implement its policies and programmes. The Corporation shall ascertain whether the vacancy shall be filled by promotion from within or recruitment from outside.

Management Response

The Management was unable to substantively fill the Top Management as it did not have approved Human Resource Policy Instruments as was required by the State Corporations Advisory Committee (SCAC). In compliance, the Authority sought approval from the SCAC. This approval had not been obtained by the close of the Financial Year 2020-2021.

The Authority had since received approval as communicated through a letter Ref. No. OP/SCAC 9/36 dated 21st March, 2022 and another from the Cabinet Secretary dated 8th August, 2022. The Authority sought financing from the National Treasury to undertake the recruitment.The financing was yet to be approved. The positions shall therefore be filled upon receipt of funding.

Committee Observation

The Committee observed the officers were still in acting position, the management informed that there was a new structure in place and recruitment process for the position of the Chief Executive Officer was ongoing.

Committee Recommendation

(i) The audit query to remain unresolved until the positions were substantively filled.

(ii) The Committee resolved to invite the chairperson of the Board to provide more information regarding officers in top management being on acting positions.

6. Improper Constitution of Water Harvesting and Storage Board

Review of Gazette notice no.1244 of 8 February, 2019 revealed that the appointment of seven (7) independent Board Members by the Cabinet Secretary was contrary to Section 41(1) of the Water Act, 2016 which requires appointment of five (5) independent Board Members in addition to a chairperson, who shall be appointed by the President, the Principal Secretary responsible for matters relating to water, the Principal Secretary responsible for matters relating to land, the Principal Secretary responsible for finance, five other members, who shall be appointed by the Cabinet Secretary, and a Chief Executive Officer.

Management Response

The matter was brought to the attention of the appointing Authority. This had since been addressed through the Appointment of the Authority's Board in compliance with the Water Act, 2016. Subsequent board appointments have been made in compliance with the Water Act 2016. See appointments made vide Gazette Notice No. 7600 and 9778.

Committee Observation

The Committee noted that vide Gazette notice no. 7998, dated 7th June 2023, the Board Members were appointed , thus the Authority's board was properly constituted.

Committee Recommendation

The audit query stands resolved.

MIN.NO.NA/PIC-CA&E/2024/078: ADJOURNMENT

There being no other business to discuss, the meeting was adjourned at 1:00pm. The next meeting will be held on notice.

Signature .....

HON. DAVID PKOSING, CBS, M.P.
(CHAIRPERSON)

Date 19/6/24

MINUTES OF THE 10TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE ON COMMERCIAL AFFAIRS & ENERGY HELD ON TUESDAY, 25TH APRIL 2023 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10:00 A.M.

PRESENT

1. Hon. David Pkosing, CBS, MP - **Chairperson**
2. Hon. Dr. Adan Wehliye Keynan, CBS, MP
3. Hon. Mwangi Kiunjuri, EGH, MP
4. Hon. Sarah Pealata Korere, MP
5. Hon. Dr. Beatrice Kahai Adagala, MP
6. Hon. Paul Nakindi Katana, MP
7. Hon. John Machua Waithaka, MP
8. Hon. Marianne Jebet Kitany, MP
9. Hon. Ronald Kamwiko Karauri, MP
10. Hon. Yusuf Mohamed Farah, MP

APOLOGIES

1. Hon. Dr. Lilian Achieng Gogo, MP - **Vice Chairperson**
2. Hon. Dr. Baba Owino Paul Ongili, MP
3. Hon. James Opiyo Wandayi, EGH, MP
4. Hon. Charo Kazungu Timgule, MP
5. Hon. Peter Irungu Kihungi, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Ahmad Guliye	-	Clerk Assistant I
2. Mr. Andrew Kipchumba	-	Clerk Assistant III
3. Dr. Benjamin Nginior	-	Senior Fiscal Analyst
4. Ms. Noel Amutalii	-	Legal Counsel II
5. Ms. Roslyn Ndegi	-	Serjeant at Arms
6. Ms. Deborah Mupusi	-	Media Relations Officer
7. Mr. Amos Tindi	-	Hansard Officer
8. Ms. Lillian Cheruiyot	-	Public Communications Officer
9. Ms. Kerubo Mercyln	-	Audio Officer
10. Ms. Alice Gicheha	-	Intern

OFFICE OF THE AUDITOR-GENERAL

1. Mr. Abdirahim Ali Maalim	-	Officer
2. Mr. Samuel Gakuna	-	Officer
3. Mr. Henry Manegene	-	Parliamentary Liaison Officer

INSPECTORATE OF STATE CORPORATIONS

Ms. Grace Mwaniki - Inspector

KENYA PIPELINE COMPANY

1. Mr. Joe Sang, EBS	-	Managing Director
2. Ms. Dinah Kirwa	-	General Manager, HR & AD
3. Eng. Okora Wangaki	-	General Manager POM
4. Mr. Antony Ndegwa	-	Officer FAM
5. Ms. Zilper M Abongo	-	General Manager, Strategy & Compliance
6. Ms. Nancy Rono	-	Ag. General Manager, Supply Chain
7. Mr. Wilson Kalui	-	Officer, TA- Managing Director
8. Mr. Andrew Ilpkemboi	-	Communications Manager
9. Ms. Mukami Kamau	-	Communications Officer
10. Ms. Florah Okoth	-	Company Secretary
11. Mr. Ogari Stephen	-	Finance Officer

MIN. NO. NA/PIC-CA&E/2021/070: PRELIMINARIES

The meeting was called to order at 10:21 a.m. with a prayer said by the Chairperson. Thereafter, introductions were made.

MIN. NO. NA/PIC-CA&E/2021/080: COMMUNICATION FROM THE CHAIR

The Chairperson welcomed the Members and stakeholders present to the meeting. He informed the Committee two financial years were under review, and the examination would begin with the FY 2020/21.

MIN.NO.NA/PIC-CA&E/2021/081: CONFIRMATION OF MINUTES

This agenda item was deferred to the next meeting.

MIN.NO.NA/PIC-CA&E/2021/082: MEETING WITH THE MANAGING DIRECTOR, KENYA PIPELINE COMPANY (KPC) TO EXAMINE THE AUDITED ACCOUNTS FOR THE FY 2020/2021 TO FY 2021/2022.

The management of Kenya Pipeline Company, led the Managing Director Mr. Joe Sang appeared before the Committee to adduce evidence on the audit queries that had been raised by the Auditor General for the FY 2020/21 to FY 2021/22.

FY 2020/21

1. Encroached Company Land

Review of the freehold land documents revealed a piece of land located in Nakuru County with book value of Kshs 760,000,000 which measures 47.10 acres which had been illegally encroached and permanent structures put up by the encroachers. According to the inspection and verification

done by a valuer engaged by the Company in 2019 to undertake valuation of the Company assets, only five (5) acres valued at Kshs.75,000,000 was occupied by the Company, with the rest of parcel measuring 42.10 acres valued at Kshs.625,000,000 being occupied by the encroachers. As a result, the ownership of the parcel which has been illegally encroached is threatened.

Management Response

Kenya Pipeline Company Ltd purchased the land known as LR No. 11904/23, in 1981 at the cost of Kshs. 11,205,000. The land measured approximately 10.07 Hectares, which translated to 47.32 Acres. The intention of the purchase was for the construction of a pump station, (PS#3). Following the construction of PS#3, part of the parcel of land remained unutilised and deemed non-core to the organization. In 2006, the process to dispose off the non-core fixed assets was commenced by following due process.

The parcel of land LR No. 11904/3 of 10.07 hectares (47.1 acres) which initially belonged to KPC was awarded for sale to M/s Nakuru Express Supplies and Services Ltd.

In 2013, the company decided to fence the land using chain-link, the beacons were reinstated but the project stalled due to the encroachment. Recently, as part of KPC embarked anti-cut, anti-climb fences to reinforce security at the Station. Consequently, an agreement was entered for change of common boundaries to enable KPC to take back the land encroached and cede an equivalent portion of the land by changing co-ordinates. KPC had concluded the processing of the Title Deed and a new title issued.

Committee Observation

I. The Committee was informed that the KPC had erected a perimeter wall on the five (5) acres they were currently occupying and the other portion of the land had been disposed.
II. The OAG informed the Committee the issue of encroachment had been addressed by the erection of perimeter fence.

Committee Resolution

The Committee was satisfied with the response provided and cleared the audit query.

FY 2021/22

2. Irregular Disposal of Company Land

Included in the financial statement was a piece of land located in Nakuru County measuring 10.07 hectares (47.10 acres) with book value of Kshs.497,061,234 from which a portion measuring 15.0 hectares (39 acres) was sold to a private company in 2007 at a cost of Kshs.7,980,000, and transfer of title signed on 21 September 2021. Despite the land having been sold in 2007, the title of the land remained in the Company name until September 2021 when the lease title was signed off.

Further, documents supporting the disposal of the land including approval from the Company's Board of Directors and The National Treasury, land valuation reports, invitation, receipt and

evaluation of bids, from interested parties, and evidence of receipt of cash from the sale were not provided for audit review.

Management Response

Kenya Pipeline Company Ltd purchased the land known as LR No. 11904/23, in 1991 at the cost of Kshs. 11,505,000. The land measured approximately 19.07 Hectares, which translated to 47.12 Acres. The intention of the purchase was for the construction of a pump station, (PS#4). The purchase was after the Ministry of Lands and Housing carried a valuation Dated 25th January 1990.

Following the construction of PS#4, part of the parcel of land remained unutilised and deemed non-core to the organization. In 2006, the process to dispose off the non-core fixed assets was commenced with the request to the Permanent Secretary, Ministry of Finance, on 10th August 2006 seeking approval to dispose off the said land and the approval thereto dated 31st August 2006.

By the letter dated 29th August 2006, KPC requested M/s Reagent Valuers International (K) Limited to carry out the valuation of the Company's vacant lands among other assets. The responses from Vide their response dated 15th September 2006, Ms. Regent Valuers International Ltd gave the valuation of 15.6 hectares. The parcel of land LR No. 11904/3 of 19.07 hectares (47.1 acres) which initially belonged to KPC was awarded for sale to M/s Nakuru Express Supplies and Services Ltd. The land was awarded at a price of Kshs.7,080,000. Copies of the KPC title LR No. 11904/23, lease transfer and sale agreement.

Committee Observation

I. The Committee was informed that the initial parcel of land was measuring 47.12 acres, currently KPC were occupying 5acres and the balance of 42.12 acres were disposed and bought by M/s Nakuru Express Supplies & Services Limited.

II. The tender documents for the disposal of the 42.12 acres were not availed during the examination, and the management stated the documents had been destroyed as per the company policy governing document control and disposal.

III. The Committee was concerned that the land was disposed at an amount which was way below the actual value of the land at the time and even below the value captured at the valuation report then.

IV. The Committee was concerned as to how the land that was sold in the year 2007, yet the the transfer process was completed in the year 2021. The management informed that land conveyancing was subcontracted to external lawyers, thus occasioned the delay.

Committee Recommendations

I. The Committee resolved to invite the Director, Surveys of Kenya the following week, to provide information on the ownership of the land disposed by KPC measuring 42.12 acres and further incase of subdivision provide detail of the owners.

II. The Committee resolved to invite the buyer M/s Nakuru Express Supplies & Services Limited to provide information on the land they acquired from KPC, provide information on subdivision or sold parcels if any.

III. The management of KPC were directed to provide the valuation report from the government, that was carried out before disposing the 44.12 acres.

9. Loss on Leased Facilities

Included in the financial statement costs were lease payments to Kenya Petroleum Refineries Limited (KPRL) amounting to Kshs 1,809,250,819 for use of pipeline network, storage tanks and associated infrastructure during the year under review. A comparison of total lease costs against total lease income for the year revealed that the Company realised income amounting to Kshs.844,250,819 thereby resulting to a net loss on the lease of Kshs.565,000,001.

Management Response

The Cabinet directed KPC to take over KPRL. The Company entered into a lease agreement with KPRL as it pursued the take-over. KPC had been taking care of all the operating costs and investing in infrastructure at KPRL geared towards helping KPC in improving its operating efficiency, flexibility and stock management to enhance security of supply of petroleum products in the country and neighbouring countries.

At the start of the Lease Agreement, KPC seconded Key staff to KPRL to ensure that costs are effectively budgeted and managed, required developments are identified and implemented, and the takeover process is progressed.

KPC ensured that the costs to be incurred at KPRL (Recurrent expenditure and Capital Expenditure) were projected and included in a harmonized handling and storage tariff for Kipevu Oil Storage facility and KPRL which was approved by Energy and Petroleum Regulatory Authority (EPRA). The annual average recurrent expenditure for the tariff control period 2020/21 to 2022/23 was Kshs1.7 billion for KOSF and Kshs1.0 billion for KPRL. This move was to ring fence the performance of existing KPC business from the impact of expenditure at KPRL. It is important to note that all revenues generated at KPRL are collected by KPC and KPC ensures that all expenditure at KPRL are catered for. No lease rent is paid to KPRL.

On 19th July 2023, the Cabinet approved the acquisition of KPRL by KPC by way of share transfer without monetary consideration. The share transfer was successfully completed and took effect on 27 October 2023 making KPRL a fully owned subsidiary of KPC.

Committee Observation

I. The Committee observed the response provided by the management was insufficient as it had not provided explanation of strategies they were employing to reduce the losses.
II. The Committee noted the query was recurring in the FY 2021/2022, however the figures on losses incurred had increased.
III. The management informed the Committee that the process of acquiring the KPRL was completed and the hand over of share transfer certificate would be held on 25th April 2024 and the certificate to be provided to the Committee in the next meeting.

Committee Resolution

The Committee directed the management of KPC to be accompanied by the Chief Executive Officer, Kenya Petroleum Refineries Limited (KPRL) who can provide information on the financial status and turn around startegies that the entity was employing to reduce losses.

MIN.NO.NA/PIC-CA&E/2024/060: ADJOURNMENT

There being no other business to discuss, the meeting was adjourned at 12.35pm. The next meeting will be held on notice.

Signature .....

HON. DAVID PKOSING, CBS, M.P.
(CHAIRPERSON)

Date..... 19/6/24

MINUTES OF THE 17TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE ON COMMERCIAL AFFAIRS & ENERGY HELD ON MONDAY, 6TH MAY 2024 IN BAOBAB CONFERENCE ROOM, SERENA HOTEL, MOMBASA AT 10:00 A.M.

PRESENT

1. Hon. David Pkosing, CBS, MP - **Chairperson**
2. Hon. James Opiyo Wandayi, EGH, MP
3. Hon. Sarah Paulata Korere, MP
4. Hon. Dr. Babu Owino Paul Ongili, MP
5. Hon. Paul Kahindi Katana, MP
6. Hon. Charo Karungo Tungule, MP
7. Hon. John Machua Waithaka, MP
8. Hon. Mariame Jebet Kitany, MP
9. Hon. Peter Irungu Kihungi, MP
10. Hon. Ronald Kamwiko Karauri, MP

APOLOGIES

1. Hon. Dr. Lilian Achieng Gogo, MP - **Vice Chairperson**
2. Hon. Dr. Adan Wehliye Keynan, CBS, MP
3. Hon. Mwangi Kiunjuri, EGH, MP
4. Hon. Dr. Beatrice Kahai Adagala, MP
5. Hon. Yusuf Mohamed Farah, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Ms. Wanjiru Mwaura	-	Principal Clerk Assistant I
2. Mr. Ahmad Guliye	-	Clerk Assistant I
3. Mr. Andrew Kipchumba	-	Clerk Assistant III
4. Ms. Angela Musau	-	Legal Counsel II
5. Ms. Gladwel Amimo	-	Research officer III
6. Mr. Brian Njeru	-	Fiscal Analyst III
7. Ms. Roslyn Ndegi	-	Serjeant at Arms
8. Ms. Deborah Mapusi	-	Media Relations Officer
9. Ms. Keruba Mercyla	-	Audio Officer
10. Ms. Alice Gicheha	-	Intern

OFFICE OF THE AUDITOR-GENERAL

1. Mr. Jared Nyasani	-	Deputy Director Audit
2. Mr. Henry Maregete	-	Parliamentary Liaison Officer

THE NATIONAL TREASURY

Ms. Cheryl Majwa	-	Senior Investments Officer

KENYA PIPELINE COMPANY

1. Mr. Joe Sang, EBS	-	Managing Director
2. Mr. Joseph Ndiri	-	Ag. Chief Executive Officer KPRL
3. Mr. Pius Mwendwa	-	General Manager Finance
4. Eng. Moses Tarawo	-	MM KPC
5. Ms. Dinah Kirwa	-	General Manager, HR & AD
6. Eng. Okora Wanguki	-	General Manager POM
7. Mr. Antony Ndegwa	-	Officer FAM
8. Mr. Tom Mallo	-	Ag. SM KPRL
9. Ms. Zilper M Abongo	-	General Manager, Strategy & Compliance
10. Ms. Nancy Bore	-	Ag. General Manager, Supply Chain
11. Mr. Andrew Kiplamboi	-	Communications Manager
12. Mr. Alfred K. Mutishi	-	Finance Department
13. Ms. Mukami Kamau	-	Communications Officer
14. Eng. Ruteli Kakai	-	Technical Advisor MD
15. Ms. Florah Otieth	-	Company Secretary
16. Ms. Gloria Khalifa	-	Legal Services Manager

MIN. NO. NA/PIC-CA&E/2021/084: PRELIMINARIES

The meeting was called to order at 10:01 a.m. with a prayer said by the Chairperson. Thereafter, introductions were made.

MIN. NO. NA/PIC-CA&E/2021/085: COMMUNICATION FROM THE CHAIR

The Chairperson welcomed the Members and stakeholders present to the meeting. He informed the Committee that this was a follow-up meeting with the agency and two financial years were under review.

MIN.NO.NA/PIC-CA&E/2021/086: CONFIRMATION OF MINUTES

This agenda item was deferred to the next meeting.

MIN.NO.NA/PIC-CA&E/2021/087: **MEETING WITH THE MANAGING DIRECTOR, KENYA PIPELINE COMPANY (KPC) TO EXAMINE THE AUDITED ACCOUNTS FOR THE FY 2020/2021 TO FY 2021/2022.**

The management of Kenya Pipeline Company, led the Managing Director Mr. Joe Sang appeared before the Committee to adduce evidence on the audit queries that had been raised by the Auditor General for the FY 2020/21 to FY 2021/22.

FY 2021/22

1.Loss on Leased Facilities

Included in the statement of profit or loss statement are lease payments to the Kenya Petroleum Refineries Limited (KPRL) amounting to Kshs 1,808,851,308 for use of pipeline network, storage tanks and associated infrastructure during the year under review. Comparison of total lease costs against total lease income for the year revealed that the Company realized income amounting to Kshs 512,691,524 resulting to a net loss on the lease of Kshs 1,296,559,984. The lease agreement revealed that the lease payments were based on expenses incurred by KPRL during the year covered by the lease agreement.

Management Response

The Cabinet directed KPC to take over KPRL. The Company entered into a lease agreement with KPRL as it pursued the take-over. KPC had been taking care of all the operating costs and investing in infrastructure at KPRL geared towards helping KPC in improving its operating efficiency, flexibility and stock management to enhance security of supply of petroleum products in the country and neighbouring countries.

KPC ensured that the costs to be incurred at KPRL (Recurrent expenditure and Capital Expenditure) were projected and included in a harmonized handling and storage tariff for Kipevu Oil Storage facility and KPRL which was approved by Energy and Petroleum Regulatory Authority (EPRA). On 16th July 2021, the Cabinet approved the acquisition of KPRL by KPC by way of share transfer without monetary consideration. The share transfer was successfully completed and took effect on 27 October 2021 making KPRL a fully owned subsidiary of KPC.

Committee Observation

I. The Committee observed that KPRL did not exist as legal entity but as a subsidiary of KPC and that the post-acquisition process of KPRL by KPC was ongoing. KPRL stopped refining oil in 2013 and since then KPC was fully responsible for the process.

II. The Committee also observed that KPC entered in to a lease agreement with KPRL on a reimbursable cost basis.The KPC facility sits on approximately 360 acre land owned by KPRL. It was noted that KPC was not in control of the costs incurred by KPRL and that the lease payments were as per the lease agreement.In addition the direct income generated by KPRL was not sufficient to cater for its expenses.

III. The Committee noted that acquisition of KPRL had benefitted KPC by enhancing operational flexibility and efficiency through additional storage capacity from KPRL.

Committee Recommendation

The Committee recommended KPC to fast track the take over process by liaising with the Office of the Attorney General to conclude the process.

6.Long Outstanding Balances

The statement of financial position included Kshs.10,103,173,278 in respect of trade debtors among them Oil Marketing Companies (OMCs), which had been outstanding for more than 180 days according to the aging analysis. According to the Transportation Service Agreements between OMCs and the Kenya Pipeline Company (KPC), the Company should have a lien on equivalent Product Quantity up to the extent of the exposure belonging to OMC in the custody of KPC after 45 days and shall be at liberty to sell all such products and apply the proceeds of such sale in or towards the satisfaction of such lien and all proper charges and expenses in relation thereto.

Management Response

Total Trade debtors Receivable as at 30th June 2022 (oil marketing companies) was Kshs. 8,310,037,994.10, while total the Trade debtors over 180 days was Kshs. 5,330,208,284.79 out of which Kshs. 5,300,681,605.72 relates to Rentil-Kobil debt in which the case was now settled.

The Company had put in place measures to ensure that debts were recovered within reasonable time. Customers were sent reminder before due dates and services were suspended if the customers do not pay within 30 days. The company was also in the process of selling line fill and operational stocks in an attempt to recover the debts. This was ongoing and KPC was liaising with KRA to facilitate the sale.

Committee Observations

I. The Committee observed this query was raised in the previous financial year, further, it was noted that the debt had been outstanding for a long period of time.

II. The Committee noted KPC had made an effort to recover the debt and currently Rentil/kobil had settled the debt in full. The management had also written to KRA to facilitate them to sell the line fill that was used as security by the oil marketing companies (OMCs)

Committee Recommendations

The Committee directed the management of KPC to provide the correspondence with KRA requesting the selling of the line fill, and the letter to include a schedule of the breakdown of each Oil Marketing Companies totaling to Ksh. 0.5B.

3.Un-Procedural Waivers 2020/21

The Transport and Storage Agreement (TSA) between Kenya Pipeline Company (KPC) and the Oil Marketing Companies (OMC) provided for penalty charges when OMC products overstay in the KPC facilities. Review of billing records revealed that four (4) OMCs were billed and invoiced for overstayed product penalties in the period between 2018 to 2021. The revenues had been recognized in the books of the Company in their respective years of occurrence. However, during the year under review, penalties amounting to Kshs 493,945,077 were waived by the Board in a meeting held on 18 May, 2021. The waivers were not accompanied by requisite approval from the Cabinet Secretary for The National Treasury or the Cabinet as provided for under Regulation 148(8) and (9) of the Public Finance Management (National Government) Regulations, 2015, which requires any write off above Kshs.100,000 to be approved by the Cabinet Secretary and any write off above 1% of the entity's budget to be approved by the Cabinet. In addition, the waiver reported in the financial statements amounted to Kshs.929,041,160 resulting in unexplained variance of Kshs.56,096,083.

Management Response

Ageing penalty was introduced to KPC to deter Oil Marketing Companies (OMC's) from clogging the system and to discourage speculation. The penalty is levied based on Clause 15.7 to 15.9 of the Transport and Storage Agreement (TSA).

The ageing waiver which was granted, was a business decision driven by the market dynamics that caused Oil marketing Companies (OMCs)'s product to overstay in the system beyond their control. The waiver was not considered a bad debt write off that would trigger the Cabinet approval as the companies were solvent and still trading at KPC.

PFM Regulation 148 (d) stipulates the circumstances where loss of revenue may arise. The write offs envisioned in PFM act, 2012 apply when the affected entities were either insolvent or untraceable. In addition, Regulation 140 (2) on revenue loss states that

"Uncollectable revenue when debts due to National Government cannot be collected by reason that the debtor cannot be traced or is insolvent"

In this case, KPC had not lost revenue on OMC's who were insolvent or untraceable but rather based on a business decision. Management had incorporated in the approval process of waivers, the National Treasury through Ministry of Energy and Petroleum (MoEP). This was after subjecting the request to management and Board Approval.

The National Treasury guided that the ageing waivers were operational matters and advised KPC to develop a policy that shall be approved by the Cabinet Secretary, Ministry of Energy and Petroleum. The policy shall provide a framework that will guide on the issue of credit notes for the ageing waivers to deserving OMCs. The policy was now developed and approved by the KPC Board.

Committee Observations

I. The Committee noted the query arose due to using the wrong terminology in KPC financial statements, the management treated the waivers as debt. Further, it was noted in the subsequent year's audit the management had corrected the anomaly.

II. The Committee noted the management had developed a policy to manage waivers and it was adopted by the KPC Board and was currently awaiting approval by the Cabinet Secretary Ministry of Energy and Petroleum (MOEP).

Committee Recommendation

The Committee directed the management to make a follow-up with the parent Ministry to fast track the approval of the waiver policy.

6.Incomplete Marine Loading Arm Project 21/22

The contract for the supply, installation, testing and commissioning of overhung marine loading arm at Kipevu Oil Terminal (KOT 1) was awarded to Hydro Pipeline Limited. The project commenced on 6 November, 2018 and was expected to take thirty-four (34) weeks and be completed on 2 May, 2019. Although materials were delivered to the site and expenditure amounting to Kshs.17,304,749 incurred, installations, testing and commissioning had not been done. Management indicated that with the operationalization of the new Kipevu Oil Terminal (KOT 2), the project had since been overtaken by events as the old oil terminal where the marine loading arm would have been fixed would be decommissioned. The fate of the project and the equipment that were delivered and are lying idle was therefore unknown.

Management Response

The Marine loading had been transferred at cost from a Work in Progress (W.I.P.) to mechanical spares under inventory in the audited financial statements of FY 2022-2023. This would be used as a spare part in the KPC facilities.

The procurement was through open tender method where an advert was put in the local daily newspaper following which the project was awarded at a total cost of Kshs.44,888,580.00 (Inclusive of VAT and all taxes) to M/s Hydrolo Pipeline Limited on 1st December 2017, during the contract period there were three (3)nos of variations. The contract was signed on 18th April 2018 for a period of 34 weeks (8 months).

The contract lapsed on 30th June 2021 after expiry of the 3rd deed of variation, management having rejected the contractors request for extension after it became apparent the contractor was incapable of executing the contract going with the contractor's failure to effectively and appropriately respond to the non-performance notices issued.

With construction and operationalization of Kipevu Oil Terminal (KOT) 2 with a higher flow rate, JET-A1 offloading currently being undertaken at KOT1 is planned to be relocated to KOT2 once the right valves are procured and installed at KOT2. In view of the new development, the

KOT1 Marine Loading Arm installations works have been overtaken by events and are no longer desirable.

Committee Observations

The Committee was informed that the incomplete marine loading arm was decommissioned due to its location being affected by the Kenya Ports Authority's new terminal. The loading arm currently used as spare parts for KPC infrastructure and so far kshs. 6,000,000 had been recouped from the marine loading arm infrastructure.

Committee Recommendations

The Committee recommended that KPC and KPA should liaise more closely in future and share their strategic plans to avoid instances of similar nature in the future.

5.Unsupported Donations 00/21

Review of expenditure documents revealed that Company donated Kshs.18,830,230 to a charitable trust towards construction of Mount Kenya electric fence on 29 April, 2021.The donation was based on a request dated 24 March, 2021 from the Trust. However, the fencing project was not traced to the Corporate Social Investment (CSI) plan approved by the Board for the year. No documentary evidence in form of project committee minutes, site visit minutes, inspection reports and status report of the fence was provided for audit review.

Management Response

The proposal was received as an ad-hoc request presented to KPC. The request was subsequently submitted to the Board for due consideration and approval. The aim was to address Climate Change mitigation measures. The Company had also revised the CSI Policy to meet the emerging realities and capture the requirements arising from its recent registration as a foundation.

Committee Observations

The Committee noted that the Board approved the expenditure in its resolution in support of the climate mitigation measures.

Committee Recommendations

The Committee directed the office of the Auditor General in subsequent audit to do a follow up on how the money donated by the agency was spent.

6.Un-Procedural Procurement of Consultancy Services

During the year under review, request for quotations were sent to four firms for labor relations services and consultancy services but later terminated as only one of the firms responded. The Company later appointed the firm that had responded for a contract sum of Kshs.2,800,000 under single sourcing method with a justification that time was limited for any other procurement method. However, the justification for both request for quotations and single sourcing

procurement were not in line with Section 106(2)(a) of the Public Procurement and Asset Disposal Act, 2015 which requires that, the Accounting Officer of a procuring entity to give request for quotations only to such persons as are registered by the procuring entity and Section 60(1) of the Public Procurement and Asset Disposal Act, 2015.

Management Response

i) Request for Quotation

KPC did not have a registered list of Labour Relations Lawyers. Consequently, the Company used Section 56 of Public Procurement and Assets Disposal Act 2015 and obtained a registered list of Labour Relations legal service providers from another public entity.

Section 56 of the Act provides that:

"To identify qualified persons, a state organ or public entity may seek, in writing, to one another State organ's, public entity's or regulated professional body's registration list of all registered persons in the category"

The list was received and added to KPC's list of registered suppliers on 22nd March 2021 and the Request for Quotations were carried out on 31st March 2021. Consequently, KPC complied with Section 106 (2)(a) of Public Procurement and Asset Disposal Act 2015 which provides that;

"An accounting officer of a procuring entity shall deal with the request for quotations in accordance with the following—

(a) the accounting officer of a procuring entity shall give the request to such persons as are registered by the procuring entity"

However, the process was unsuccessful as only one bidder responded which is contrary to Section 106 (2) (d) of Public Procurement & Assets Disposal Act 2015 which requires a minimum of 3 responses.

ii) Section 60(1) Public Procurement & Assets Disposal Act 2015

The section provides that;

"An accounting officer of a procuring entity shall prepare specific requirements relating to the goods, works or services being procured that are clear, that give a correct and complete description of what is to be procured and that allow for fair and open competition among those who may wish to participate in the procurement proceedings."

KPC complied with Section 60(1) of the Public Procurement & Assets Disposal Act 2015 by providing the scope of service/terms of reference to the bidders.

iii) Single sourcing procurement

A lot of time was consumed having gone through an entire procurement process and the need for the services became urgent. There were pending industrial relations matters that needed to be closed out successfully which included the conclusion of the Collective Bargaining Agreement negotiations by 30th June 2021. This gave rise to the urgency of the procurement.

Consequently, it became impractical to engage in another competitive tendering process hence the use of direct procurement, pursuant to Section 103 (2)(b) of the Act, to the only bidder who had initially responded to the Request for Quotations. In both the Request for quotation method and in the Direct procurement method, the firm maintained their quoted sum as Kshs.2,900,000.

The firm completed the services, submitted a report, and were paid vide a Service entry sheet 6000986378 and banked invoice 1000032909 remittance advice.

Details of the tender process are as shown in Appendix C-6-1 to Appendix C-6-6.

Committee Observations

The Committee noted the management had provided all the documents that was not availed during the audit process which included correspondences with Kisii County and the OAG confirmed the same.

Committee Recommendation

The Committee was satisfied with the management response and cleared the management of the audit query.

7.Un-Procedural Procurement of Security Services

The Company procured provision of security services through direct procurement method. Review of documents relating to the tender revealed that an advertisement was placed on 6 November, 2020 for security services which was three months after contracts for existing services had expired. Two firms were found to be responsive.

However, the tender process was terminated on grounds that the KPC regions to be guarded were segmented into six (6) sectors. Further, the requirement for bidders to have presence in six sectors had not been included in the bid documents thereby raising doubts as to how it was concluded that the two bidders who qualified were not capable of covering all the sectors, and why no awards were made for the two sectors where the two bidders had presence as the Company retendered for the other sectors.

Management Response

i) Existing Security Contracts

The contracts reference KPC/PU/134-LP/18 were scheduled to expire on 30th September 2020. However, to allow for a new procurement cycle, the Managing Director approved extension of time on 14th September 2020 for a period of 3 months ie, 1st October 2020- 31st December 2020.

ii) Prequalification for guarding and security services KPC/PU-FW/054(SEC)NBI/20-21

A prequalification was advertised on 3rd November 2020 for provision of guarding and security services.

It was confirmed that two firms were responsive. However, KPC has a practice of segmenting the facilities into sectors and contracting one security firm per sector. This minimizes the risk of exposure in the event of any industrial unrest. During this period there were six sectors and therefore qualification of only two firms left KPC with little room to progress with the process except to terminate. Progressing the two firms to the tendering stage would have meant that the contracts for the various sectors would have commenced at different times.

A second extension of time was approved for the period 1st January 2021- 31st March 2021 to allow for advertisement and competitive bidding of the same. KPC advertised tender ref: KPC/PU/OT-128/SEC/NBI/20-21 on 19th January 2021. This tender was evaluated and recommended for termination as all the tenderers were non-responsive.

iii) The use of direct procurement method for the provision of security services was not justified by the Management.

KPC is a strategic Government Facility, and it is crucial that it's premises and assets are secured at all times. Given that the open tender process was unsuccessful a Direct Procurement was carried out to the firms already providing services due to the urgency.

KPC advertised an open tender ref: KPC/PU/OT-030/SEC/NBI/20-21 on 9th November 2021. This tender was evaluated and awarded for a period of one year ending on 30th April 2022. KPC advertised a tender for provision of security services for a period of two years and the contracts commenced on 1st May 2022.

Committee Observations

The Committee noted that the documents provided to support the management response were insufficient to answer the audit query.

Committee Recommendations

The Committee directed the management to submit the tender documents related to procuring the security services, for the Committee to examine the information contained.

6.Irregular Procurement of Printing Consumables

The Company invited bids for supply of printing consumables comprising toners and cartridges through a restricted tender, where five (5) authorized dealers of HP printers in Kenya were invited. Three (3) bidders responded and were subjected to tender opening and preliminary evaluation process but were found non-responsive on grounds that they did not attach mandatory requirements when bidding. The supply was retendered, and the same bidders were invited to bid in a restricted tender. Upon evaluation, the tender was awarded two bidders at a cost of Kshs.11,504,151 and Kshs.83,066,244 respectively. However, use of restricted tendering method

was not justified since the tender did not meet the conditions for use of restricted tendering method.

Management Response

An Open Tender reference KPC/PU/043-CP/18-19 was initially advertised in the newspapers-MyGov on 19th February 2018.

A second Open Tender, reference KPC/PU/090-CP/18-19, was advertised in the newspapers-MyGov on 17th March 2020. During evaluation, due diligence was carried out on 14No bidders that had attained the minimum qualifying score of 75%. KPC wrote to HP to confirm whether the bidders were authorised HP dealers. HP responded and confirmed that none of the listed bidders were authorised dealers thus Restricted Tendering Method. The tender was subsequently terminated.

KPC wrote to HP Europe BV, Amsterdam on 5th October 2020 requesting for a list of authorized Dealers or Agents with their respective contacts in Kenya. HP responded on 6th October 2020 by submitting a list of 5No. dealers. Dealing with HP authorised dealers guarantees supply of genuine HP products from the market as there are several entities supplying counterfeit products.

KPC obtained a list of HP authorized Agents (Partners) from HP Europe BV, to get value for money for the products purchased and also guarantee the quality of the products used in the HP printer machines as the market is infiltrated with counterfeits.

Committee Observations

I. The Committee directed the management to reword the response to provide clarity on the issues raised.
II. The Committee noted KPC was using HP printers and from the correspondence with the manufacturer HP, they were advised to only use genuine products from certified suppliers in the country.

Committee Recommendations

The committee was satisfied with the response provided and cleared the audit query.

8.Un-Procedural Recruitment

Review of staff recruitment during the year revealed appointment of an applicant who did not meet the required minimum qualifications for the position appointed to. According to the human resource records, the appointee to a General Manager position lacked requisite experience for appointment to the position both as required in the advertisement and as per the approved career guidelines for the Company. In the circumstance, the suitability of the appointed applicant to the position was in doubt, as well as the objectivity of the recruitments.

Management Response

Disciplinary action was initiated against the Staff for falsification of her records on her experience. Upon issuance of a show cause letter and subsequent invitation to appear before the Board's Human Resource Committee for a hearing, she moved to court and obtained an injunction. Currently the Company was ensuring appropriate due diligence was carried out before appointment of staff.

Committee Observations

I. The Committee noted there was an active case in the court regarding this matter, further, it was noted the officer in question had an experience of four (4) years four (4) months against the required experience of five (5) years.
II. The Committee implored the legal department of KPC to consider the case and advise the management, as the case seemed harsh to the affected employee.

Committee Recommendations

The Committee would make recommendations in its final report.

10.Un-Procedural Promotions

During the year under review, the Company advertised internally and promoted several staff members. A review of the promotions revealed the following anomalies:

i) Three (3) vacancies were declared and advertised for the position of assistant engineer (operations) grade KPC 7. However, four (4) candidates were appointed at the end of the interview process.

ii) According to the advertisement placed for position of dispatch clerk grade KPC 10, six (6) vacancies were declared and advertised but twenty-one (21) candidates were appointed at the end of the interview process.

iii) Three (3) vacancies were advertised for position of chemist Grade KPC 8, but six (6) candidates were appointed at the end of the interview process. No explanation was provided for the appointment of extra officers over and above the declared and advertised vacancies.

iv) Review of personal files for a sample of employees promoted during the year revealed that four (4) members of staff had not attained the minimum qualification for the positions they were promoted to in accordance with the approved career guideline. These included academic qualifications, mandatory courses, and possession of practicing licenses.

Management Response

i) Filling of more positions than those advertised

It will be observed that many positions were advertised internally in the company at the time, whereupon staff on being promoted would leave vacancies that were hitherto not existing.

Consequently, whereas a specific number of positions for diverse designations would be advertised, in view of the many positions that were concurrently being filled at the time as well as natural attrition taking place at the time, it was felt prudent to fill all vacant positions determined at the time of interview rather than having it on the originally advertised number and/or having to re-advertise the same.

ii) Technical Operator promoted without meeting the minimum academic qualification i.e., having a "D" instead of "D+".

The staff promoted was done based on a board resolution on how to treat internal staff and copy of letter of deployment

iii) Lacked supervisory/ Leadership course lasting not less than two (2) weeks.

Whereas the requirement of a supervisory course lasting not less than two (2) weeks was contained in the career guidelines, since these were internal promotions with the staff already having been tested on the job, management thought it wise to proceed and promote the suitably identified staff and have them undertake these supervisory courses as they settle in the job.

Cognizant of the role played by actual career experience, the Public Service Commission (PSC) through its communication Ref: PSC/ADM/ 1A/ (6) dated 11th March 2020 on requirements for promotion has since dropped promotion/ supervisory training requirement.

Committee Observations

I. The Committee noted the management employed more employees than the number advertised internally.
II. The Committee informed the management to submit a justification for not advertising the positions, as it disadvantaged other employees who were qualified.

Committee Recommendations

I. The Committee requested for input from the State Corporations Advisory Council (SCAC), regarding the situation where a government agency employs more staff than the number advertised.
II. The Committee to make recommendations in its report writing.

MIN.NO.NA/PIC-CA&E/2024/060: ADJOURNMENT

There being no other business to discuss, the meeting was adjourned at 02:50 pm. The next meeting will be held at 2:30 pm at the same venue.

Signature .....

HON. DAVID PKOSING, CBS, M.P.
(CHAIRPERSON)

Date 19/6/24

MINUTES OF THE 18TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE ON COMMERCIAL AFFAIRS & ENERGY HELD ON MONDAY, 6TH MAY 2024 IN BAOBAB CONFERENCE ROOM, SERENA HOTEL, MOMBASA AT 3:00 P.M.

PRESENT

1. Hon. David Pkosing, CBS, MP - **Chairperson**
2. Hon. James Opiyo Wandayi, EGH, MP
3. Hon. Sarah Paulata Korere, MP
4. Hon. Dr. Babu Owino Paul Ongili, MP
5. Hon. Paul Kahindi Katana, MP
6. Hon. Charo Kazungu Tungulo, MP
7. Hon. John Mathua Waithaka, MP
8. Hon. Marianne Jebet Kitany, MP
9. Hon. Peter Irungu Kihangi, MP
10. Hon. Ronald Kamwiko Karauri, MP

APOLOGIES

1. Hon. Dr. Lillian Achieng Gogo, MP - **Vice Chairperson**
2. Hon. Dr. Adan Wehliye Keynan, CBS, MP
3. Hon. Mwangi Kiunjuri, EGH, MP
4. Hon. Dr. Beatrice Kahai Adagala, MP
5. Hon. Yusuf Mohamed Farah, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Ms. Wanjiru Mwaura	-	Principal Clerk Assistant I
2. Mr. Ahmad Guliye	-	Clerk Assistant I
3. Mr. Andrew Kipchumba	-	Clerk Assistant III
4. Ms. Angela Musau	-	Legal Counsel II
5. Ms. Gladwel Aminio	-	Research officer III
6. Mr. Brian Njeru	-	Fiscal Analyst III
7. Ms. Roslyn Ndegi	-	Serjeant at Arms
8. Ms. Deborah Muasi	-	Media Relations Officer
9. Ms. Kerubo Mercyln	-	Audio Officer
10. Ms. Alice Gichehu	-	Intern

OFFICE OF THE AUDITOR-GENERAL

1. Mr. Jared Nyasani	-	Deputy Director Audit
2. Mr. Henry Mutegene	-	Parliamentary Liaison Officer

THE NATIONAL TREASURY

Ms. Cheryl Majwa	-	Senior Investments Officer

KENYA PIPELINE COMPANY

1. Mr. Joe Saag, EBS	-	Managing Director
2. Mr. Joseph Ndeti	-	Ag. Chief Executive Officer KPRL
3. Mr. Pius Mwendwa	-	General Manager Finance
4. Eng. Moses Taruwo	-	MM KPC
5. Ms. Dinah Kirwa	-	General Manager, HR & AD
6. Eng. Otiora Wangoki	-	General Manager POM
7. Mr. Antony Ndegwa	-	Officer FAM
8. Mr. Tom Mailu	-	Ag. SM KPRL
9. Ms. Zilpc M Abongo	-	General Manager, Strategy & Compliance
10. Ms. Nancy Rono	-	Ag. General Manager, Supply Chain
11. Mr. Andrew Kiptoonkei	-	Communications Manager
12. Mr. Alfred K. Muriuki	-	Finance Department
13. Ms. Mokami Kamau	-	Communications Officer
14. Eng. Estelli Bakai	-	Technical Advisor MD
15. Ms. Florah Oketh	-	Company Secretary
16. Ms. Gloria Khafifa	-	Legal Services Manager

MIN. NO. NA/PIC-CA&E/2021/080: PRELIMINARIES

The meeting was called to order at 09.37 p.m. with a prayer said by the Chairperson. Thereafter, introductions were made.

MIN. NO. NA/PIC-CA&E/2021/080: COMMUNICATION FROM THE CHAIR

The Chairperson welcomed the Members and stakeholders present to the meeting.

MIN.NO.NA/PIC-CA&E/2021/081: CONFIRMATION OF MINUTES

This agenda item was deferred to the next meeting.

MIN.NO.NA/PIC-CA&E/2021/082: MEETING WITH THE MANAGING DIRECTOR, KENYA PIPELINE COMPANY (KPC) TO EXAMINE THE AUDITED ACCOUNTS FOR THE FY 2020/2021 TO FY 2021/2022.

The management of Kenya Pipeline Company, led by the Managing Director Mr. Joe Saag resumed to adduce evidence on the audit queries that had been raised by the Auditor General for the FY 2020/21 to FY 2021/22.

1. Non-Compliance with the One-Third Of Basic Salary Rule

During the year ended 30 June, 2021 forty-three (43) employees were paid a net salary that was less than a third (1/3) of their basic pay in the month of June, 2021. This contravened Section 19(3) of the Employment Act, 2007. No plausible explanation was given for failure to comply with the law on payment of salaries and allowances.

Management Response

The auditor's comments had been noted. The Employees who were below a-third of the Basic Salary due to the reasons; Medical over expenditure Recovery, Other Salary Recoveries, Court Attachments, Persons With Disabilities (PWD), tax deductions, Suspension – 50% salary payment , Subsistence Allowance Recovery and ICPC Staff Housing Rent deduction

The Company complies with Section 19(3) of the Employment Act, 2007 fully. Management had ensured that no staff falls below a Third Rule. Staff Salary was improved, and recoveries are closely monitored each month to ensure compliance with the Act.

Committee Observations

I. The Committee noted that the management had improved their systems and the query had not recurred in the subsequent year and this was confirmed by the Office of the Auditor General.
II. The management to revised the response to reflect the context and current situation.

Committee Recommendation

The Committee was satisfied with the response provided and resolved to close the management of the audit query.

8.Accounting for Accrued Expenditure

The general ledger for administration expenses for the year under review included accrual reversals of Kshs. 19,018,419 and Kshs.6,374,650 in respect of consultancy services. The reversals were in respect of expenses incurred in June 2020 which were normally cleared upon payment. However, the payment was made on the same month of June 2020 but the accrual was reversed in July, 2020. Similarly, information communication technology ledger for the year under review included June 2020 accrual reversals amounting to Kshs.33,848,007, which had been erroneously included in the expenditure account for the year under review. Whereas the errors were corrected as post-audit adjustments, there was indication of weaknesses in the internal control system which failed to detect the error during processing of the transactions.

Management Response

Internal controls are in place and the provisions accounts reconciliation are signed off monthly. The Financial Statements for FY 2019/2020 were restated and published with the above

amounts to reflect the correct position. The management currently has controls in place in form of monthly reconciliations

Committee Observations

The Committee noted that the anomaly in the accounting entries had been rectified and confirmed by the Office of the Auditor General.

Committee Recommendation

The Committee cleared the management of the audit query.

5.Dormant Human Resources Management Advisory Committee

The Company appointed six (6) members to the Human Resource Management Advisory Committee (HRMAC) on 16 September 2019 in line with paragraph 2.13.1. of the Company Human Resource Policy and Procedure Manual. The committee was responsible for reviewing and advising the Managing Director on human resource management and development issues. However, during the year under review the committee did not hold any meeting to review and deliberate on human resource issues as stipulated in the human resource policies and procedures.

Management Response

Whereas the Human Resource Management Advisory Committee (HRMAC) was in place as contained in *clause 2.13* of the Human Resource Policy & Procedures Manual (HRPPM), giving diverse mandate, the mandate was also covered in other clauses within the same manual. By inference therefore the functions of the HRMAC had been on going albeit using the other respective provisions. Nevertheless, and more specifically, upon reconstitution of this committee on 22nd June 2022, it had since proceeded to conduct hearings for the FY 2020/21 and FY 2021/22 performance ceiling appeals from staff.

Committee Observations

The Committee noted despite the HRMAC being dormant, the functions were carried out by other committees within the company hence duplication of roles, however, the management was liaising with the State Corporation Advisory Council (SCAC) to develop and align their human resource policies with the relevant laws.

Committee Recommendation

The Committee was satisfied with the response and cleared the management of the audit query.

6.Dormant Corporate Social Investment Committee

The Managing Director through a letter dated 16 April 2019 appointed six (6) members into Corporate Social Investment Committee to operationalize the corporate social investment policy. However, during the period under review the committee did not meet to review and deliberate CSI initiative plan for 2020/2021. The approved CSI plan for the period 2020/2021 was reviewed

by only two (2) members drawn from the Company's foundation department. No explanation was provided on why the appointed committee members did not perform their mandate of reviewing the plan for the period under review.

Management Response

It should be noted that the review committee consisted of only four members.

During the year under review a meeting was convened on 23rd October 2020. Two (2) members of the committee sent their apologies leaving only two (2) who included the Foundation Manager and the Senior Foundation Officer. The two (2) attended and transacted the business of the day. The meeting was convened in October during the COVID 19 pandemic which disrupted many activities and especially face to face meetings.

Currently,the Kenya Pipeline Foundation now fully registered as a Charitable Trust and the Board had appointed Trustees who hold a fiduciary role in the management of all the assets and the financial resources of the KPC Foundation. The coming on board of the Trustees will introduce a second tier in the management of the affairs of the Foundation considering that their proposals will ultimately be approved by the KPC Board. The Trustees will be meeting on a quarterly basis to oversee and guide the Foundation staff in the implementation its projects/programmes.

Committee Observations

The Committee was informed that the Corporate Social Investment Committee was active and currently registered as a Charitable Trust consisting of 9 trustees, 7 trustees have been appointed so far and gazetted.

Committee Recommendation

I. The Committee informed the Office of the Auditor General to examine the expenditure of the trust in future audit cycles.
II. The Committee was satisfied with the management response and cleared the audit query.

MIN.NO.NA/PIC-CA&E/2024/060 ADJOURNMENT

There being no other business to discuss, the meeting was adjourned at 4:35pm. The next meeting will be held on notice.

Signature .....

HON. DAVID PROSING, CBS, M.P.
(CHAIRPERSON)

Date.....19/6/24.....

MINUTES OF THE 19TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE ON COMMERCIAL AFFAIRS & ENERGY HELD ON TUESDAY, 7TH MAY 2024 IN BAOBAB CONFERENCE ROOM, SERENA HOTEL, MOMBASA AT 10:00 A.M.

PRESENT

1. Hon. David Pkosing, CBS, MP - **Chairperson**
2. Hon. James Opiyo Wandayi, EGH, MP
3. Hon. Sarah Paulata Korere, MP
4. Hon. Dr. Babu Owino Paul Ongili, MP
5. Hon. Paul Kahindi Katana, MP
6. Hon. Charo Karonga Tungule, MP
7. Hon. John Machua Waithaka, MP
8. Hon. Mariamw Jebet Kitany, MP
9. Hon. Peter Irungu Kihungi, MP
10. Hon. Ronald Kamwiko Karauri, MP

APOLOGIES

1. Hon. Dr. Lilian Achieng Gogo, MP - **Vice Chairperson**
2. Hon. Dr. Adan Wehliye Keynan, CBS, MP
3. Hon. Mwangi Kiunjuri, EGH, MP
4. Hon. Dr. Beatrice Kalui Adagala, MP
5. Hon. Yusuf Mohamed Farah, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Ms. Wanjiru Mwaura	-	Principal Clerk Assistant I
2. Mr. Ahmad Guliye	-	Clerk Assistant I
3. Mr. Andrew Kipchumba	-	Clerk Assistant III
4. Ms. Angela Mutua	-	Legal Counsel II
5. Ms. Gladwel Amimo	-	Research officer III
6. Mr. Brian Njeru	-	Fiscal Analyst III
7. Ms. Roslyn Nduti	-	Serjeant at Arms
8. Ms. Deborah Mapusi	-	Media Relations Officer
9. Ms. Kerubo Mercyln	-	Audio Officer
10. Ms. Alice Gicheha	-	Intern

OFFICE OF THE AUDITOR-GENERAL

1. Mr. Jared Nyasani	-	Deputy Director Audit
2. Mr. Henry Manegere	-	Parliamentary Liaison Officer

THE NATIONAL TREASURY

Ms. Cheryl Majwa	-	Senior Investments Officer

INSPECTORATE OF STATE CORPORATIONS

1. Ms. Nanjala Christine	-	Deputy Inspector General
2. Mr. Noreen Kinyua	-	Officer

KENYA PIPELINE COMPANY

1. Mr. Joe Sang, EBS	-	Managing Director
2. Mr. Joseph Ndeti	-	Ag. Chief Executive Officer KPRL
3. Mr. Pius Mwendwa	-	General Manager Finance
4. Eng. Moses Taruwo	-	MM KPC
5. Ms. Dinah Kirwa	-	General Manager, HR & AD
6. Eng. Okora Wangaki	-	General Manager POM
7. Mr. Antony Ndegwa	-	Officer FAM
8. Mr. Tom Mailu	-	Ag. SM KPRL
9. Ms. Zilper M Abongo	-	General Manager, Strategy & Compliance
10. Ms. Nancy Bomt	-	Ag. General Manager, Supply Chain
11. Mr. Andrew Kiplamboi	-	Communications Manager
12. Mr. Alfred K. Mutuki	-	Finance Department
13. Ms. Mukami Kamau	-	Communications Officer
14. Eng. Kutoli Kahai	-	Technical Advisor MD
15. Ms. Florah Oketh	-	Company Secretary
16. Ms. Gloria Khafafa	-	Legal Services Manager

MIN. NO. NA/PIC-CA&E/2024/004: PRELIMINARIES

The meeting was called to order at 10:21 a.m. with a prayer said by the Chairperson. Thereafter, introductions were made.

MIN. NO. NA/PIC-CA&E/2024/005: COMMUNICATION FROM THE CHAIR

The Chairperson welcomed the Members and stakeholders present at the meeting.

MIN NO NA/PIC-CA&E/2024/006: CONFIRMATION OF MINUTES

This agenda item was deferred to the next meeting.

MIN NO NA/PIC-CA&E/2024/007: MEETING WITH THE MANAGING DIRECTOR, KENYA PIPELINE COMPANY (KPC) TO EXAMINE THE AUDITED ACCOUNTS FOR THE FY 2020/2021 TO FY 2021/2022.

The management of Kenya Pipeline Company, led by the Managing Director Mr. Joe Sang appeared before the Committee to adduce evidence on the audit queries that had been raised by the Auditor General for the FY 2020/21 to FY 2021/22.

FY 2021/22

1.0. Unvalued Property, Plant and Equipment

The statement of financial position reflects property, plant and equipment with a net book value of Kshs 85,978,670,504. As previously reported, the balance was made up of fair values of the assets determined by an independent valuer engaged by the Management in 2019, which had been adjusted for accumulated depreciation in the three (3) years up to 30 June, 2022. However, several assets comprising freehold land, buildings, fibre optic cable and motor vehicles with a book value of Kshs.7,393,255,566 as at the time of valuation on 1 July, 2019 were not revalued by the independent valuer, and their current book value was based on the historical costs and previous revalued amounts adjusted for accumulated depreciation.

Management Response

The matter had since been resolved as the assets were well accounted for in the restated financials in FY2022/2023. The non-valued assets with a book value of Kshs. 7.3 billion were revalued in July 2023 and the revalued figures adopted in the audited books of accounts in the financial year 2022/2023.

Committee Observation

The Committee was informed that the management had carried out the re-valuation of the non-valued assets and correctly stated them in the financial statements for the year 2022/23, and this was confirmed by the Office of the Auditor General.

Committee Recommendation

The Committee was satisfied with the response provided by the management and cleared the audit query.

2.0. Trade and Other Receivables

2.1. Inaccuracies in Provision for Bad and Doubtful Debts

Review of the receivables' ledger reflected a balance of Kshs.3,330,240,300 in respect of outstanding trade debtors as at 30 June, 2022 that was over 180 days. A provision of 10% of the outstanding trade debtors for over 180 days in line with the Company's policy on general provision would have translated to Kshs.555,024,095. However, the Management made provisions totalling Kshs.1,374,742,232 resulting in over provision of Kshs.730,118,138 which was not explained. In addition, the Management had made specific provisions amounting to Kshs.941,241,500 in respect of amounts owed by oil marketers who were still trading with the

Company and the Kenya Airports Authority, and other provisions of Kshs 21,243,930 in respect of staff debtors. These provisions were not supported by justification as well as the requisite approvals in line with the Company policy and Government Financial Regulations.

Management Response:

The movement in provisions was made up of Specific, General & Other provisions. As per the policy, a provision of 10% of the outstanding trade debtors for over 180 days ought to be made but specific provisions had to be excluded first in the 3,333,290,000. The opening balance for Provision account was Kshs. 3,012,092,917 which closed with a balance of Kshs. 6,530,883,389.

The justification for making specific provisions related to trade debtors, among them Oil marketing Companies (OMCs) with outstanding debt over 365 days. The provision for Tullow oil (early oil project) was outstanding for over 365days but had since been reversed as they have honored their debt in FY2023. Provisions for KAA was made for amounts outstanding for over 7 years that the entity though continuously engaged has been reluctant to honor. Telkom Kenya have disputed amounts that management is pursuing to resolve but discussions on collections are on-going.

10% of trade debtors over 180days was derived after excluding specific provisions done in prior and current year and not a block 10% on outstanding Debtors. Prior to making the provisions, approvals were sought as per policy.

Committee Observations

I. The Committee noted that the management was pursuing collection of the debts and this was demonstrated by the correspondences. The current status was that recoveries had been made and the management was liaising with ERA to facilitate them in selling the line fill used as security by the Oil Marketing Companies.

II. The Management informed the Committee that the inaccuracies in reporting of the provision of bad and doubtful debt was due to some companies that had outstanding debt beyond the 365 days were still in operation.

III. The Committee noted that reconciliation of the accounts had been done and this was concurred by the OAG, and that the management had aligned provision of the doubtful debts to its policy.

Committee Recommendations

The Committee was satisfied with the response provided by the management and cleared the management of the audit query.

2.2 Inaccuracies in Value Added Tax Recoverable

The financial statements reflected Value Added Tax (VAT) recoverable of Kshs 1,744,055,359 as at 30 June, 2022. A reconciliation of the VAT account and file returns reflected an amount of

Kshs.914,987,561 described as VAT credit expected from Kenya Revenue Authority (KRA). Review of correspondences between the Company and KRA revealed that the amount relates to input credits disallowed due to VAT Auto Assessment (VAA) which KRA was reviewing as at the time of the audit.

Management Response:

The amount of Kshs. 914,987,560.61 related to debit adjustment vouchers (DAV's) KRA issued to KPC reducing KPC's tax credit. KPC contested the decision and KRA admitted that KPC validly claimed but they disallowed and amount of Kshs. 94,568,293.84 resulting in net a VAT Automated Assessments (VAA) credit of Kshs. 820,419,666. This was resolved and credit reinstated. KPC has made a provision for the outstanding Kshs 184,101,524 million in the FY2021 financial statements as management continues to engage KRA on the same.

Committee Observation

The Committee noted that the management of KPA and KRA were liaising to correct the inaccuracies in the value Added Tax Recoverable. The OAG remarked that the two parties had made progress and the outstanding amounts had significantly reduced in the subsequent years.

Committee Recommendation

The Committee was satisfied with the response provided and cleared the query.

8.0. Unreconciled Related Entities Balances

The payables balance included Kshs.210,009,118 due to the Kenya Petroleum Refineries Limited (KPRL) as at 30 June, 2022. However, KPRL books and financial records as at 30 June, 2022 reflected an amount of Kshs.310,109,618 as receivable from the Company resulting in a variance of Kshs.100,100,500. Although Management provided a reconciliation for the variance, the same was not acknowledged and was disputed by KPRL Management.

Management Response

The disputed balances were acknowledged by KPRL management and correspondences shared with the Office of the Auditor General acknowledging the variance.

The variance with KPRL largely related to withheld tax of 10% on lease rental payments at Kshs. 297,812,446.21. These amounts are withheld as per the respective Acts & KRA Ruling.

Tax certificates in respect of the withheld amounts had also been issued through the tax system (I-tax) withholding certificates. The are other payables relate to contested invoices for Early Oil Pilot System (EOPS) and rent payments recovered from staff residing in KPRL staff housing estate that were now resolved.

Committee Observations

The Committee noted that the two parties reached an agreement on the reporting of the financial statements, and the OAG informed that in the financial statements of the year 2022/23 the figures had reconciled.

Committee Recommendations

The Committee was satisfied with response and cleared the query.

4.11. Land without Titles

4.1. Freehold Land

According to Management, the land was allotted from trust land and there have been delays in demarcation of the areas and adjudication processes required to facilitate acquisition of title deeds. However, there was no evidence of efforts made by Management to ensure that the process of land adjudication was concluded and yet the parcels of land were allocated to the Kenya Pipeline Company more than twenty (20) years ago. Further, review of the records maintained at the Company revealed that a parcel of land purchased from a private vendor could not be registered as the title deed for the plot is charged to the Kenya Commercial Bank for loan taken by the owner.

Management Response:

Numerous correspondence by KPC's external lawyers to KCB on the status of discharge of the charge to them did not yield any results from 2014 to 2022. KPC opted to engage the bank directly on the negotiations for the discharge of the charge to finalize the same.

Committee Observation

The query to be considered in the next meeting.

4.2. Leasehold Land

Included in the leasehold land balance of Kshs.18,500,547,884 as disclosed in Note 16 to the financial statements is a parcel of land with a net book value of Kshs.3,210,101,469 which the Company was allocated by the Government in 1976. However, the Company did not have a title deed for the parcel. Further, information provided during the audit indicates the parcel where Embakasi Depot sits and carried in the books at Kshs.3,210,101,469 had its title deed issued to the Kenya Airports Authority. Additionally, a parcel of land located in Mombasa County was carried in the books at Nil netbook value since it had been fully amortized. As a result, the ownership and completeness of the leasehold land balance of Kshs.18,500,547,884 could not be ascertained.

Management Response:

The parcels of land in question are where KPC aviation depots, such as those at JKIA and Mombasa International Airport, are located. Despite KPC's efforts, the Kenya Airports Authority

had not issued title deeds for these lands despite repeated requests. KPC had sought assistance from the Ministry of Petroleum & Mining and the Ministry of Lands, but responses had been lacking. Letters had been sent to the Permanent Secretary of the Ministry of Petroleum & Mining requesting executive action. The National Land Commission had also been involved, requesting the surrender of titles from the Kenya Airports Authority.

Committee Observation

I. The management of KPC informed the Committee that KAA agreed to give the organization a long-term lease. KAA was supposed to make a policy change to include this decision.
II. The Committee questioned whether land without a title deed should be included in accounting; however, the Committee was informed that KPC owned an allotment letter therefore the organization had a legal claim to the parcel of land.
III. The Committee observed that KAA had agreed to grant KPC a long term lease, given that requests made by KPC to be allocated the ownership documents of the parcels of land had been futile.
IV. The Committee noted the best solution to enable KPC to continue discharging its critical mandate at the airports was to obtain long term leases.

Committee Recommendation

The Committee resolved to have a round table with the following stakeholders in order to find a way forward on the land currently occupied by KPC and owned by KAA; the Cabinet Secretary for Transport, Infrastructure and Housing, the Cabinet Secretary for Lands and the Cabinet Secretary for Energy & Petroleum.

2.0. Disputed Amount Payable to a Vendor

Included in the pending lawsuits was an amount of USD 3,545,893 [Kshs.455,347,467] claimed by a vendor of hydrant pit valves and associated spare parts supplied to the Company in 2017/2018 financial year. The Company had made a 40% advance payment to the vendor, with the remaining 60% payable upon delivery and acceptance of the items. Although the valves were received and later utilized at the Company, the price of the items was disputed and subjected by criminal investigations and prosecutions by the Ethics and Anti-Corruption Commission (EACC). The vendor had since moved to court demanding for payment of the remaining 60% of the invoice amount.

Management Response

The purchase price of hydrant pit valves and spare parts supplied to the Company in FY 2017/18 was under scrutiny in both criminal proceedings (Milimani Anti-Corruption case No ACC 30/2018) and civil proceedings (ACEC Suit No 8 of 2018). These legal matters are ongoing. Meanwhile, the supplier has filed a case (Nairobi High Court Case Number 224 of 2018) against the Company claiming USD 3, 545, 893 (Kshs. 455,347,467) plus interest for goods supplied under a contract.

Committee Observations

I. The Committee noted that there was a law suit by the vendor claiming to be paid the 60% outstanding amount as per the contract, however the EACC was contesting the payment of that amount as they claimed that the 40% that had been paid was sufficient as the contract had been inflated.
II. The Committee was concerned why the EACC interfered with the tendering process, and how they arrived to conclude that the values were overpriced.
III. The Committee noted that KPC was going to incur huge costs of settling the amount as per the contracts plus the interests that had accrued over the period, and management advised KPC to explore the arbitration route.
IV. The Committee was concerned that the recommendation they were to make would be futile given that there was an active in court case.

Committee Recommendation

I. The Committee directed the management of KPC to submit the tender documentation that culminated in awarding the contract to the vendor.
II. The Management of KPC to submit details and status of the three law suits.
III. The Chairperson to give a communication to the Committee regarding the recommendations for this query.

MIN. NO. NA/PIC-CA&E/2024/098: ADJOURNMENT

There being no other business to discuss, the meeting was adjourned at 1:01 pm. The next meeting will be held on notice.

Signature .....

HON. DAVID PKOSING, CBS, M.P.
(CHAIRPERSON)

Date 19/6/24

MINUTES OF THE 20TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE ON COMMERCIAL AFFAIRS & ENERGY HELD ON TUESDAY, 7TH MAY 2024 IN BAOBAB CONFERENCE ROOM, SERENA HOTEL, MOMBASA AT 2:00 P.M.

PRESENT

1. Hon. David Pkosing, CBS, MP - **Chairperson**
2. Hon. James Opiyo Wandayi, EGH, MP
3. Hon. Sarah Paulata Korere, MP
4. Hon. Dr. Babu Owino Paul Ongili, MP
5. Hon. Paul Kahindi Katana, MP
6. Hon. Charo Kazungu Tsenge, MP
7. Hon. John Machua Waithaka, MP
8. Hon. Marianne Jebet Kitany, MP
9. Hon. Peter Irungu Kihangi, MP
10. Hon. Ronald Kamwiko Karauri, MP

APOLOGIES

1. Hon. Dr. Lilian Achieng Gogo, MP - **Vice Chairperson**
2. Hon. Dr. Adan Wehliye Keynan, CBS, MP
3. Hon. Mwangi Kiunjuri, EGH, MP
4. Hon. Dr. Beatrice Kahai Adagala, MP
5. Hon. Yusuf Mohamed Farah, MP

IN ATTENDANCE

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1. Ms. Wanjiru Mwaura	-	Principal Clerk Assistant I
2. Mr. Ahmad Guliye	-	Clerk Assistant I
3. Mr. Andrew Kipchumba	-	Clerk Assistant III
4. Ms. Angela Mutua	-	Legal Counsel II
5. Ms. Ghalwel Amimo	-	Research officer III
6. Mr. Brian Njeru	-	Fiscal Analyst III
7. Ms. Roslyn Ndegi	-	Serjeant at Arms
8. Ms. Deborah Mujasi	-	Media Relations Officer
9. Ms. Kerubo Mercyln	-	Audio Officer
10. Ms. Alice Gicheha	-	Intern

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1. Mr. Jared Nyasani	-	Deputy Director Audit
2. Mr. Henry Maregesa	-	Parliamentary Liaison Officer

THE NATIONAL TREASURY

Ms. Cheryl Majwa - Senior Investments Officer

INSPECTORATE OF STATE CORPORATIONS

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8. Mr. Tom Mailu	-	Ag. SM KPRL
9. Ms. Zilpa M Abongo	-	General Manager, Strategy & Compliance
10. Ms. Nancy Bono	-	Ag. General Manager, Supply Chain
11. Mr. Andrew Kipkemboi	-	Communications Manager
12. Mr. Alfred K. Muriuki	-	Finance Department
13. Ms. Muhami Kamau	-	Communications Officer
14. Eng. Ruto Bakai	-	Technical Advisor MD
15. Ms. Florah Okoth	-	Company Secretary
16. Ms. Gloria Khalifa	-	Legal Services Manager

MIN. NO. NA/PIC-CAAE/2024/090: PRELIMINARIES

The meeting was called to order at 2.15 p.m. with a prayer said by the Chairperson. Thereafter, introductions were made.

MIN. NO. NA/PIC-CAAE/2024/100: COMMUNICATION FROM THE CHAIR

The Chairperson welcomed the Members and stakeholders present to the meeting.

MIN.NO.NA/PIC-CAAE/2024/101: CONFIRMATION OF MINUTES

This agenda item was deferred to the next meeting.

MIN.NO.NA/PIC-CAAE/2024/102 **MEETING WITH THE MANAGING DIRECTOR, KENYA PIPELINE COMPANY (KPC) TO EXAMINE THE AUDITED ACCOUNTS FOR THE FY 2020/2021 TO FY 2021/2022.**

The management of Kenya Pipeline Company, led by the Managing Director Mr. Joe Sang resumed to adduce evidence on the audit queries that had been raised by the Auditor General for the FY 2020/21 to FY 2021/22.

1. Procurement of Goods and Services

1.1 Irregular Award of Tender to a Technically Non-Responsive Tenderer

During the year under review, the Management advertised a tender for the construction of security fence at Pump Station 6-JKIA Embakasi on 22 October, 2021. The tender was opened on 9 December, 2021 and subsequently evaluated. The Evaluation Committee in its report recommended re-tendering since all the six (6) bidders evaluated were technically non-responsive. A professional opinion dated 17 January, 2022 recommended termination of the tender. However, the Accounting Officer rejected the opinion and recommended re-evaluation of the tender. The Evaluation Committee re-evaluated the tender and recommended termination and re-tendered noting that all the six (6) tenderers failed the technical evaluation. The technical requirement was for the bidders to provide relevant experience with fencing material manufacturer in similar works in the last five (5) years. Despite the recommendation of the Evaluation Committee upon re-evaluation, the head of procurement recommended to the Accounting Officer to award the contract to one of the bidders in a professional opinion.

Management Response

The construction of a perimeter security fence was to replace the existing chain-link fence. The perimeter fence is anti-climb modern high security it is used for securing similar facilities worldwide. Embakasi being a strategic installation, which handles very sensitive and whose proximity to Jomo Kenyatta International Airport renders it as a target. Safeguarding the depot and the Airport was done as an emergency.

The evaluation report submitted by the evaluation committee indicated that the bidder submitted references for their works from two clients against the required three in the tender document. The firm had five references more than the three required references. It was unfair to disqualify the bidder on this basis.

Head of procurement was permitted in Section 84(2) of the PPDA Revised in 2022 enables to issue an independent Professional opinion on the procurement proceeding. It was worth noting that the work was completed in accordance with the contract that met the intended purpose and passed the required test on completion to the satisfaction of KPC.

Committee Observation

1. The Committee noted that the query as raised was on the procedure that led to the award of the tender, further, there was a disconnect between the tender evaluation committee and the Managing Director / Procurement Manager on the requirements to be met by the tenderers.

iii. The Committee observed the response provided by the management was not sufficient to answer the audit query and requested documents to shed more light.

Committee Recommendations

The Committee directed the management to submit the following documents:

i. The primary criteria outlined in the tender
ii. The addendum document made to the tender
iii. The evaluation report from the Committee that rejected the tenderer
iv. The rejection notes of the evaluation report from the Accounting Officer
v. The re-evaluation/professional opinion report from the Procurement Manager that culminated in the award of the contract

1.8 Procurement of Works Without Scope

The Company awarded a contract for repair works of a petroleum storage tank on 1 April, 2021 at a cost of Kshs.145,093,636. According to the tender and other documents reviewed, the tender was initiated and awarded without undertaking inspection by an expert to determine the scope of work to be done as required under paragraph 0.4.2.2 of the American Petroleum Institute (API) 653 on Tank Inspection, Repair, Alteration, and Reconstruction. On 27 September, 2021 Management engaged an expert to carry out the inspection while the repair works were ongoing to determine the scope of works. The expert recommended complete replacement of the tank floor which had suffered significant corrosion metal loss to entail replacement of 10% of tank floor area and welding of repair patch covering 30% of tank floor area. The additional work resulted in additional costs of Kshs.97,173,883.

In the absence scope determination before commencement of work, the basis and necessity of the initial repair works could not be confirmed.

Management Response:

Tank 14-TK-102 was last rehabilitated in 2007, this was when comprehensive repairs were carried out on the tank bottom, shell and floating roof. Tender for emergency repair was advertised in FY 2017-18 but failed due to inadequate budget. The tender finally succeeded in 2020-21 FY and was awarded to M/s Weldcon.

KPC had entered into a framework contract tank inspection, that would allow data collection during scheduled tank cleaning exercises. Tank inspection data collected during the tank cleaning exercise will form basis for preparation of scope of works for tank repair tenders/contracts.

Committee Observations

1. The Committee questioned the management on awarding the tender for repair works before the award of a tender for inspection, and the management of KPC noted they had

corrected the anomaly and currently, they had adopted a framework contract where tender for cleaning and inspection of tanks are mapped together.

II. The Committee advised the management to explore contracting a clerk of works in the future who would be monitoring areas for repairs and reporting back to the management.

Committee Recommendation

The Committee to make recommendations in its report.

2.Unprocedural Implementation of Mzima Springs Water Project

The financial statements, included work in progress of Kshs 873,508,780 which further includes Kshs 6,569,600 in respect of Line 1 conveyance for Mzima Water Project. The Mzima Springs Water Project was initiated through a Presidential directive communicated through Head of Public Service. The Board of Directors had earlier on February 9, 2022 approved the conversion of a portion of Line 1 pipeline to deliver water to Mombasa in collaboration with other Government agencies. All approvals required from the relative Authorities included wayleaves permit, National Environment Management Authority (NEMA), Energy and Petroleum Regulatory Authority (EPRA), National Construction Authority (NCA) and the Ministry of Water be issued before decommissioning of the line. The technical team came up with a business case which recommended two options comprising converting line1 for water conveyance and lease it to the Coast Water Works Development Authority (CWWDA) at the current gazetted water tariff of Kshs.64 per m3 , or refurbish the 14-inch line 1, replace the corroded sections of the line to enable utilization of existing pumps, and other associated facilities to complement the 40-inch Line 2 which has already attained its optimal capacity. This would improve flow rates to 480m3/hr and increase evacuation from Mombasa and alleviate allege.

However, the following anomalies were observed:

i) The Company operating a water pipeline was outside its mandate and had not obtained approval from the Water Services Regulatory Board (WASREB) before embarking on the project.

ii) No evidence was provided to indicate that the business case was presented to the Board for deliberation and which of the two options was adopted for implementation. However, the conversion of the pipeline for water conveyance was ongoing and was at 64% completion as at the time of the audit.

iii) The Company intended to sell water in bulk to the Coast Water Works Development Authority (CWWDA) once the project was completed. However, there was no Service Level Agreement or Memorandum of Understanding signed between the Company and CWWDA. As a result, there is no guarantee that CWWDA will agree to the proposal.

iv) The use of a petroleum pipeline for transportation of water may pose risks of contaminating the water with the residue petroleum in the pipe and effluent which may cause health and environmental concerns.

v) On 19 January, 2022, the Management wrote to the National Environment Management Authority (NEMA) and sent all necessary documents for Environmental Impact Assessment (EIA) on decommissioning of Line 1 excavation, recovery, and relocation of a portion of 34 kilometres of the pipeline and use of 101 kilometres portion of the pipeline stretching from Mzima Springs to Mombasa for supply of portable water to Mombasa. NEMA responded indicating that the proposed project requires an Environmental Impact Assessment (EIA). However, no Environmental Impact Assessment (EIA) was carried out before commencing the project contrary to Section 58 of the Environmental Management and Coordination Act, 1999 and Regulations, 2003, Legal Notice No. 101. Further, a consultant engaged by Management to conduct an assessment for the proposed decommissioning and utilization of Line 1 to deliver water to Mombasa was yet to conclude and prepare a final report on the same.

Management Response:

The Mzima Springs Water project which was initiated through a presidential directive communicated to the Ministry of Petroleum and Mining

An approval of the Company Board was subject to a business case to justify the project been developed by the management, and that all approvals required from the relative Authorities including Wayleaves permit, National Environment Management Authority (NEMA), Energy and Petroleum Regulatory Authority (EPRA), National Construction Authority (NCA) and the Ministry of Water be issued before Management proceeds with the decommissioning

Management appointed a business case technical team to determine the viability of the project. The technical team came up with a business case which recommended two options: the company to invest in line 1 for water conveyance and lease it to CWWDA or refurbish the line to continue being used for petroleum products to increase evacuation from Mombasa and alleviate village.

Further, issues on the project are highlighted below.

-The water project was a JV between Ministry of Petroleum and Mining and Ministry of Water, sanitation and irrigation as evidenced in the Presidential Executive Order issued to both ministries on the 25th March 2021, CWWDA falls under the latter Ministry. The initiative had been a JV between KPC and CWWDA. The latter had a heavy presence in the project as evidenced in the resource (Human and Machines) allocation to the project and Minutes of Meetings held on diverse dates. Their Participation in the project was a guarantee that there was consensus.

-To forestall contamination, the following Procedure shall be adopted before putting the water for human consumption: -

i) Upon completion of the project, the water will be allowed to flow to KPRL Tank 101 and be released to the environment through the Oil Water Separator in a controlled manner. The primary objective of this is to clean the pipeline as much as possible to rid of any remnant materials.

ii) The Pipeline shall be disinfected

iii) The line shall be internally Lined with CIPP to convert it to food grade standard.

iv) Samples shall be drawn from the pipeline at various sampling points and be tested to *KAS 1896:2014 East African Standard Portable Water Specification and Dutch standards 2000 limits.*

v) Thirdly, stakeholders shall be invited to extract samples and do an independent test on the water quality for results comparison.

Committee Observations

I. The Committee was informed that currently the project was stopped and the management was in discussion with the National Environmental Management Authority (NEMA) to be granted a license to decommission the pipeline.
II. The Committee noted that the directive to start the project was from the executive, and the budget for implementation was solely borne by KPC and so far, kshs. 400m had been spent to detour the old KPC line to Mzima Springs.
III. The Committee was concerned that despite the project being conceived through a Presidential directive, the country's laws and regulations governing project implementation should have been adhered to.
IV. The Committee took note that no feasibility study was conducted to establish the viability of the water project.
V. The Committee was concerned why the management of KPC accepted such a project given that it would have compromised the health of residents of the intended beneficiary areas as the pipes had been used to supply petroleum products.

Committee Recommendations

The Committee to make recommendations during its report writing.

3.Composition of Board Committees

Mwongozo Code of Governance for State Corporations provides that a Board may establish not more than four (4) Committees including Audit Committee. The guidelines also provide that the Board may however constitute Ad-Hoc Committees to deal with emerging issues that require focused attention, and which do not fall in the domain of regular Board Committees. Such Ad Hoc Committees should have clear terms of reference and a limited lifespan. The number of Members to any Committees should be no more than one third (1/3) of the Full Board to obviate the risk of a Committee conducting its business within the framework of a Full Board structure.

During the year under review, the Company's Board of Directors comprised nine (9) Members. Review of membership and record of minutes of Committee meetings revealed the following anomalies:

i. Membership of Board Committees was expected to be a maximum of one third (1/3) of Board membership. However, the Audit Committee, the Human Resource Committee and the Technical Committee had five (5) Members each while the Finance Committee has six (6) Members instead of the maximum three (3) Members.

ii. Review of the reconstituted Board Committee Members revealed that two of the Directors were Members of all the four Board Committees which contravened Paragraph 4 of the Office of the President circular referenced OP/CAB.8/1A dated 11 March, 2020, on Establishment of Board Committees which provides that Members can only sit in a maximum of two Board Committees.

iii. The Managing Director was a Member of three of the Board Committees comprising Board Human Resource Committee, Board Technical Committee and the Board Finance Committee. However, Section 1.2.6(1) of the Mwongozo guidelines stipulates that the role of the Board should be separated from that of the Management.

Management Response:

i) The reconstitution of committees was done by the Board considering the need for Parent Ministry and The National Treasury representatives to be in the Audit, Technical and Finance committees for effective oversight and guidance of the Company.

ii) The latest reconstituted Board Committees has ensured that no member sits in more than two committees.

iii) Unlike some State Corporations that have constitutive legislation specific for their establishment, KPC was incorporated under the Companies Act and was subject to the State Corporations Act, CAP 446 of the Laws of Kenya. Section 6(4) of the State Corporations Act explicitly states that the Boards of State Corporations include of the Chief Executive.

iv) Section 8(5) of CAP 446 states that quorum for the meeting is two thirds of total number of members present which includes the MD. Article 1.1 item 4 of the Mwongozo states that the MD shall be a member of the Board with no voting rights. The MD is an ex-officio member of the Board, similar to the directors from Government that are representatives of offices set out in the Act and is only excluded in matters where a vote is required to be taken since all agenda is technically generated and owned by the CEO.

v) Section 9 and section 6 read together expressly state that a state corporation may establish committees consisting of members of the Board which members explicitly include the CEO. The CEO sits in the Committees as a substantive member and to table Management papers as the principal agent of the Board who executes Board policy and directives.

Committee Observations

I. The Committee noted that the Board had been reconstituted and the members do not sit in more than two board committees.

II. The Committee was informed the managing director of KPC sat on the board committees as an ex-official member and had no voting rights.

Committee Recommendation

I. The Committee cleared the management of the audit query as the response provided was sufficient, and this was confirmed by the OAG.

II. The management to rewrite the response chronologically as stated in the audit query.

MIN.NO.NA/PIC-CAAE/2024/108: ADJOURNMENT

There being no other business to discuss, the meeting was adjourned at 3.45 pm. The next meeting will be held on notice.

Signature .....

HON. DAVID PKOSING, CBS, M.P.
(CHAIRPERSON)

Date..... 19/6/24

MINUTES OF THE 24TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE ON COMMERCIAL AFFAIRS & ENERGY HELD ON WEDNESDAY, 19TH JUNE 2024 IN COMMITTEE ROOM 22, BUNGE TOWER AT 10:00 A.M.

PRESENT

1. Hon. David Pkosing, CBS, MP - **Chairperson**
2. Hon. Dr. Lillian Achieng Gogo, MP - Vice Chairperson
3. Hon. Mwangi Kiunjuri, EGH, MP
4. Hon. Paul Kahindi Katana, MP
5. Hon. Charo Karisaga Tungale, MP
6. Hon. John Machua Waichaka, MP
7. Hon. Marianne Jebet Kitany, MP
8. Hon. Peter Irungu Kihangi, MP
9. Hon. Yusuf Mohamed Farah, MP

APOLOGIES

1. Hon. James Opiyo Wandayi, EGH, MP
2. Hon. Dr. Adan Wehliye Keynan, CBS, MP
3. Hon. Sarah Paulata Korere, MP
4. Hon. Dr. Babu Owino Paul Ongili, MP
5. Hon. Dr. Beatrice Kahai Adagala, MP
6. Hon. Ronald Kamwiko Karauri, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Ms. Wanjiru Mwaura	-	Principal Clerk Assistant I
2. Mr. Ahmad Guliye	-	Clerk Assistant I
3. Mr. Andrew Kipchumba	-	Clerk Assistant III
4. Ms. Angela Musau	-	Legal Counsel II
5. Mr. Brian Njeru	-	Fiscal Analyst III
6. Ms. Deborah Mguzi	-	Media Relations Officer
7. Ms. Kerubo Mercyla	-	Audio Officer
8. Ms. Alice Gichaba	-	Intern

OFFICE OF THE AUDITOR-GENERAL

1. Mr. Fredrick Okumu	-	Auditor
2. Ms. Deborah Ngugi	-	Auditor
3. Mr. Henry Masegere	-	Parliamentary Liaison Officer

THE NATIONAL TREASURY

Ms. Cheryl Majiwa	-	Senior Investments Officer

INSPECTORATE OF STATE CORPORATIONS

Ms. Grace Mwaniki	-	Inspector

OFFICE OF THE ATTORNEY GENERAL

i. Hon. Shadrack Mose	-	Solicitor General
ii. Mr. Charles Wanyagi	-	State Counsel

GEOTHERMAL DEVELOPMENT COMPANY

1. Mr. Paul Ngugi	-	Managing Director
2. Mr. Reuben Ngusi	-	Ag. GM Drilling
3. Mr Stephen Busieni	-	General Manager Finance
4. Ms. Jacklyne Waibungu	-	Ag. Manager Finance
5. Ms. Agnes Muthengi	-	Ag. General Manager Legal Service

MIN. NO. NA/PIC-CA&E/2024/120: PRELIMINARIES

The meeting was called to order at 10:05 a.m. with a prayer said by the Chairperson. Thereafter, introductions were made.

MIN. NO. NA/PIC-CA&E/2024/121: COMMUNICATION FROM THE CHAIR

The Chairperson welcomed the Members and stakeholders present to the meeting. He informed the meeting that the input from the State Law Office was key in providing information regarding the arbitration process that occurred between the GDC and Cluff Geothermal Limited.

MIN NO.NA/PIC-CA&E/2024/122: CONFIRMATION OF MINUTES

I. The minutes of the 12th sitting of the Committee were confirmed as a true reflection of the Committee's proceedings having being proposed and seconded by Hon. Yusuf Mohamed Farah, MP and Hon. Lillian Achieng Gogo, MP respectively.

II. The minutes of the 13th sitting of the Committee were confirmed as a true reflection of the Committee's proceedings having being proposed and seconded by Hon. John Machua Waithaka, MP and Hon. Mwangi Kiunjuri, MP respectively.

III. The minutes of the 14th sitting of the Committee were confirmed as a true reflection of the Committee's proceedings having being proposed and seconded by Hon. Peter Ethangi, MP and Hon. Yusuf Mohamed Farah MP respectively.

V. The minutes of the 13th sitting of the Committee were confirmed as a true reflection of the Committee's proceedings having being proposed and seconded by Hon. Paul Katana, MP and Hon. John Machua Waithaka, MP respectively.

VI. The minutes of the 16th sitting of the Committee were confirmed as a true reflection of the Committee's proceedings having being proposed and seconded by Hon. Yusuf Farah, MP and Hon. Paul Kahindi Katana, MP respectively.

VII. The minutes of the 17th sitting of the Committee were confirmed as a true reflection of the Committee's proceedings having being proposed and seconded by Hon. Charo Kazungu Tungule, MP and Hon. Maryanne Kitany, MP respectively.

VIII. The minutes of the 18th sitting of the Committee were confirmed as a true reflection of the Committee's proceedings having being proposed and seconded by Hon. Peter Kihungi, MP and Hon. John Waithaka, MP respectively.

IX. The minutes of the 19th sitting of the Committee were confirmed as a true reflection of the Committee's proceedings having being proposed and seconded by Hon. Paul Katana Kahindi, MP and Hon. Peter Kihungi, MP respectively.

X. The minutes of the 20th sitting of the Committee were confirmed as a true reflection of the Committee's proceedings having being proposed and seconded by Hon. Charo Kazungu Tungule, MP and Hon. Maryanne Kitany, MP respectively.

XI. The minutes of the 21st sitting of the Committee were confirmed as a true reflection of the Committee's proceedings having being proposed and seconded by Hon. Peter Irungu Kihungi, MP and Hon. Paul Katana, MP respectively.

XII. The minutes of the 22nd sitting of the Committee were confirmed as a true reflection of the Committee's proceedings having being proposed and seconded by Hon. John Waithaka, MP and Hon. Peter Kihungi Irungu, MP respectively.

XIII. The minutes of the 23rd sitting of the Committee were confirmed as a true reflection of the Committee's proceedings having being proposed and seconded by Hon. Charo Kazungu Tungule, MP and Hon. Maryanne Kitany, MP respectively.

MIN NO.NA/PIC-CA&E/2021/123: MEETING WITH THE SOLICITOR GENERAL REGARDING THE WASTEFUL EXPENSES AND BREACH OF CONTRACT BY GDC OVER THE NON-PAYMENT OF CONTRACTUAL OBLIGATION IN FAVOUR OF CLUFF GEOTHERMAL LIMITED.

The State Law Office, led by the Solicitor General, Hon. Shadrack Mose appeared before the Committee to provide information on the audit query regarding wasteful expenses and breach of contract by Geothermal Development Company (GDC) over the non-payment of contractual obligations in favour of Cluff Geothermal Limited.

Wasteful expenses

The statement of profit or loss and other comprehensive income reflects other operating expenses of Kshs 1,703,975,000 which constituted an amount of Kshs.588,498,000 (USD 4,855,177.85) which further included interest on unpaid invoices of Kshs.69,241,000 and arbitration costs of Kshs.45,856,000, on account of a GDC vs Cluff Geothermal case. Further, as disclosed in Note 8 to the financial statements, the legal expenses balance of Kshs.119,009,000 includes an amount of Kshs.109,459,000 incurred on account of the above case, which brings the total expenses on account of the case to Kshs. 211,081,000. The case arose from alleged breach of contract by the Company, for non-payment of USD 20,177,953 relating to provision of top holing services by the contractor at Menengai field.

Submission by the Solicitor General

The Solicitor General submitted as follows;

That In respect to the query whether Geothermal Development Company (GDC) sought legal advice from this Office and if GDC conducted due diligence **before** entering into the Contract, from the file records, the office was unable to locate any request for legal advisory in both respects. The arbitration was initiated pursuant to clauses of the Drilling Contract, which detailed how the disputes would be resolved.

An Arbitral Tribunal was appointed by the Parties, including: Ms. Chantal-Aimée Doerries Kings Counsel, Chair of the Tribunal (a former Chair of the Bar Council of England and Wales), Dr. Gavan Griffith Kings Counsel (a former Solicitor General of Australia) and Dr. Michael Moser (a Senior Austrian lawyer).

The claimant Cluff Geothermal Company presented their case and the defendant Geothermal Development Company made their presentation, and the arbitration Tribunal made the determination.

The Solicitor General concluded as follows;

i. The Partial Final Award was favourable to the State and GDC.
ii. GDC had been sued for a total sum of USD$ 20,177,953 (plus interest and costs). This was a contingent claim estimated to have been approximately in the region of USD$ 34,000,000 (inclusive of interest and costs).
iii. GOK obtained a successful outcome and prevented the loss of public funds. The claim was drastically reduced to a total sum of USD$ 4,703,134.11, inclusive of interest and costs.
iv. Further, it should be noted that on 29th September 2017, 20th April 2018 and 3rd July 2018, the Claimants' Counsel, Omnia Strategy LLP, led by Ms. Cherie Blair CBW KC sought to settle the matter at US$ 13,000,000. In all the instances, the Office of the Attorney General found that on the assessment of the merits, the matter could not be settled at US$ 13,000,000, and therefore found it prudent for the matter to proceed to a full hearing and over US$ 25,000,000 (as well as interest and costs) was knocked off from the Claimants claim.

Committee Observations

I. The Committee noted from the submissions made by the Solicitor General that Cliff Geothermal Company had no capacity to carry out the contracted work and the technical evaluation criteria was structured to suit a particular company.

II. The Committee tasked the management of GDC to provide documentation evidence exempting them not to seek legal opinion from the office of the Attorney General during the tendering process that resulted in the award of the contract to Cliff Geothermal Company.

III. The Committee queried to know if Cliff Geothermal had the capacity to carry out the works, and GDC stated from the technical evaluation documents the company had the relevant experience for top hole drilling.

IV. The Committee noted that from the arbitration process that even though GDC paid USD8 9,768,118.51 to the claimant, this was a saving to the Government of Kenya given that Cliff Geothermal wanted an initial settlement of USD8 86,177,083.

V. The Committee raised concerns about the increase in contracts in the country that had arbitration clauses and these arbitration processes were to be carried outside the country. This has led to many public firms incurring heavy expenses yet these arbitration could have been done locally.

VI. The Committee noted that Cliff Geothermal Company was a company that was registered locally and from the details of the directors all of them were foreigners, and Committee sought to know if it was possible for non-kenyans to register a company locally.

Committee Recommendations

I. The Committee directed the State Law Office to provide an updated CR12 with contact details of Cliff Geothermal Company, Great Rift Drilling and Adam Risk Company and Support Company.

II. The Committee directed GDC to submit the following documents;
   i. documents detailing the capacity of Cliff Geothermal Company,
   ii. the tender documents that culminated in the award of contract to Cliff Geothermal, and,
   iii. the names of the persons who carried out the tender evaluation, the procurement manager and the managing director at the time when Cliff Geothermal Company was awarded the contract.

III. The Committee to make recommendations regarding this query in its final report.

MIN.NO.NA/PIC-CA&E/2024/124: ADJOURNMENT

There being no other business to discuss, the meeting was adjourned at 12.40 pm. The next meeting will be held on notice.

Signature .....

HON. DAVID PROSING, CBS, M.P.
(CHAIRPERSON)

Date..... 15/10/24

MINUTES OF THE 23RD SITTING OF THE PUBLIC INVESTMENTS COMMITTEE ON COMMERCIAL AFFAIRS & ENERGY HELD ON FRIDAY, 20TH JUNE 2024 IN GDC BOARDROOM, PAKA FIELD AT 11:00 A.M.

PRESENT

1. Hon. David Pkosing, CBS, MP - **Chairperson**
2. Hon. Sarah Paulata Korere, MP
3. Hon. Dr. Beatrice Kahai Adagala, MP
4. Hon. Chare Kaunga Tungale, MP
5. Hon. John Machua Waiduka, MP
6. Hon. Marianne Jebet Kitany, MP
7. Hon. Peter Irungu Kihungi, MP

APOLOGIES

1. Hon. Dr. Lillian Achieng Gogo, MP - Vice Chairperson
2. Hon. James Opiyo Wandayi, EGH, MP
3. Hon. Dr. Adan Wehliye Keynan, CBS, MP
4. Hon. Mwangi Kiunjuri, EGH, MP
5. Hon. Paul Kahindi Katana, MP
6. Hon. Dr. Bahu Owino Paul Otondi, MP
7. Hon. Ronald Kamwiko Kamuri, MP
8. Hon. Yusuf Mohamed Farah, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Ms. Wanjiru Mwaura	-	Principal Clerk Assistant I
2. Mr. Ahmad Guliye	-	Clerk Assistant I
3. Mr. Andrew Kipchumba	-	Clerk Assistant III
4. Ms. Gladwel Amimo	-	Research Officer
5. Ms. Joyce Wasera	-	Hansard Reporter III
6. Ms. Deborah Mujasi	-	Media Relations Officer

GEOTHERMAL DEVELOPMENT COMPANY

1. Mr. Paul Ngugi	-	Managing Director
2. Mr. Reuben Ngosi	-	Ag. GM Drilling
3. Mr. Cornel Ofwona	-	General Manager -GRD
4. Ms. Martha Mburu	-	Ag. General Manager SRI
5. Mr. John Lagat	-	Regional Manager, North Rift
6. Mr Stephen Buienei	-	General Manager Finance
7. Ms. Jacklyne Wakhungu	-	Ag. Manager Finance
8. Ms. Agnes Mutheregi	-	Ag. General Manager Legal Service

9. Mr. Eric Wamanji	-	Communications Manager
10. Ms. Irene Onyambu	-	GM HR&ADMIN
11. Mr. Gabriel Wetangula	-	Manager SHE
12. Mr. Jacob Ngoletiang'	-	Chairman CLMC PAKA
13. Mr. Godfrey Shitsama	-	Officer
14. Mr. Patrick Bagto	-	Officer MSCM
15. Mr. Mahvalin Okeidah	-	Officer
16. Mr. Yusuf Lasuta, HSC	-	CHO
17. Mr. Oscar Ole Sirgoiy	-	HHM North Rift

MIN. NO. NA/PIC-CA&E/2021/140: PRELIMINARIES

The meeting was called to order at 11:29 a.m. with a prayer said by the Chairperson. Thereafter, introductions were made.

MIN. NO. NA/PIC-CA&E/2021/141: COMMUNICATION FROM THE CHAIR

The Chairperson welcomed the Members and stakeholders to the meeting and thanked the management of Geothermal Development Company (GDC) for the warm reception. He informed the management that the field visit was necessitated by concerns raised by the Auditor General in the reports of the audited accounts of GDC for the Financial Years 2017/2018 to 2020/2021, thus the Committee needed to acquaint itself with the operations and processes in the production of steam energy and verify the concerns raised by the Auditor General.

MIN.NO.NA/PIC-CA&E/2021/142: CONFIRMATION OF MINUTES

This agenda was differed to the next meeting.

MIN.NO.NA/PIC-CA&E/2021/143: EXAMINATION OF THE AUDITED ACCOUNTS OF GDC FOR THE FY 2017/2018 TO FY 2020/2021. (FIELD VISIT TO STEAM GENERATING WELLS AT PAKA FIELD)

The management of Geothermal Development Company (GDC), led by the Chief Executive Officer Mr. Paul K. Ngugi appeared before the Committee and made a presentation regarding steam generation operations at Paka field. The management submitted as follows;

i. That GDC was formed in the year 2008 as a special purpose vehicle to accelerate the generation of geothermal resources in the country. The company was designed to absorb the upfront risks associated with geothermal development and this development had high upfront costs and risks.

ii. GDC achieves its mandate through; scientific surface exploration, social license development and management, acquisition of permits and licenses, drilling operations and reservoir management and steam sale to power generators.

III. Eighteen (18) wells have so far been drilled at PAKA field that currently generate 15MW. The Company was targeting to put up 100MW plant by year 2017.

IV. The company was currently undertaking out drilling activities at the field and established roads, constructed a long water supply infrastructure for their operations and supply to the community.

V. The company was consuming 4million litres per day and the pumps are operated by diesel generators and a levy was paid to WARMA per litre of water extracted from the Lake.

VI. The distance from Nakuru – the logistical headquarter of GDC – to the fields in Baringo was approximately 200km leading to high cost of non-productive time. Other factors that had led to increase in cost was rain cutting off road network, insecurity and community land concerns.

Committee Observations

The Committee noted the presentation by the Company and emphasized the following as areas of concern it would focus on during the filed visit as raised by the Auditor General:

I. Cost of non-productive time
II. Work-in-progress (WIP)
III. Under used drilling rigs

Committee Findings

I. The Committee noted that GDC was incurring huge expenses to run diesel powered generators to pump water from Lake Baringo to Paka field and there was need to connect electricity to the water pump station to reduce over-head costs.

II. The Committee noted that there was need to exempt the company from paying the water levy to WARMA, as the steam generation was still in the exploration/production stage.

III. The Committee observed that the Paka field had logistical challenges stemming from poor infrastructure and the long distance between the field and the logistical centres in Nakuru and Marigat. This had led the company incurring huge costs in non-productive time.

IV. The Committee advised the management to adopt framework contract in the supply of the critical drilling components to ensure ready supply in case of breakdown.

V. The Committee noted that the production of steam was ongoing and completed wells were still under observation, further the power plant to convert steam to electricity had not yet been established.

MIN NO NA/PIC-CA&E/2004/189: ADJOURNMENT

There being no other business to discuss, the meeting was adjourned at 1240 pm. The next meeting will be held on notice

Signature .....

HON. DAVID PKOSING, CBS, M.P.
(CHAIRPERSON)

Date 15/10/14

MINUTES OF THE 26TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE ON COMMERCIAL AFFAIRS & ENERGY HELD ON SATURDAY, 21ST JUNE 2024 IN GDC MENENGAI FIELD, NAKURU COUNTY AT 10:00 A.M.

PRESENT

1. Hon. David Pkosing, CBS, MP - **Chairperson**
2. Hon. Sarah Paulata Korere, MP
3. Hon. Dr. Beatrice Kahai Adagala, MP
4. Hon. Charo Kazungu Tungule, MP
5. Hon. John Machua Waititaka, MP
6. Hon. Marianne Jebet Kitany, MP
7. Hon. Peter Irungu Kihungi, MP

APOLOGIES

1. Hon. Dr. Lilian Achieng Gogo, MP - Vice Chairperson
2. Hon. James Opiyo Wandayi, EGH, MP
3. Hon. Dr. Adan Wehliye Keynan, CBS, MP
4. Hon. Mwangi Kiunjuri, EGH, MP
5. Hon. Paul Kahindi Katana, MP
6. Hon. Dr. Babu Owino Paul Ongili, MP
7. Hon. Ronald Kamwiko Karauri, MP
8. Hon. Yusuf Mohamed Farah, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Ms. Wanjiru Mwaura	-	Principal Clerk Assistant I
2. Mr. Ahmad Guliye	-	Clerk Assistant I
3. Mr. Andrew Kipchumba	-	Clerk Assistant III
4. Ms. Gladwel Anjimu	-	Legal Counsel II
5. Ms. Joyce Wacera	-	Hansard Reporter III
6. Ms. Deborah Mupasi	-	Media Relations Officer

GEOTHERMAL DEVELOPMENT COMPANY

1. Mr. Paul Ngugi	-	Managing Director
2. Mr. Reuben Ngisi	-	Ag. GM Drilling
3. Mr. Cornel Olwoma	-	General Manager -GRD
4. Ms. Martha Mburu	-	Ag. General Manager SRI
5. Mr. John Lagat	-	Regional Manager, North Rift
6. Mr. Stephen Busienei	-	General Manager Finance
7. Ms. Jacklyne Wakhungu	-	Ag. Manager Finance
8. Ms. Agnes Muthengi	-	Ag. General Manager Legal Service
9. Mr. Eric Wamanji	-	Communications Manager
10. Ms. Irene Onyambu	-	GM HR&ADMIN
11. Mr. Gabriel Wetangala	-	Manager SHE

12. Mr. Jacob Ngoletiang	-	Chairman CLMC PAKA
13. Mr. Godfrey Shitsama	-	Officer
14. Mr. Patrick Bapto	-	Officer MDCM
15. Mr. Madvalin Okinlah	-	Officer
16. Mr. Yusuf Lasote, HSC	-	CSO
17. Mr. Oscar Ole Kirgoty	-	HRM North Rift

MIN. NO. NA/PIC-CAAE/2014/130: PRELIMINARIES

The meeting was called to order at 10.03 a.m. with a prayer said by the Chairperson. Thereafter, introductions were made.

MIN. NO. NA/PIC-CAAE/2014/131: COMMUNICATION FROM THE CHAIR

The Chairperson welcomed the Members and stakeholders to the meeting. He stated the Menengai field visit would focus on the query raised by the Auditor General mainly, *unproductive and abandoned* wells that led to wasteful expenses as GDC management was taken through an arbitration process in the UK that led to a settlement of USD$ 6,765,114.31 to Cluff Geothermal Company.

MIN.NO.NA/PIC-CAAE/2014/132: CONFIRMATION OF MINUTES

This agenda was differed to the next meeting.

MIN.NO.NA/PIC-CAAE/2014/133: EXAMINATION OF THE AUDITED ACCOUNTS OF GDC FOR THE FY 2017/2018 TO FY 2020/2021. (FIELD VISIT TO STEAM GENERATING WELLS AT MENENGAI FIELDS)

The management of Geothermal Development Company (GDC), led by the Chief Executive Officer Mr. Paul K. Ngugi presented regarding steam generation operations at Menengai field.

The status of the top holed wells were presented as follows;

	WELL ID	SPUD DATE	COMPLETION/ABONDONED DATE	DEPTH (m)	Remarks	Current Status
1	MW-14A	30-Aug-13	Abandoned on 13th Dec 2013 at depth 397m, top of fish @71m	397	Abandoned due to collapsed formation. Has stuck drill pipes	To be utilized for geological hazard monitoring and other research work
2	MW-23	8-Jan-14	15-Mar-14	3001	Drilled to completion by GDC rig after top-holing	To be utilized for reinjection of brine from other production wells

5	MW-04	25-Mar-14	Abandoned on 7th April 2014 at depth 605M due to misalignment.	55	Abandoned due to misalignment.	To be utilized for geological hazard monitoring and other research work
6	MW-04A	9-Apr-14	Abandoned on 2-May-2014 due to failed fishing operations	308	Drilled to completion by GDC rig after top-holing	To be utilized by alternative technology
5	MW-03	5-May-14	Abandoned on 27/May/14	623	Abandoned due to stuck drill pipes and failed fishing operations	To be utilized for geological hazard monitoring and other research work
6	MW-03A	8-Jul-14	Abandoned on 16-Aug-14 due to stuck drill string and failed fishing operations	480	Abandoned due to stuck drill pipes and failed fishing operations	To be utilized for geological hazard monitoring and other research work
7	MW-03B	3-Dec-14	03-Dec-14	307	Drilled to completion by GDC rig after top-holing	To be utilized for monitoring performance of the production reservoir
9	MW-09	29-Aug-14	12-Sep-14	303	Awaits further drilling to deeper depth	To be drilled deeper for future use
8	MW-08A	1-Jan-15	17-Jan-15	960	Drilled to completion by GDC rig after top-holing	To be utilized by alternative technology
10	MW-07	03-Sep-14	02-Oct-14	420	Drilled to completion by GDC rig after top-holing	To be utilized by alternative technology
11	MW-08	20-Oct-14	11-Nov-14	456	Drilled to completion by GDC rig after top-holing	To be utilized for reinjection of brine from other production wells

12	MW-09	15-Nov-14	09-Nov-14	617	Awaits further drilling to deeper depth	To be drilled deeper for future use
13	MW-31	25-Jan-15	14-Feb-13	200	Awaits further drilling to deeper depth	To be drilled deeper for future use
14	MW-32	24-Feb-15	09-Feb-13	80	Abandoned at the time when dispute arose between the parties	Not usable. The site is unstable and can't support a high-capacity drill rig

Committee Findings

I. The Committee noted that GDC intended to top hole twenty (20) wells, out of which fourteen (14) were done and none of them was successful in generating steam that could generate electricity, and the management was exploring alternative ways of utilizing the wells.

II. The Committee was informed that the remaining six (6) wells could be completed subject to the requisite scientific study.

III. The Committee was informed that permeability made steam production hard for the successfully top holed wells. Nevertheless, the successful wells could be used for other purposes other than to generate steam as intended. The wells could be used in heat parks for pasteurization of milk and meat processing, in Cement factories, recycling and sustainability as well as in industrial parks.

IV. The Committee observed that GDC was currently underutilising the already developed steam wells due to inadequate plants to generate electricity. Additionally, the Committee found out that some wells had been lying idle since the year 2010, when they were successfully drilled.

V. The Committee noted that currently, the Sosiani Power Plant, an Independent Power Producer under the Menengai Geothermal Project, was the only active plant generating 35MW of electricity. The other electricity generating plant was an ongoing project under construction and was expected to pump a additional 35MW to the national grid after its completion.

VI. The Committee was informed that the delay in the setting up of power plants by GDC, was occasioned by delay in securing partial risk guarantee and letter of support, which are a collateral to shield the investor in the event that KPLC fails to purchase the power generated.

VII. The Committee was also informed that Sosiani Power plant had requested for permission to utilize its capacity and potential by generating an extra 10MW. The Board of GDC had approved the request, which was awaiting authorization from the Parent Ministry and the National Treasury at the time of the visit.

VIII. The Committee noted that there was need to fully utilize the developed steam and fast-tracking of the approval of the pending request.

MIN.NO.NA/PIC-CA&E/2024/154: ADJOURNMENT

There being no other business to discuss, the meeting was adjourned at 12:50 pm. The next meeting will be held on notice.

Signature .....

HON. DAVID PKOSING, CBS, M.P.
(CHAIRPERSON)

Date 15/11/24

MINUTES OF THE 47TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE ON COMMERCIAL AFFAIRS & ENERGY HELD ON THURSDAY, 8TH AUGUST, 2024 IN COMMITTEE ROOM 4A, BUNGE TOWER, MAIN PARLIAMENT BUILDINGS AT 10:00 A.M.

PRESENT

1. Hon. David Pkosing, CBS, MP - **Chairperson**
2. Hon. Dr. Adan Wehliye Keynan, CBS, MP
3. Hon. Paul Kahindi Katana, MP
4. Hon. Dr. Beatrice Kabai Adagala, MP
5. Hon. Charo Karonge Tungale, MP
6. Hon. Marianne Jelet Kitany, MP
7. Hon. Yusuf Mohamed Farah, MP

APOLOGIES

1. Hon. Dr. Lilian Achieng Gogo, MP - Vice Chairperson
2. Hon. Mwangi Kiunjuri, EGH, MP
3. Hon. Sarah Paulata Korere, MP
4. Hon. Dr. Bahu Ouvino Paul Otuoli, MP
5. Hon. John Machua Waithaka, MP
6. Hon. Peter Irungu Kihungi, MP
7. Hon. Ronald Karowiko Karauri, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

i. Ms. Wanjiru Mwaura	-	Principal Clerk Assistant I
ii. Mr. Ahmad Guliye	-	Clerk Assistant I
iii. Mr. Andrew Kipchumba	-	Clerk Assistant III
iv. Ms. Angela Mutua	-	Legal Counsel II
v. Ms. Gladwel Anzimo	-	Research Officer III
vi. Ms. Amos Tiroi	-	Hansard Reporter III
vii. Ms. Roselyne N'degi	-	Serjeant-At-Arms
viii. Ms. Alice Gicheha	-	Intern

OFFICE OF THE AUDITOR GENERAL

Mr. Henry Manegene - Liaison Officer

STATE DEPARTMENT OF LANDS

1. Hon. Nixon Korir, CBS	-	Principal Secretary
2. Mr. Nyandoro David	-	Chief Land Registrar
3. Mr. Hilton Kamau	-	Ass. Director, Land Administration
4. Mr. Maritim Weldon	-	SLPP, DOS

5.	Mr. Andrew Kwatany	–	Personal Assistant, PS Lands

MIN. NO. NA/PIC-CA&E/2024/125: PRELIMINARIES

The meeting was called to order at 10:25 a.m. with a prayer said by the Chairperson. Thereafter, introductions were made.

MIN. NO. NA/PIC-CA&E/2024/126: COMMUNICATION FROM THE CHAIR

The Chairperson welcomed the Members and stakeholders to the meeting. He informed the purpose of inviting the Principal Secretary for State Department of Lands was to provide information on the irregular disposal of land by the Kenya Pipeline Company in Nakuru.

MIN.NO.NA/PIC-CA&E/2024/127: CONFIRMATION OF MINUTES

This agenda item was differed to the next meeting.

MIN.NO.NA/PIC-CA&E/2024/128: EXAMINATION OF THE AUDITED ACCOUNTS OF KENYA PIPELINE CORPORATION (KPC) FOR THE FY 2019/2020 TO FY 2020/2021. (IRREGULAR DISPOSAL OF COMPANY LAND IN NAKURU)

The State Department of Lands, led by the Principal Secretary Hon. Nixon Korir presented regarding the irregular disposal of company land by KPC. He submitted as follows;

Irregular Disposal of Company Land

Included in the financial statement was a piece of land located in Nakuru County measuring 19.07 hectares (47.10 acres) with book value of Kshs.697,601,654 from which a portion measuring 15.8 hectares (39 acres) was sold to a private company in 2007 at a cost of Kshs 7,940,000, and transfer of title signed on 21 September 2021. Despite the land having been sold in 2007, the title of the land remained in the Company name until September 2021 when the lease title was signed off.

Further, documents supporting the disposal of the land including approval from the Company's Board of Directors and The National Treasury, land valuation reports, invitation, receipt and evaluation of bids, from interested parties, and evidence of receipt of cash from the sale were not provided for audit review.

Management Response

I. The LR. No. 11304/3 whose subdivision gave rise to LR. No. 11994/22, the property in question emanated from LR. No. 11304. The grant for LR. No. 11304 was issued by the President of the Republic of Kenya to Joyce Tajkili on January 13, 1974.

II. The beneficiaries of the estate of Joyce Tajkili (deceased) subdivided the land and individual titles were registered in favour of the beneficiaries. One of the resultant subplots which is LR. No 11304/3 measuring approximately 19.07 hectares was

registered in the name of Michael Chettle on March 30, 1989. On May 29, 1990, LR. No 11904/2 was transferred to Kenya Pipeline company Limited vide a transfer dated May 10, 1990 for a consideration of Kshs. 11, 515,000/.

III. In 2008, Kenya Pipeline Company Limited made an application to the then Municipal Council of Nakuru to change the user and subdivide LR No. 11904/5 into 2 portions. This proposal was also approved by the then Ministry of Lands vide a letter Ref. 116586/80 dated October 9, 2011.

IV. Upon Subdivision, LR No. 11904/5 gave rise to LR No. 11904/22 measuring approximately 15.80 hectares and LR No. 11904/23 measuring approximately 3.470 hectares.

V. The lease for LR No. 11904/22 was registered on January 13, 2014 while the one for LR No. 11904/23 was registered on September 25, 2013. On December 14, 2016, Kenya Pipeline Company Limited transferred LR No. 11904/22 measuring approximately 15.80 hectares to Nakuru Express Supplies and Services Limited for a consideration of Kshs. 7, 980, 000/-.

VI. In 2017, Nakuru Express Supplies and Services Limited further subdivided L.R No. 11904/22 resulting into 81 subplots being LR. Nos. 11904/28- 11904/107 of different acreages, as per the matrix below. The subdivision was approved by the County Government of Nakuru and the Ministry as per survey plans 615/80 & 806/1.

VII. L.R No. 11904/108 which was a resultant sub-plot of L.R No. 11904/22 has undergone further subdivision resulting into 31 subplots measuring approximately 0.043 hectares each. This subdivision was approved by the County Government of Nakuru and the Ministry. LR No. 11904/100 was converted to Nakuru Municipality Block 57/216 and its subdivision resulted to Nakuru Municipality Block 57/215-245.

Committee Observations

I. The Committee noted the land in Nakuru had been subdivided and was currently occupied by more than 80 individuals, the process of subdivision was approved by the relevant authorities and the Ministry was not in a position to explain the disposal process that was undertaken by Kenya Pipeline Company.

II. The Committee was informed that in some cases, the policy on disposal of government land varied in different government entities with some having conferred such powers to the Boards and not fully relying on the Ministry of Lands. For instance, the PS stated that in the case of ISPC, the Board had mandate to dispose the land by engaging private valuers as well as ensuring value for money was realized.

III. The Committee informed the PS on the need to have a discussion on the status of public land owned by government parastatals given that most had been grabbed by private entities.

IV. The Committee advised the PS on the urgency of fast-tracking the Land Value Index Bill to guide the country on land valuation.

V. The Committee further noted that as much as private valuers could value government land, there was need for a policy for the Ministry to approve disposal of government land to avert cases where government land was disposed off way less than the prevailing market value.

Committee Recommendation

The Committee resolved to make recommendations regarding the audit query in its report.

MIN.NO.NA/PIC-CA&E/2024/110 ANY OTHER BUSINESS (A.O.B.)

The Committee evaluated the its performance and observed that it didn't meet its set targets. The Committee resolved the following in order to improve its efficiency:

(i) To examine the audited accounts of the entities per sector going forward.
(ii) To reduce the number of referrals for each agency to not more than two.

MIN.NO.NA/PIC-CA&E/2024/110 ADJOURNMENT

There being no other business, the meeting was adjourned at 12:30 pm. The next meeting will be held on notice.

Signature .....

HON. DAVID PKOSING, CBS, M.P.
(CHAIRPERSON)

Date 15/10/24

MINUTES OF THE 59TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE ON COMMERCIAL AFFAIRS & ENERGY HELD ON WEDNESDAY, 14TH AUGUST, 2024 IN COMMITTEE ROOM, 6TH FLOOR CONTINENTAL HOUSE AT 10:00 A.M.

PRESENT

1. Hon. David Pkosing, CBS, MP - **Chairperson**
2. Hon. Dr. Adan Keynan, CBS, MPS
3. Hon. Mwangi Kiunjuri, EGH, MP
4. Hon. Sarah Paulata Korere, MP
5. Hon. Dr. Beatrice Kahai Adagala, MP
6. Hon. Paul Kahindi Katana, MP
7. Hon. Charo Kazungu Tungule, MP
8. Hon. John Machua Waithaka, MP
9. Hon. Marianne Jobet Kitany, MP
10. Hon. Peter Irungu Kihungi, MP
11. Hon. Yusuf Mohamed Bulle Farah, MP

APOLOGIES

1. Hon. Dr. Lilian Achieng Gogo, MP - Vice Chairperson
2. Hon. Dr. Baba Owino, MP
3. Hon. Ronald Kamwiko Karauri, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1.	Ms. Wanjiru Mwaura	-	Principal Clerk Assistant I
2.	Mr. Ahmad Guliye	-	Clerk Assistant I
3.	Mr. Andrew Kipchumba	-	Clerk Assistant III
4.	Ms. Angela Maasai	-	Legal Counsel II
5.	Ms. Gladwel Animo	-	Research Officer III
6.	Mr. Psirmoi Daniel	-	Media Relations Officer
7.	Ms. Mercyln Serebo	-	Audio Officer
8.	Mr. Richard Sang	-	Serjeant-At-Arms
9.	Ms. Alice Gichebi	-	Intern

OFFICE OF THE AUDITOR GENERAL

1.	Mr. Henry Manegene	-	Liaison Officer
2.	Ms. Debra Ngagi	-	Auditor
3.	Mr. Fredrick Olaoch	-	Auditor
4.	Mr. Joseph Wangoju	-	Auditor

THE NATIONAL TREASURY

1.	Mr. Rodrick Kosme	-	Officer

2. Ms. Muragi Ngoyo - Officer

INSPECTORATE OF STATE CORPORATIONS

Ms. Nanjala Christine - Deputy Inspector

GEOTHERMAL DEVELOPMENT COMPANY

1. Mr. Paul Ngugi - Managing Director
2. Mr. Stephen Ibuinori - General Manager Finance
3. Mr. Geofrey Shitsama - Internal Auditor
4. Mr. Reuben Ngusi - Manager Drilling
5. Ms. Jacklyne Wakhungu - Manager Finance

MIN. NO. NA/PIC-CA&E/2024/141: PRELIMINARIES

The meeting was called to order at 10:23 a.m. with a prayer said by the Chairperson. Thereafter, introductions were made.

MIN. NO. NA/PIC-CA&E/2024/142: COMMUNICATION FROM THE CHAIR

The Chairperson welcomed the Members and stakeholders to the meeting. He informed the meeting that the Committee would examine the financial statements of Geothermal Development Company (GDC) for the Financial Year 2020/2021 which was the year under review.

MIN.NO.NA/PIC-CA&E/2024/143: CONFIRMATION OF MINUTES

This agenda item was differed to the next meeting.

MIN.NO.NA/PIC-CA&E/2024/144: EXAMINATION OF THE AUDITED ACCOUNTS OF GEOTHERMAL DEVELOPMENT COMPANY (GDC) FOR THE FY 2020/2021.

The management of Geothermal Development Company (GDC), led by the Chief Executive Officer Mr. Paul K. Ngugi appeared before the Committee to adduce evidence on the audit queries that had been raised by the Auditor General for the FY 2020/2021.

FY 2020/2021

1. Trading Revenue Recognized as Capital Grants

The statement of profit or loss and other comprehensive income reflected steam charges revenue totaling Kshs. 1,033,599.0. The Note indicated that the Company earned Kshs.5,038,849,000 from steam-charges during the year under review. However, the company using its accounting policy, reported Kshs.1,005,650,000 of the earnings as capital grants applied to fund development

projects. However, no satisfactory explanation was provided by Management for capitalization of a portion of revenue.

Management Response

The actual appropriation in aid for the year was Ksh 3,038,000,000. Of this amount, Kshs 1,995,850,000 was recognized as development grant while Ksh 1,042,150,000 was recognized as recurrent expenditure grant in line with printed estimates for the year and in line with the accounting policy of the Company. The accounting policy was revised in the financial year 2019/20. This matter was being handled together with the tax matter.

Committee Observation

The Committee noted the management needed to provide proof that the money generated by the steam wells were grants, and was to be used as revolving fund to be reinvested in developing new steam wells and therefore they needed not to pay taxes.

Committee Recommendations

The query to be dealt conclusively at the roundtable meeting with all relevant stakeholders.

2. Pending Grants Recognized as Revenue

The trade and other receivables balance include grants totaling Kshs 82, 890,000 listed in the general ledger as receivable from the National Government. No explanation was provided why the grants, which had not been received by the end of the year under review on 30 June, 2021, was recognized as income in the year under review contrary to requirements of International Accounting Standards (IAS) 20 - Accounting for Government Grants and Disclosure of Government Assistance, and the prudence concept of accounting.

Management Response

Based on the provisions of the accounting standard (IAS 20), the grants receivable of Ksh 82,840,000 related to European Investment Bank (EIB) grants of Ksh 70,180,587 and Exchequer grant of Ksh 12,500,000 which were received on 6th and 9th July 2021. The company treated the grant as receivable because all the conditions for receipt of the grant had been met as at the balance sheet date and were matched to the expenses.

Committee Observation

The Committee observed the query was an accounting matter, further, the anomaly arose due to the difference in interpretation of the IAS standard, and the management of GDC informed the Committee that the grants were recognized and matched in the balance sheet.

Committee Recommendations

The Committee was satisfied with the management response and cleared the audit query.

3.Unconfirmed Balances

3.1. Administration Expenses

3.1.1. Unexplained Apportionment of Employees Benefits Expenditure

The examination of the payroll data indicated that salaries and allowances paid to employees totaled Kshs 653,224,010, out of which only Kshs 491,344,000 or 75% was expensed as recurrent expenditure.Management did not provide documentary evidence, including accounting policies, to explain the basis for the apportionment of 25% of the costs totaling Kshs 161,806,003 to capital expenditure.

Management Response

The Company undertakes drilling activities using its own employees. The staff costs form part of the project costs. The policy of the company is that head office costs are apportioned to the project on effort basis. Previously, employee benefits were apportioned between the head office and projects based on staff ratios and utilization in project activities on a 75:25 basis which was estimated appropriately though it had not been categorically stated in the policy manual.

The policy on allocation of employee benefits between the head office and projects has been put in place with effect from FY 2021/2022 to guide the allocation.

Committee Observation

The Committee noted the management had developed a *fixed assets capitalization and management policy* and in the policy, paragraph 6.13, contained the capitalization of staff and other costs where the criteria for the apportionment of employee benefits were clearly stipulated.

Committee Recommendations

The Committee was satisfied with the response provided by the management and cleared the audit query.

3.1.2. Unsupported Overtime Allowance

Examination of monthly payrolls indicated that the Company paid overtime allowances totaling Kshs 6,232,500 to employees in the year under review. However, the Company's policy on payment of overtime allowances, approvals for the payments, timesheets completed by the payees and the payment rates applied were not provided for audit.

Management Response

Overtime is paid to unionizable staff in line with the Human Resource Policy and the Collective Bargaining Agreement (CBA). Requisite documentation and approvals for payment of overtime are clearly stipulated in the company procedures. The company had incorporated overtime claims and payments through its ERP system for ease of retrieval and processing.

Committee Observation

I. The Committee noted the documents supporting the payments of the overtime allowance were submitted to the auditor after they had concluded the audit.

II. The Committee noted a human resource policy and a collective bargain agreement dated 20th February 2020 that permitted the payment of overtime allowance was submitted by the management and the OAG concurred.

Committee Recommendations

The Committee was satisfied with the response provided by the management and cleared the audit query.

3.2. Cash and Cash Equivalents

The statement of financial position reflects cash and cash equivalents totaling Kshs 887,789,000 held in various bank accounts as at 30 June, 2021. The examination of bank reconciliation statements indicated that the balance included an unpresented cheque totaling Kshs.1,804,020 drawn on 10 January, 2018 and which had since become stale. In view of the failure to reverse the cheque in the cashbook, the cash and cash equivalents balance was not fairly stated.

Management Response

The amount of Ksh 1,804,020 related to valid payments to the beneficiaries of deceased staff that had been processed for release as at 30th of June 2021.The accounting documents attached were first posted in the system in 2018. However, payment had not been made due to disagreements between the beneficiaries The payment cleared from the bank in July 2021 hence was still valid

Committee Observation

The Committee noted the delay in payment was occasioned by the disagreements among the beneficiaries, however the management had settled the payment as evidenced by bank transaction document ref. no100004178 dated 30th June 2021.

Committee Recommendations

The Committee was satisfied with the response provided by the management and cleared the audit query.

4. Trade and Other Receivables

4.1.Long Outstanding Standing Interest on Receivables

The trade and other receivables balance include Ksh.31,616,263 being interest receivable on late payment of invoices by Kenya Electricity Generating Company Limited (KenGen) for steam power sales made in the year 2018. In view of the failure to collect the long-standing debt, its recoverability was doubtful.

Further, the receivables balance included additional debts totaling Ksh.1,344,890,145 owed by KenGen. However, KenGen's financial statements for the year under review reflected debts

totaling Kshs 1,030,884,000 as owed to the Company. No reconciliation was provided by Management for the difference of Kshs 84,982,423.

Management Response

The balances reported were as per internal records and concurrence from KenGen. As part of the audit procedures, KenGen were requested to confirm the amount due from them to GDC and the status of payment in relation to the interest owing of Ksh 31,058,983 of which they confirmed.

Currently, there is continuous reconciliation of balances between the two entities to ensure that the balances being reported agree.

Committee Observation

The Committee noted the management of GDC and KENGEN carried out reconciliation and agreed on a figure of kshs. 1,146, 416,534.44 as per the letter ref. MN/JM/MW dated 10th May 2022. However the management had not provided the invoices for the interest on late payments totaling to kshs. 31,058,988.

Committee Recommendations

The Committee directed the management of GDC to provide the invoices for the payment of interest by the close of business 14/08/2048.

4.2.Value Added Tax Recoverable

The trade and other receivables balance further includes Value Added Tax (VAT) receivable totaling Ksh.309,871,000. However, no supporting records were provided for withholding VAT totaling Ksh.31,298,573 included in the balance.

Management Response

Withholding VAT relates to amounts due to and from the KRA by virtue of GDC being a withholding agent of KRA. The amounts are withheld from payments to suppliers and from receipts by GDC from KenGen. As at the end of the financial year the amounts due and receivable in respect of withholding VAT of Ksh Ksh 31,298,573 is as per Annex VI. Withholding VAT extract.

Committee Observation

The Committee noted from the VAT withholding extract provided by the management, it was not possible get a reconciliation of the VAT recoverable of kshs. 31,298,573 from the summary.

Committee Recommendations

The Committee to make recommendation in the final report if the management doesn't provide evidence of the VAT recoverable totaling to kshs. 31,298,573.

4.3. Current Income Tax Liability

The statement of financial position reflects a Nil current income tax liability. However, the audited financial statements for 2018/2019 financial year, indicated there were unpaid taxes totaling Kshs.4,042,970,000 that had accrued from 2014/2015 to 2018/2019 financial years. However, change in the Company's accounting policy on steam charges revenue in the year 2019/2020 reduced the outstanding corporation tax and related penalties outstanding as at 30 June, 2019 by Kshs.2,312,581,000 to Kshs.197,853,000.The balance had, however, not been agreed with the Kenya Revenue Authority (KRA) as at 30 June, 2021.

Management Response

The issue was awaiting deliberations of the round table meeting

Committee Observation

This query to be handled at the roundtable meeting with all the relevant stakeholders.

4.4. Current Income Tax

The statement of financial position reflects current income tax recoverable totaling Kshs.121,303,000. However, records on tax payments indicated that withholding taxes paid included Kshs.49,045,806 for the months of July, August, December, 2019 which therefore related to the 2019/20 financial year and not the year under review.

Management Response

The withholding tax amount of Ksh 49,045,806 related to steam charge payments for July, August & December 2019. KenGen remitted the said amounts to KRA in the year under review

GDC recognized the same in the current period as this was when the same reflected in i-tax ledger for the company. The taxes were recognized in the year they were remitted.

Committee Observation

The Committee noted the management had submitted an iTax system excerpt and a withholding certificate from KENGEN dated 30/09/2020, however the withholding tax for the months of July, August and December 2019 totaling kshs.49, 045,806 could not be confirmed.

Committee Recommendations

The Committee to make recommendation in its final report.

5.Property, Plant and Equipment

5.1 Material Differences Between Fair Value of Assets and the Carrying Amounts

The assets totaling Kshs 49,041,481,000 are stated at historical cost less depreciation in line with the Company's policy on valuation of property, plant, and equipment. However, the Company's assets reflected carrying amounts that were materially different from their fair values. Further, several assets that were fully depreciated were in use and in good working condition. This was

contrary to International Accounting Standard No.16- Accounting for Property, Plant and Equipment whereby the assets should be revalued and their wear and tear charged against revenues for the year.

In addition, the Company's assets register reflected freehold land and buildings located in Nakuru County acquired more than ten years earlier. Although their market values had since risen, the assets had neither been revalued nor the variance between their fair and book values disclosed in the financial statements as required by IAS 16.

Management Response

The company uses the cost model for recognizing property plant and equipment in the financial statement. Under the cost model, property plant and equipment were measured at cost less accumulated depreciation and any accumulated impairment losses. The Company does not depreciate land hence the depreciation charge under this class of assets related to buildings.

Committee Observation

The Committee observed the management had not responded to the query sufficiently as the issue raised was about revaluation of assets. The OAG pointed out the query was still outstanding until the revaluation of assets was done.

Committee Recommendations

The Committee to make recommendation in the final report.

5.2. Work-in-Progress

The work-in-progress balance included works costing Kshs.815,701,000 which had been completed but not capitalized as at 30 June, 2021.

Further, out of the Ksh.815,701,000, Kshs.751,740,000 worth of projects included in the work-in-progress balance were unchanged from the previous year which implied that their execution may have stalled. No explanation was provided for the anomaly.

Management Response

The work in progress as disclosed under PPE are works of capital nature (Graded roads, boreholes) that are not being depreciated because they were yet to be commissioned. The works were completed and commissioned after year end hence depreciated in the FY 2021/22.

A significant portion of the work in progress as at year end related to the steam gathering system which was awaiting construction of the power plant and subsequent connection hence not stalled. One of the Power plant was now connected. The works totaling Ksh.815,701,000 have since been capitalized.

Committee Observation

I. The Committee noted the projects of kshs. 838,301,000 were capital in nature and it included graded roads and boreholes and the completion certificates dated 1st July 2021 were provided.

II. The Committee noted the projects associated with the kshs. 733,740,000, related to steam gathering system which had not been fully capitalized due to inadequate power plants to utilize the available steam.

III. The Committee directed the OAG, that when conducting future audits for the GDC, they should include a paragraph on the status of steam wells that had been completed but uncapitalised given the current status where total steam produced is 600MW but only 356 MW was capitalized.

Committee Recommendations

The Committee to raise the issue of fully developed steam wells that were lying idle in the round table meeting.

MIN.NO.NA/PIC-CA&E/2024/145: ADJOURNMENT

There being no other business, the meeting was adjourned at 01:03 pm. The next meeting will be held at 02:00 pm at the same venue.

Signature .....

HON. DAVID PROSING, CBS, M.P.
(CHAIRPERSON)

Date..... 15/10/24

MINUTES OF THE 89TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE ON COMMERCIAL AFFAIRS & ENERGY HELD ON WEDNESDAY, 14TH AUGUST, 2024 IN COMMITTEE ROOM, 4TH FLOOR CONTINENTAL HOUSE AT 02:00 P.M.

PRESENT

1. Hon. David Pkosing, CBS, MP - **Chairperson**
2. Hon. Sarah Paulata Korere, MP
3. Hon. Dr. Beatrice Kahai Adagala, MP
4. Hon. Paul Kalitoli Katana, MP
5. Hon. John Muchua Waithaka, MP
6. Hon. Peter Irungu Kihungi, MP

APOLOGIES

1. Hon. Dr. Lilian Achieng Gogo, MP - Vice Chairperson
2. Hon. Dr. Adan Keynan, CBS, MPS
3. Hon. Mwangi Kiunjuri, EGH, MP
4. Hon. Dr. Babu Owino, MP
5. Hon. Charo Kazungu Tungule, MP
6. Hon. Marianne Jebet Kitany, MP
7. Hon. Ronald Kamwiko Karauri, MP
8. Hon. Yusuf Mohamed Bulle Farah, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1.	Ms. Wanjiru Mwaura	-	Principal Clerk Assistant I
2.	Mr. Ahmad Guliye	-	Clerk Assistant I
3.	Mr. Andrew Ripchumba	-	Clerk Assistant III
4.	Ms. Angela Mosau	-	Legal Counsel II
5.	Ms. Gladwel Anamo	-	Research Officer III
6.	Ms. Judith Ripmp	-	Fiscal Analyst
7.	Mr. Psirmes Daniel	-	Media Relations Officer
8.	Ms. Mercyln Korubo	-	Audio Officer
9.	Mr. Richard Bang	-	Serjeant-At-Arms
10.	Ms. Alice Gichoka	-	Intern

OFFICE OF THE AUDITOR GENERAL

1.	Mr. Henry Maregesi	-	Liaison Officer
2.	Ms. Debra Ngugi	-	Auditor
3.	Mr. Fredrick Okuoch	-	Auditor
4.	Mr. Joseph Wangoju	-	Auditor

THE NATIONAL TREASURY

i.	Mr. Rodrick Koome	-	Officer
ii.	Ms. Muragi Ngoyu	-	Officer

INSPECTORATE OF STATE CORPORATIONS

Ms. Nanjala Christine - Deputy Inspector

GEOTHERMAL DEVELOPMENT COMPANY

i.	Mr. Paul Ngugi	-	Managing Director
ii.	Mr. Stephen Rosieneri	-	General Manager Finance
iii.	Mr. Geoffey Shitsama	-	Internal Auditor
iv.	Mr. Reuben Ngusi	-	Manager Drilling
v.	Ms. Jacklyne Wakhungu	-	Manager Finance

MIN. NO. NA/PIC-CA&E/2024/140: PRELIMINARIES

The meeting was called to order at 02:00 p.m. with a prayer said by the Chairperson. Thereafter, introductions were made.

MIN.NO.NA/PIC-CA&E/2024/148. CONFIRMATION OF MINUTES

This agenda was differed to the next meeting.

MIN.NO.NA/PIC-CA&E/2024/149 EXAMINATION OF THE AUDITED ACCOUNTS OF GEOTHERMAL DEVELOPMENT COMPANY (GDC) FOR THE FY 2020/2021.

The management of Geothermal Development Company (GDC), led by the Chief Executive Officer Mr. Paul K. Ngugi returned to adduce evidence on the audit queries that had been raised by the Auditor General for the FY 2020/2021.

FY 2020/2021

1.Stallted Fuel Management System Project

The work-in-progress balance further included works costing Kshs.39,830,980.00 on design, supply, installation, and commissioning of an information management system. Examination of records on the project indicated that the Company contracted an international company in December, 2014 to install a fuel management system at a cost of Kshs.344,525,716. However, implementation of the project stalled in 2015 after the first works certificate valued at Kshs.99,455,840 was paid to the contractor. The procurement execution of the contract was thereafter put under investigation by the Ethics and Anti-Corruption Commission (EACC).

Management Response

Delivery of works

Management system items worth Ksh13,529,894 were received and utilized by the company. Management was awaiting the conclusion of the investigations by EACC to determine the appropriate steps to be taken.

Committee Observations

I. The Committee was informed that the management were in the process of implementing a monitoring system that encompassed; drilling system, fuel system, CCTV system and a data center. The Contract sum was ksh. 344,523,712 for the project and the contractor had been paid ksh. 29,433,840 for the first milestone however the contractor supplied items worth only kshs. 13,529,894 resulting in an overpayment of kshs. 45,903,746.

II. The Committee inquired to know how the EACC commenced the investigation and the management informed it related to the procurement process, further the Committee noted the investigation by the EACC had dragged for long, and the current status was the management of GDC terminated the contract and GDC had not taken any steps to recover the overpayment from the contractor.

Committee Recommendations

I. The Committee directed the management of GDC to submit the following documents to Parliament by the close of business 15/08/2024.
   (i.) The payment voucher of Kshs. 29,433,840.
   (ii.) The signatories that approved the payment of the above voucher.
   (iii.) The status of the mentioned officers, those who were still in service and those that had exited the service.
   (iv.) The details of the Managing Director at the time the payment was effected.
   (v.) The details name of the company and its CR12.
   (vi.) The payment receipts for the kshs. 13,529,894.

II. The Committee to make recommendation regarding the audit query in its final report.

9 Losses Related to Drilling Rigs

9.1. Vandalized Drilling Rigs

In the year under review, an arbitrator appointed by the Nairobi Centre for International Arbitration awarded a security services firm Kshs.50,027,187 comprised of Kshs.46,218,301 for unpaid claims for services rendered to the Company and Kshs.3,808,886 for arbitration costs. Review of documents provided for audit indicated that assorted electric cables, batteries, and electronic components for four (4) of the Company's rigs were stolen between 31 December, 2017 and 01 January, 2020. The Company had put the aggregate value of the vandalized items at Kshs.51,038,565 and attributed the loss to laxity by the security firm which it had contracted to secure the rigs. Management had withheld payments due to the firm and thereafter lodged a claim against it citing losses totaling Kshs.2,800,448,213. The claim cited the stolen parts and loss of business after the four rigs were reportedly put out of service for two years. However, the

Arbitrator dismissed the compensation claim after ruling that the Company withheld the firm's payments without following due process. Audit inspections at the locations of the rigs in February, 2022 indicated that Management had not established new measures to prevent similar losses.

Management Response

The Company has engaged the Critical Infrastructure Police Unit (CIPU) in addition to the existing security firms contracted by the company to beef up security in its areas of operation. The matter was still actively being pursued by Government agencies.

Committee Observation

The committee noted the aggregate value listed by the management was based on the calculation of the value of time lost. The management had taken measures to beef up security in their installation by engaging the Kenya Police Wing of Critical Infrastructure Police Unit.

Committee Recommendation

The Committee was satisfied with the response provided by the management and cleared the audit query, however, to provide clarity on their written response the committee directed the management to rewrite the response.

6.8. Under Used Drilling Rigs

Fixed assets records indicated that the Company owned seven geothermal drilling rigs with a net book value of Kshs 7,784,707,309 as at 30 June, 2021. The rigs were bought at an aggregate cost of Kshs 15,887,767,572 several ago. However, review of records on their use indicated that four (4) of the rigs with a net year book value of Kshs 6,289,024,110 as at 30 June, 2021 and purchase cost of Kshs 8,063,023,527 had not been used in the previous four financial years. One of the rigs was acquired and used to drill two wells in 2016 and had been idling ever since. Further, records on the rigs indicated each could drill one standard well in one hundred and twenty days (six months), or two wells per year. However, the Company's rigs averaged less than one (1) well per year, which implied that they were not used efficiently, or were idling for much of the time.

Management Response

In acquiring the resources (7 rigs) currently in place, the Country envisioned accelerated drilling of geothermal resources in the several geothermal sites.

The plan was to drill in the Menengai, Bogoria - Silali and Suswa blocks. This plan was to be backed by funding from the Government of Kenya that had a grand plan to increase the national generation capacity to 5,000 MW. The budgetary allocation over the years has not been sufficient to enable full deployment and utilization of the available rigs. Additionally, the Suswa block was subject to an arbitration which has since been concluded and GDC given the go ahead to explore the field.

Committee Observation

The Committee was informed that buying of the seven rigs was to achieve the government target plan of generating 5000MW and in the government blueprint this could have been achieved by accelerating geothermal energy development. However after the purchase of the rigs, the Company did not have sufficient budgetary allocation to full operate all the seven rigs.

Committee Recommendation

The Committee was satisfied with the response given and cleared the management of the audit query.

5.Irregularities in Payment of Employee Expenses and Benefits

5.1. Non-Compliance with Salary Deductions Rule

Examination of payrolls for the year under review indicated that, contrary to Section 19(8) of the Employment Act, 2007 and Section C.1(8) of the Public Service Commission (PSC) Human Resource Policies, 2016, net monthly salaries paid to sixty-eight (68) employees were less than one-third (1/3) of their basic monthly pay.

Management Response

The company continues to monitor adherence and ensure that staff comply with the 1/3 rule.

Management had also included as part of the staff separation process a requirement for the exiting employee to notify Stima Sacco on their impending separation so as to either clear the loan balance or for notification of Loan Guarantors before deductions are instituted on their pay slips.

Committee Observation

I. The Committee noted the management of GDC had concurred with the observations made by OAG, and attributed the violation of the non-compliance to the 1/3 basic salary rule to deductions of guarantors by Stima Sacco.
II. The management had instituted administrative and policy sanctions to all employees who break the rule, further they had instituted education on prudent financial management to all staff. The management were also engaging Stima Sacco to renegotiate duration of loan repayments and liaising with the National Treasury on the challenges with compliance to the 1/3 basic salary rule.

Committee Recommendation

The Committee was satisfied with response provided and cleared the management of the audit query.

5.2. Over Extended Acting Appointments

Review of the payroll data indicated that acting allowances totalling Kshs.7,109,203 were paid to thirteen (13) employees appointed in acting capacity for periods lasting more than six months. The appointments were contrary to Section C 14(1) of the Human Resource Policies and

Procedures Manual for the Public Service issued in May, 2016 which provides that acting appointments should not last for more than six months.

Management Response

The employees were placed on acting terms to hold office, as the recruitment process for the vacant positions (Managers) was undertaken.

Status of the recruitment process

The recruitment process aborted twice, albeit with advertisements and interviews having taken place. This led to the renewal of acting for continuity of service. In addition, management also noted that there was a need to review its Human Resource Instruments which were contributing factors in the delayed recruitment process. The issue was awaiting approval of the National Treasury to fill the critical positions.

Committee Observation

I. The Committee noted the management had not complied with the Section C 14(1) of the Human Resource Policies and Procedures Manual for the Public Service issued in May, 2016 by allowing employees to act in a position for more than six months.
II. The Committee was informed the management had received approval of State Corporation Advisory Council (SCAC) to fill the position and were awaiting the approval of the National Treasury, however there was a circular on the freeze on hiring of staff in the public sector.

Committee Recommendation

The Committee to make recommendations in the final report.

4.0. Irregular Procurement of Goods and Services

4.1. Failure to Implement e-Procurement

Regulation 40(2) of the Public Procurement and Asset Disposal Act Regulations, 2020 required public entities to procure goods, works and services through the e-procurement system integrated to the State Portal. However, none of the Company's procurements in the year under review was done through the state portal. Therefore, Management was in breach of the law and the procurements done may not have been competitive enough to ensure value for money on the public funds spent on the resulting contracts.

Management Response

The company uses the SAP system (in-house ERP system) for its procurement and inventory management processes. However, the SAP system had a gap in supplier collaboration (online tender opening and evaluation) which had hampered full implementation of e-procurement.

To comply with e-procurement, all tenders and reports are published in the PPIP portal.

The Company had earmarked funds in the current financial year for the e-procurement software.

Committee Observation

I. The Committee noted the management of GDC were in the process of procuring an e-procurement system and had set aside funds in the current financial year.

II. The Committee advised the management that as a short-term measure they could integrate the current SAP system to the National Treasury in order to comply with the Public Procurement and Asset Disposal Act Regulations, 2020 requiring public entities to integrate their system with the National Treasury system.

Committee Recommendation

The Committee noted the management of GDC had not complied with the Public Procurement and Asset Disposal Act Regulations, 2020 and would make recommendation in its report.

4.0. Irregular Procurement of Legal Services

The Company's legal records indicated that in the year under review, Management hired a private law firm to represent it in a constitutional petition filed before the Employment and Labor Relations Court by five (5) senior managers. Management used Direct Procurement Method to contract the firm on grounds that it was impractical to apply other methods as the matter was urgent. However, the direct procurement method applied did not meet the conditions set out in Section 103 of Public Procurement and Asset Disposal Act, 2015 as the Company had a list of prequalified lawyers from which a restricted tender could have been considered.

Management Response

The management's choice of direct procurement method was based on the urgency of the matter and the parties involved, which in the company's view was appropriate in the circumstances. The company was able to mitigate attendant risks which could have arisen from non-compliance with the court orders.

Committee Observation

The Committee was informed that the selected law firm was among the prequalified firms by the company and the case involved five senior managers who had sued GDC for unfair termination of contract and this included the Company Legal Secretary.

Committee Recommendation

The Committee was satisfied with the response given and cleared the management of the audit query.

5.Overstocking of Drilling Supplies and Equipment

In the year under review the Company only utilized items valued at Kshs.847,041,814 or 6% of the stock. The low rate of use implied that the Company's stock management system was not economical as it had resulted in a large portion of the Company's capital being invested in slow moving stock that faced the risk of loss from obsolescence. Further, examination of inventories records indicated that the Company did not have a comprehensive inventory management system.

Management Response

The Company envisioned in its formative stage to drill geothermal resources in the country in various geothermal sites. Part of the plan was to drill in the Menengai, Bogoria - Silali and Suswa blocks. The Suswa block was subjected to an arbitration which has since been concluded and GDC given the go ahead to explore the field.

The acquired materials and equipment were in line with the above vision. This plan was to be backed by funding from the Government of Kenya and obtaining of geothermal licenses.

Committee Observation

The Committee was informed that buying of the seven rigs was to achieve the government target plan of generating 5000MW and in the government blueprint this could have been achieved by accelerating geothermal energy development. However, after the purchase of the rigs the GDC did not have sufficient budgetary allocation to fully operate all the seven rigs.

Committee Recommendation

The Committee was satisfied with the response given and cleared the management of the audit query.

ii. Commingling of Company Funds

Review of bank accounts and various donor funded projects indicated that that funds for the Menengai and Bogoria Silali geothermal projects were banked together with other Company funds in spite of Management having indicated in the prior year that the funds would be separated. The commingling hampered timely reconciliation of revenue and expenditure and therefore elevated the risk of inaccurate reporting and loss of cash.

Management Response

The company used to hold one bank account held at the Co-operative Bank of Kenya for all its receipts from Exchequer and Steam charge payments for its projects. The funds were then applied to the respective projects.

Following the recommendation from the Auditor General to have separate bank accounts for each project, the company effected separation of the bank accounts for its projects and for the company for receipt of ex-chequer funding. The Bogoria-Silali project bank account was maintained at the KCB Kisumu Branch account number 1110013209. The Menengai project account was maintained at Co-operative Bank Upper Hill Branch account number 01130160837600. The Company's Recurrent account was maintained at ABSA Bank Plaza Corporate Service Centre account number 2044818109.

Steam charge receipts are however, received into the Co-operative Bank account due an existing assignment agreement of the steam charge payments with the bank.

Committee Observations

The Committee observed that GDC operated one bank account then and they had a moratorium with Cooperative Bank at the time that explains why steam revenue had to be deposited at that

account together with project funds. However, GDC had set up other bank accounts to manage project and recurrent funds that include; KCB bank, ABSA bank and Cooperative bank.

Committee Recommendation:

The Committee was satisfied with the management response and cleared the management of the audit query.

MIN.NO.NA/PIC-CA&E/2024/150: ADJOURNMENT

There being no other business, the meeting was adjourned at 03:17 pm. The next meeting will be held on notice.

Signature .....

HON. DAVID PKOSING, CBS, M.P.
(CHAIRPERSON)

Date..... 15/10/24 .....

MINUTES OF THE 30TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE ON COMMERCIAL AFFAIRS & ENERGY HELD ON THURSDAY, 15TH AUGUST, 2024 IN COMMITTEE ROOM 21, BUNGE TOWER AT 10:00 A.M.

PRESENT

1. Hon. David Pkosing, CBS, MP - **Chairperson**
2. Hon. Dr. Lilian Gogo, MP - **Vice Chairperson**
3. Hon. Dr. Babi Owino, MP
4. Hon. Dr. Beatrice Kahai Adagala, MP
5. Hon. Paul Kahindi Katana, MP
6. Hon. Charo Kazungu Targale, MP
7. Hon. John Machua Waithaka, MP
8. Hon. Peter Irungu Kihungi, MP
9. Hon. Yusuf Mohamed Bulle Farah, MP

APOLOGIES

1. Hon. Dr. Adan Keynan, CBS, MPS
2. Hon. Mwangi Kiunjuri, EGH, MP
3. Hon. Sarah Paulata Korere, MP
4. Hon. Marianne Jebet Kitany, MP
5. Hon. Ronald Kamwiko Karauri, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Ms. Wanjiru Mwaura - Principal Clerk Assistant I
2. Mr. Ahmad Guliye - Clerk Assistant I
3. Mr. Andrew Kipchumba - Clerk Assistant III
4. Ms. Angela Musau - Legal Counsel II
5. Ms. Gladwel Amimo - Research Officer III
6. Ms. Judith Kiprop - Fiscal Analyst
7. Ms. Mercyln Kerubo - Audio Officer
8. Mr. Richard Sang - Serjeant-At-Arms
9. Ms. Alice Gichelu - Intern

OFFICE OF THE AUDITOR GENERAL

1. Mr. Henry Manegene - Liaison Officer
2. Ms. Rosemary Koigi - Auditor
3. Mr. James Muriithi - Auditor
4. Mr. James M. Njeru - Auditor

THE NATIONAL TREASURY

Ms. Catherine Nzioki – Officer

INSPECTORATE OF STATE CORPORATIONS

Mr. Daniel Mawei Wambua

KENYA RAILWAYS CORPORATION

1. Mr. Stanley Gitari – Director, Legal Services
2. Mr. Peter N. Namakia – Accounts Manager

NATIONAL LANDS COMMISSION (NLC)

Mr. Bernard Cheruiyot – Director, Finance & Administration

MIN. NO. NA/PIC-CA&E/2024/131: PRELIMINARIES

The meeting was called to order at 10:24 a.m. with a prayer said by the Chairperson. Thereafter, introductions were made.

MIN. NO. NA/PIC-CA&E/2024/132: COMMUNICATION FROM THE CHAIR

The Chairperson welcomed the Members and stakeholders to the meeting. He stated the purpose of the meeting was for the Kenya Railway Corporation and the National Land Commission to provide documents relating to one project affected person (PAP) who was paid Kshs. 8,517,010 during the SGR phase 1 compensation.

MIN.NO.NA/PIC-CA&E/2024/133: CONFIRMATION OF MINUTES

This agenda was differed to the next meeting.

MIN.NO.NA/PIC-CA&E/2024/134: EXAMINATION OF THE AUDITED ACCOUNTS OF KENYA RAILWAYS CORPORATION (KRC) FOR THE FY 2018/2019 TO FY 2020/2021 (JOINT VERIFICATION BY KRC, NLC AND THE OAG, REGARDING COMPENSATION OF PROJECT AFFECTED PERSONS IN SGR PHASE 1)

The Kenya Railways Corporation and the National Land Commission, presented documents led by Mr. Stanley Gitari and Mr. Bernard Cheruiyot respectively.

Irregular Land Compensation

The Committee had requested the management of KRC and NLC to submit documents for verification with regards to payments supported by PIN, copy of ID, signed bank details, tax

compliance certificate and award letter totaling to kshs 3,217,043 paid to a project affected person.

Management Response

Kenya Railways and the Office of the Auditor General (OAG) carried out the joint verification exercise and confirmed that NLC had provided supporting documents including an award letter, signed bank details, a copy of ID and PIN for the Kes 3,217,043 payment to one PAP.

Committee Observations

The Committee noted the management had provided details of the one PAP and it included, an award letter ref. VAL/1601, an Identification Card (ID), a KRA PIN certificate, bank account details. However, the Committee noted that Tax Compliance Certificate was missing. The Committee was satisfied with the proof provided by the KRC and the NLC.

Committee Recommendation

The OAG confirmed that they had verified the documents provided and were satisfied that a project affected person (PAP) was duly paid. The Committee concurred with the OAG and cleared the audit query.

MIN NO NA/PIC-CA&E/4084/115: ADJOURNMENT

There being no other business, the meeting was adjourned at 11.15 am. The next meeting will be held on notice.

Signature .....

HON. DAVID PKOSING, CBS, M.P.
(CHAIRPERSON)

Date 15/10/24

OFFICE OF THE PRESIDENT

PERMANENT SECRETARY, SECRETARY TO THE CABINET
AND HEAD OF THE PUBLIC SERVICE

Our Ref: OP CAB.9/14

27 July 2011

All Permanent Secretaries

Chairmen and Chief Executives of State Corporations

RE: STATE CORPORATION BOARD MANAGEMENT ISSUES

Arising from various Public Investment Committee reports and recommendations, it has been noted that some State Corporations do not adhere to the rules, regulations and guidelines as stated in the various Acts and Circulars issued from time to time. Your attention is drawn to the following Board Management issues that have been of concern:

1. Size of Boards

It has come to my attention that the membership of the Board of some State Corporations ranges between 11 and 20 members. The best size of the Board should be between 7 and 11 as per good corporate governance principles and State Corporations Act (Cap 446) section 6. In this regard, members with State Corporations that are not in compliance with the best practice will need to review their shareholding legislation on matters of Board composition with a view of reducing the size of the Board.

2. Attendance of Board Committees by Chairman

It has also been noted that in some State Corporations, the Chairman of the Board attends Board Committee meetings contrary to guidelines issued by this office on 8th November 2004 (*Ref. OP.CAB.P.1/4*). This practice should cease forthwith.

3. Irregular Payment of Allowances

In accordance with the Circular No. OP.CAB.4/26A from this office and the State Corporation Act Article 10(1), payment of sitting allowances to Chief Executive/State Corporation and Management is not allowed. However some Corporations/Universities have not adhered to these regulations to-date. Similarly, Chairpersons of Boards should not continue to draw honorarium after expiry of the term of office. This should cease forthwith.

4. Advances and Loan Schemes to Board Members or Staff

It has been noted that some State Corporations have advanced long term loans and/or car/personal advances to Board members from institutional funds contrary to the provisions of Section 17 of the State Corporations Act. This should stop forthwith.

In addition, some State Corporations have set aside institutional funds for staff mortgage schemes. While in principal it improves staff motivation and retention, there is need to harmonize such schemes to forestall possible abuse and ensure they are sustainable. To ensure that there is equitable administration of such schemes in the public service, all staff mortgage schemes must be approved by the Treasury in accordance with provisions of Section 17 of the State Corporation Act. Chief Executives of State Corporations are directed to ensure compliance.

5. Management of Fixed Assets and Liabilities

a) Land acquisition

The Government has previously directed that all State Corporations should enquire that they get all their land surveyed and secure title deeds for the same. However, some State Corporations have not complied with this directive. The failure to comply has resulted in the understatement of the value of their assets as such land is not reflected in their asset register. In addition, there is the risk of the State Corporations losing their land.

All State Corporations are required to immediately initiate the process of acquiring title deeds for all pieces of land in their possession. The process should be concluded within one year from the date of this circular.

v) Procurement of Capital Equipment

We did notice that some organizations have acquired capital and consumable items/equipment, waiting to use at a later time. It is expected that all Public Sector entities should not only procure goods and services in a transparent manner and in accordance with the requirements and relevant Act, but should also ensure that they obtain value for money while procuring capital assets.

In the future, procurement of capital, capital goods will be scheduled / implemented and the officers involved fully answerable / liable for the losses.

vi) Government Loans Obligations

In accordance with the Annual Treasury Circular on budgets, all State Corporations are required to take debt service and statutory obligations as a first charge on their revenue and other receipts. Despite this requirement and the contractual undertaking through the Loan Agreements, it has been noted that some organizations have defaulted on their obligations in respect of Government loan repayments.

All affected State Corporations and Ministries reminded to honour their loan obligations by clearing the loan arrears and making subsequent payments on the due date.

(DR. RAZILA B. H. FARSAL, EBS)
PERMANENT SECRETARY, SECRETARY TO THE CABINET AND HEAD OF THE PUBLIC SERVICE

C.C.
State Corporations Advisory Committee

Attorney General

Permanent Secretary (Treasury)

Clerk of the National Assembly